



FILED

Sep 21, 2023, 9:59 am
OFFICE OF FAIR HEARINGS

**STATE OF FLORIDA
AGENCY FOR HEALTH CARE ADMINISTRATION
OFFICE OF FAIR HEARINGS**

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1644

Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on August 11, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Debra Havey-Levy
Program Integrity Manager
UnitedHealthcare Community Plan

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional thirty-five (35) hours per week of personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (“Petitioner”) appeared for the hearing but did not testify. [REDACTED] Petitioner’s Authorized Representative and [REDACTED], appeared as a witness for Petitioner.

Debra Havey-Levy, Program Integrity Manager for UnitedHealthcare Community Plan, Inc. (“UnitedHealthcare”) appeared on behalf of Respondent. Dr. Albena Baharieva (“Dr. Baharieva”), Long Term Care Medical Director for UnitedHealthcare, attended as a witness for Respondent.

Sandra Durden, Medical Healthcare Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”) appeared as an observer.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent a five (5)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as “Email Correspondence.pdf.” Absent an objection from the Respondent, the undersigned admitted the five (5)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty (280)-page evidence packet. The evidence appears in the Office of Fair Hearings’ document management system as “Respondent’s Statement of Matters_Part1 (Pgs. 1 – 66).pdf”, “Respondent’s Statement of Matters_Part2 (Pgs. 67 – 97).pdf”, “Respondent’s Statement of Matters_Part3 (Pgs. 98 – 195).pdf”, and “Respondent’s Statement of Matters_Part4 (Pgs. 196 – 280).pdf.” Absent an objection from Petitioner, the undersigned admitted the two hundred and eighty (280)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of UnitedHealthcare. See RCE 1 at page 1. UnitedHealthcare is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. *Id.* [REDACTED] lives in a [REDACTED] *Id.* at 38. Petitioner has [REDACTED] that lives [REDACTED] and [REDACTED]. Petitioner has [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Id. at 43 – 44. Petitioner also suffers from [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 29.

3. Petitioner answered the questions for the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment”), dated July 13, 2023, on [REDACTED] own. *Id.* at 38. As provided in the 701B Assessment, Petitioner needs the following assistance with [REDACTED] activities of daily living (“ADLs”): needs assistance (but not total help) with [REDACTED]; uses an

[REDACTED]; and needs no assistance with [REDACTED]. *Id.* at 41. Regarding her ADLs, Petitioner always has assistance with [REDACTED], and needs no assistance with eating, using [REDACTED]. *Id.*

4. Petitioner's assistance needs for instrumental activities of daily living ("IADLs") are as follows: needs total assistance (cannot do at all) with [REDACTED]; needs assistance (but not total help) with [REDACTED]; needs no assistance with [REDACTED]. *Id.* at 42. Regarding [REDACTED] IADLs, Petitioner always has assistance with [REDACTED]; Petitioner does not need assistance with [REDACTED]. *Id.*

5. The notes and summary of the 701B Assessment observe:

Member is an [REDACTED] who resides with members [REDACTED], who member reported to suffer from [REDACTED]. Member is [REDACTED].

Member appears to [REDACTED] noted at the time of assessment.

Member requires moderate assistance with daily ADLs and IADLs. Member provider choice was discussed with member. Complete service: Ointment 1 jar, Bladder pads 1 case, pull ups 2 cases; PC 20 hrs per week; HMK 5 hrs per week with Patient Choice Home Health Care; Guardian Medical Monitoring PERS monthly monitoring.

Member reported not to be receiving any therapies or specialty care at the time of assessment.

RCE 1 at 37 – 53.

6. Petitioner requested an additional thirty (35) hours per week of personal care services.

Id. at 5. In the Notice of Adverse Benefit Determination (“NABD”), Respondent denied Petitioner’s request as of May 11, 2023. *Id.* at 5 – 9. The NABD explained the basis of the decision as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (See Rule)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...

- Other Authority

...

The facts that we used to make our decision are:

Your assessment tells us that you need help with [REDACTED]

[REDACTED].

You asked for 35 more hours a week of personal care.

You are getting 20 hours a week of personal care to help you.

You are getting 5 hours a week of homemaker services to help you.

You [live] with [REDACTED] that helps you.

In my clinical opinion, your personal care needs can be met by the current services and supports. These hours can be split to meet your needs during the day.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated June 23, 2023, upholding the denial of additional personal care services. *Id.* at 122 – 127. The NPAR states, in pertinent part:

On March 26, 2023, we received your timely plan appeal request regarding UnitedHealthcare Community Plan’s Notice of Adverse Benefit Determination dated May 11, 2023, A197731090, denying the request for Personal Care 35 more hours a week provided to [Petitioner].

On June 22, 2023, after consideration of the information you provided to UnitedHealthcare Community Plan in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal.

As part of our review we look at information you or your provider gave us. We also look at your benefits. Based on our review of your appeal, we have determined that the service you requested will not be approved.

John Szafranski, MD, specializing in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Administrative Code 59G-1.010(166).

Your appeal was reviewed by a medical director. He is a medical doctor. He is board certified in family medicine. We looked at your records. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. You are for additional personal care. You would like 35 more hours a week. You want more help with daily activities. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving a total of 20 hours a week. You can help yourself some. These should meet your personal care needs. You have other paid services for help. These include homemaker service 5 hours a week and home delivered meals 7 meals a week. Your aid does not have to make these meals for you. You live with a caregiver who can help some. That is why we cannot approve what you asked for. Please talk about this with your doctor.

8. On July 5, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On July 14, 2023, the Hearing Officer issued an Order Scheduling Fair

Hearing by Telephone and Prehearing Instructions, setting the hearing for August 11, 2023, at 9:00 a.m. EST.

9. Petitioner's authorized representative and [REDACTED], testified as follows:
- a. Petitioner lives with [REDACTED] was Baker Acted twice out of concern for [REDACTED] safety. [REDACTED] ability to take care of Petitioner is almost none. [REDACTED] recently requested a leave of absence from [REDACTED] job to seek treatment in a partial hospitalization program. When [REDACTED] goes to the partial hospital program, no one will be home with Petitioner.
 - b. [REDACTED] lives [REDACTED] and tries to visit Petitioner every four to five weeks, unless there is an emergency.
 - c. [REDACTED] asserted that Petitioner has frequent falls but does not always seek medical care because [REDACTED] is stubborn and does not want to get medical attention when [REDACTED] should.
 - d. [REDACTED] disagreed with some of the information in the 701B assessment. However, when given the opportunity, [REDACTED] did not object to the 701B assessment, which was included in Respondent's evidence packet and accepted as Respondent's Composite Exhibit 1.
 - e. [REDACTED] acknowledged that Petitioner completed the 701B assessment on her own, providing the information and answers to questions. When asked why Petitioner answered the assessment on [REDACTED] own if [REDACTED] has concerns about Petitioner understanding the reality of [REDACTED] situation, [REDACTED] answered that he does not have additional resources to care for Petitioner in the home.

- f. Petitioner does not live with [REDACTED] because Petitioner feels that [REDACTED] wants to support [REDACTED]. Petitioner is also accustomed to [REDACTED] health care provider and the [REDACTED] community in South Florida.
 - g. [REDACTED] asserted that Petitioner may have needed moderate assistance a year ago, but the circumstances have changed drastically from a year ago.
 - h. [REDACTED] did not know the time of Petitioner's last fall and does not have confirmation of changes in Petitioner's medication. [REDACTED] receives [REDACTED] information regarding Petitioner from Petitioner and [REDACTED].
 - i. Petitioner's [REDACTED] works six (6) days a week and visits with Petitioner every three (3) weeks for a couple hours.
 - j. Petitioner does not have a primary caregiver.
10. [REDACTED] referred to a letter from Petitioner's physician, Roberto Soler Verges, MD, stating:

Patient with multiple comorbidities with [REDACTED], unable to achieve [REDACTED] daily ADLs and IADLs, needs constant and daily close monitoring.

PCE 1 at 2.

11. Dr. Baharieva is a Medical Director for UnitedHealthcare. Dr. Baharieva testified as follows:

- a. Respondent's decisions are based on the medical necessity of the Petitioner.
- b. Petitioner currently receives twenty (21) hours of personal care services, five (5) hours of homemaker services, and seven (7) home delivered meals each week.

- c. Personal care hours are approved based on a person's ability or lack of ability to perform ADLs. Dr. Baharieva reviewed Petitioner's assistance needs with [REDACTED] ADLs and IADLs, opining that this information is why the current hours were approved.
- d. Dr. Baharieva reviewed the letter from Petitioner's doctor, RCE 1 at 29, stating having a list of diagnoses does not paint of a picture of what a person can do with [REDACTED] ADLs. The letter does not include a physical examination or information regarding Petitioner's functional status and ability to complete ADLs in detail.
- e. Dr. Baharieva reviewed notes from Petitioner's neurologist and PCP document, *Id.* at 81 – 87, highlighting that none of the notes indicate any new neurologic deficits or any new cognitive deficits that would impair Petitioner's ability to perform [REDACTED] ADLs. There is no documentation that there has been a significant worsening in Petitioner's ability to perform [REDACTED] ADLs.
- f. Based on the two 701B Assessments, dated April 23, 2023 (report run by DOEA_B (Department of Elder Affairs) on May 3, 2023) and July 13, 2023, there is no change in Petitioner's ADLs, no change in Petitioner's cognitive status, and the lack of any doctor's notes that specifically address changes in Petitioner's ability to do ADLs, a decision was made that medical criteria for additional hours were not met.

CONCLUSIONS OF LAW

- 12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).
- 13. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-

1.100(17)(b).

14. Because Petitioner is requesting a new service, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

15. The Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care and homemakers:

1.1 Description and Program Goal

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene

- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

4.1 General Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment. [emphasis supplied]

RCE 1, LTC Policy at pages 236 – 244.

16. The LTC Policy also provides the following regarding medical necessity:

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

RCE 1 at 237 – 238.

17. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care,

goods or services medically necessary or a medical necessity or a covered service.

RCE 1 at 229.

18. Petitioner requested an additional thirty-five (35) hours per week of personal care services. *See supra* ¶ 6. The additional personal care services were denied based on medical necessity. *See supra* ¶ 6, 7. Respondent explained that Petitioner’s request was not medically necessary based on the information provided but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. *Id.*

19. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 15. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment. *Id.*

20. The evidence presented reflects that Respondent’s denial of an additional thirty-five (35) hours per week of personal care services is warranted under the circumstances of this case. As provided in the LTC Policy, personal care is to provide “assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” *See supra* ¶ 15. The record reflects that Petitioner lives [REDACTED], and [REDACTED] other [REDACTED] every three (3) to five (5) weeks. *See supra* ¶ 2, 5, and 9. With regard to ADLs, Petitioner needs assistance (but not total help) with [REDACTED]; uses an assistive

device [REDACTED]; and needs no assistance [REDACTED]. See supra ¶ 3. The 701B Assessment states that Petitioner currently has assistance with [REDACTED], and needs no assistance with [REDACTED]. See supra ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED] needs assistance (but not total help) with [REDACTED] needs no assistance with [REDACTED]. See supra ¶ 4. The 701B Assessment states that Petitioner always has assistance with [REDACTED] and that Petitioner does not need assistance with [REDACTED]. See supra ¶ 4. [REDACTED] asserted that the answers in the 701B dated July 13, 2023 were inaccurate, see supra ¶ 9, however, [REDACTED] did not object to the 701B when it was included in Respondent's evidence packet and accepted as Respondent's Composite Exhibit 1. Further, Petitioner appeared at the Fair Hearing, provided no testimony that contradicted [REDACTED] answers to the 701B, and there is no documentation provided by [REDACTED] stating Petitioner is unable to answer such an assessment on [REDACTED] own. Petitioner currently receives twenty (20) hours of personal care services, five (5) hours of homemaker services, and seven (7) home delivered meals, for a total of twenty-five (25) hours of care. See supra ¶¶ 6, 7, and 11.

21. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PCS Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides general guidance concerning the time allotted for personal care tasks. As Dr. Baharieva testified, there is no documentation that there has been a significant worsening in Petitioner's

ability to perform [REDACTED] ADLs (or IADLs). *See supra* ¶ 11. Neither Petitioner nor [REDACTED] provided a schedule of ADLs/IADLs and/or any estimate of the time it takes to complete each ADL/IADL task. Allotting thirty (30) minutes of time for each of Petitioner’s ADLs ([REDACTED] [REDACTED]) and taking into account Petitioner’s medical conditions, the current twenty (20) hours of personal care services appear to be reasonable. Petitioner also has five (5) hours of homemaker services per week, which closely align with the documented IADL tasks that Petitioner needs assistance with. Dr. Bowers Baharieva credible and persuasive testimony that the approved services are adequate to meet Petitioner’s needs.

22. [REDACTED] testified that no one will be home with Petitioner when [REDACTED], the [REDACTED] who lives with Petitioner, goes to a partial hospitalization program. *See supra* ¶ 9. The request for additional personal care hours corresponds more with adult companion care services, which are defined as the “provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee.” *See supra* ¶ 15.

23. [REDACTED] testified that Petitioner’s physician supports Petitioner’s request for the additional hours of personal care services, based on a letter provided by the physician. *See supra* ¶ 10. However, the fact that a provider prescribed, recommended, or approved medical or allied care, goods, or services does not, itself, make such care, goods, or services medically necessary or a medical necessity or a covered service. *See supra* ¶¶ 16 and 17.

24. Therefore, upon consideration of the testimony provided, Petitioner’s Composite Exhibit 1, Respondent’s Composite Exhibit 1, and the applicable laws and policies, the undersigned

concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional thirty-five (35) hours per week of personal care services was incorrect.

DECISION

Respondent's denial of an additional thirty-five (35) hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE AND ORDERED this 21st day of September, 2023 in Tallahassee, Leon County, Florida.



Kameisha Presley
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KAMEISHA PRESLEY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

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