

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



FILED

Oct 09, 2023, 10:13 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1840

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 12, 2023, at 10:00 a.m. EST.

APPEARANCES

For the Petitioner:

[REDACTED]

Authorized Representative

For the Respondent:

Markeshi Lee
Medicaid Fair Hearing Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUES

The issue in this matter is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of thirty-six (36) additional hours of adult companion care was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED], the Petitioner's Authorized Representative and [REDACTED] represented Petitioner at the Fair Hearing and provided

testimony on Petitioner's behalf.

Markeshi Lee, ("Ms. Lee") Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana" or "Respondent"), represented the Respondent at the hearing. Dr. Wayne Sherman ("Dr. Sherman"), Medical Director for Humana, appeared as a witness for Respondent.

Diana Hearod, Medical Healthcare Program Analyst & Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

The Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty-nine (289)-page evidence packet that was admitted into evidence without objection, shall be identified as "Respondent's Composite Exhibit 1", and appears in the Office of Fair Hearings' case management system as: "Evidence Packet_Part1.pdf"; "Evidence Packet_Part2.pdf"; "Evidence Packet_Part3.pdf"; "Evidence Packet_Part4.pdf"; "Evidence Packet_Part5.pdf"; and "Evidence Packet_Part6.pdf"; .

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. See Respondent's Composite Exhibit 1, page 1. Humana 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]
[REDACTED] See Respondent's Composite Exhibit 1, page 40. Petitioner has [REDACTED] that live nearby, including one that serves as the Petitioner's primary caregiver and the other serving as the Authorized Representative in this matter. See Respondent's Composite Exhibit 1, pages 44 and 56.

3. The most recent Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), is dated June 7, 2023, which reflects the Petitioner health conditions include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See Respondent’s Composite Exhibit 1, pages 46 and 47.

4. The June 7, 2023, 701B form reflects the Petitioner the following regarding the Activities of Daily Living (“ADLs”); the Petitioner requires total assistance (cannot do at all) with bathing, dressing, using [REDACTED], and that the Petitioner requires some assistance but not total help with [REDACTED]. See Respondent’s Composite Exhibit 1, page 44.

However, the notes regarding ADLs in the 701B reflect that because of advanced [REDACTED] [REDACTED] the Petitioner requires total assistance with all [REDACTED] ADLs. *Id.* The Petitioner uses assistive devices for [REDACTED]. *Id.* The June 7, 2023, 701B reflects the Petitioner always has assistance [REDACTED] and has assistance most of the time with the remaining ADLs. *Id.*

5. With respect to the Petitioner’s Instrumental Activities of Daily Living (“IADLs”), the 701B Assessment reflects the Petitioner needs total assistance (cannot do at all) with [REDACTED]

[REDACTED]

[REDACTED] and needs some assistance (but not total help) with [REDACTED]. See Respondent’s Composite Exhibit 1, page 45.

6. On June 7, 2023, the Petitioner requested an additional thirty-six (36) hours per week of adult companion care services per week. See Respondent’s Composite Exhibit 1, pages 10-17.

On June 13, 2023, the Respondent issued a Notice of Adverse Benefit Determination (“NABD”) that

denied the Petitioner's request for an additional thirty-six (36) hours of adult companion care services per week. *Id.* The NABD states, in pertinent part, as follows:

We made our decision because:
(Check all boxes that apply)

- We determined that your requested services are **not medically necessary** because the services do not meet either of the reason(s) 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.

The requested **service is not a covered benefit.**

■ **Other authority**

The facts that we used to make our decision are:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan's approved review criteria and guidelines.

You have requested an additional 36 hours of adult companion care service each week. You have several (multiple) medical problems. You do not have trouble

making your needs known. You often have trouble thinking clearly or remembering things. You often [REDACTED] You receive 5 home delivered meals each week. You have not had any recent changes in your health. You have not recently been in the hospital. You live with alone. You use a walker to move around (walk). Use a wheelchair for long distances. You need help transferring (move from bed to chair). You need help bathing, dressing, and toileting. You need help with [REDACTED] [REDACTED] Your request for an additional 36 hours of adult companion care service each week is being denied as not medically necessary. The hours you are receiving should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

Id.

7. Petitioner requested a plan appeal challenging the denial of an additional thirty-six (36) hours of adult companion care services per week. *See* Respondent’s Composite Exhibit 1, pages 19-24. On July 20, 2023, the Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the denial. *Id.* The NPAR explains as follows:

The reason for the decision was based on the information received.

You are appealing the denial of additional 36 hours of adult companion care service requested each week. The member lives alone. [REDACTED] is alert and oriented only to person with confusion and agitation at times. [REDACTED] has multiple medical problems. We have reviewed [REDACTED] documents and assessed [REDACTED] needs. The member currently receives 40 hours of PDO care, 5 hours of traditional adult companion care and 5 home delivered meals. There has been no significant change in [REDACTED] overall care. [REDACTED] does not wander. The current hours should be sufficient for the member’s needs. We are upholding the decision of the medical director and denying your appeal.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the Plan’s approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

Id.

8. Petitioner is currently authorized to receive the following participant directed option

("PDO") home and community-based services: twenty-five (25) hours per week of personal care services; five (5) hours per week of homemaker services; ten (10) hours of adult companion care services. See Respondent's Composite Exhibit 1, pages 72-75. In addition, the Petitioner receives five (5) hours of traditional adult companion care on Saturdays, five (5) home delivered meals Monday through Friday, a total of ten (10) hours per week of natural support from one daughter, and finally forty-eight (48) hours of natural support from the Authorized Representative on Saturdays and Sundays. See Respondent's Composite Exhibit 1, pages 68, 69, 78, and 79.

9. The Petitioner's authorized representative testified [REDACTED] and [REDACTED] spend over one hundred and twenty-three (123) hours per week caring for their [REDACTED] beyond the forty-five (45) hours of home health services they currently approved by Humana. The Authorized Representative testified both [REDACTED] have their own households to manage and they desperately need outside assistance to help care for their [REDACTED]. The Authorized Representative testified [REDACTED] health is declining, that [REDACTED] is in the [REDACTED], was diagnosed with [REDACTED], cannot be left alone, and has a [REDACTED] [REDACTED] because the Petitioner doesn't remember [REDACTED]. The Authorized Representative testified that [REDACTED] frequently wakes up at night to use the bathroom, and needs assistance before, during, and afterwards. In addition, the Authorized Representative acknowledged that [REDACTED] provides forty (40) hours of PDO home health services each week, and has reached the maximum number of PDO services that can be provided to the Petitioner. Finally, the Authorized Representative testified that the thirty-six (36) hours of requested adult companion care each week is to allow [REDACTED] the opportunity for them to leave [REDACTED] in the care of another, to rest, and spend time at their own respective homes.

10. In [REDACTED] rebuttal testimony, the Authorized Representative testified that the Petitioner requires personal care at night due to [REDACTED], that [REDACTED] health is declining, and that someone is needed to be with [REDACTED] twenty-four (24) hours each day, seven (7) days per week. In closing, the Authorized Representative said any additional hours are needed for the Petitioner.

11. Dr. Sherman testified that the Petitioner receives a total of forty-five (45) hours of Medicaid home based services, consisting of forty (40) hours of PDO services plus five (5) hours of traditional adult companion care on Saturdays. Dr. Sherman also testified the conclusion that the Petitioner receives a sufficient amount of medically necessary home health service hours, that additional hours are not medically necessary, and that the Petitioner should not receive any additional hours for the times when [REDACTED] is sleeping.

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 section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of the Agency under section 409.285(2)(a).

13. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).

14. Because Petitioner is requesting new services, 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 Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program

Coverage Policy (March 2018) (“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 home and community-based services, including adult companion care services:

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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual’s medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

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)

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

4.0 Coverage Information

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 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

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.

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

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 individualized 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.

LTC Policy at pages 1 - 8.

16. The LTC Policy also addresses 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.

LTC Policy at pages 2 – 3.

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.

18. As provided in the LTC Policy, the purpose of adult companion care services is to provide “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. Companion care is designed to prevent social isolation or to provide supervision and is not designed to address the performance of ADLs. See supra ¶ 15.

19. The Petitioner lives alone and currently receives the following participant directed option (“PDO”) home and community-based services from her daughter and primary caregiver: twenty-five (25) hours per week of personal care services; five (5) hours per week of homemaker

services; ten (10) hours of adult companion care services. *See supra* ¶ 8. In addition, the Petitioner receives five (5) hours of traditional adult companion care on Saturdays, five (5) home delivered meals, weekly, a total of ten (10) hours per week of natural support from her primary caregiver daughter, and forty-eight (48) hours of natural support from the Authorized Representative on Saturdays and Sundays. *Id.* Thus, as Petitioner has opportunities to socialize with [REDACTED], the adult companion care aide on Saturdays, an additional thirty-six (36) hours of non-medical adult companion care services are in excess of the Petitioner's needs and not medically necessary. *See supra* ¶¶ 16 and 17.

20. Petitioner suffers [REDACTED]
[REDACTED]
[REDACTED]. *See supra* ¶ 3. Here, the Petitioner has the burden of proof to demonstrate the Respondent's decision to deny thirty-six (36) hours per week of non-medical and supervisory adult companion care is incorrect. The Authorized Representative testified of [REDACTED] wish that [REDACTED] be supervised more hours per week to assist [REDACTED] with [REDACTED] ADLs and IADLs, including [REDACTED] at night. The Petitioner did not demonstrate that Petitioner's need for non-medical supervisory adult companion care services cannot be met with the currently approved twenty-five (25) hours per week of PDO personal care services, five (5) hours per week of PDO homemaker services, ten (10) hours of PDO adult companion care services per week, five (5) hours of traditional adult companion care on Saturdays, ten (10) hours per week of natural support from [REDACTED], and forty-eight (48) hours of natural support from the Authorized Representative on Saturdays and Sundays.

21. In this matter, the Authorized Representative testified that [REDACTED] is suffering from [REDACTED], needs total assistance with [REDACTED] ADLs and IADLs, [REDACTED] [REDACTED], is at a [REDACTED], and that additional PDO personal care hours are not possible since at forty (40) hours, no additional PDO hours are permissible under Medicaid. The Petitioner currently receives twenty-five hours of personal care services per week and the testimony and evidence establishes that additional non-PDO personal care service hours may be appropriate in this matter. *See supra* ¶ 8. However, the sole issue before this Hearing Officer is the denial of an additional thirty-six (36) hours of adult companion care services, which as established are non-medical by definition, and intended to address non-medical care, supervision or social enrichment.

22. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy, specifically states that adult companion care is for “[T]he provision of **non-medical, supervision ... or social enrichment of a functionally impaired enrollee.**” (Emphasis added.) *See supra* ¶ 15. The testimony and evidence in this matter demonstrates that the services required by the Petitioner are medical in nature related to the performance of ADLs and IADLs. Based on the foregoing, the Petitioner failed to demonstrate that the requested additional thirty-six (36) hours per week of non-medical adult companion care services are not in-excess of the Petitioner’s needs and medically necessary. *See supra* ¶ ¶ 15, 16 and 17.

23. Both the Florida LTC Coverage Policy and the Florida Medicaid Definitions policy provide that any services must be medically necessary to be approved. *See supra* ¶ ¶ 16 and 17. In order to be considered medically necessary, the requested services must 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." *Id.* The requested additional thirty-six (36) hours of non-medical adult companion care services that is the issue in this matter are not consistent with the Petitioner's symptoms and medical conditions and are not medically necessary.

24. Therefore, upon consideration of both parties' testimony, Respondent's Composite Exhibit 1, and the LTC Policy, the undersigned finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of an additional thirty-six (36) hours per week of non-medical adult companion care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of an additional thirty-six (36) hours of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and ORDERED this 9th day of October, 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer

23-FH1840

Alan J. Leifer 2023.10.09 08:08:25

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ALAN LEIFER, 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

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COPIES FURNISHED TO:



**Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com**

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**

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