

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



FILED

Nov 01, 2023, 11:18 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1870

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 20, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Joshua Mitchell

Grievance and Appeals Fair Hearing Specialist

Humana Medical Plan, Inc.

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 additional adult companion care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's authorized representative and [REDACTED] appeared on behalf of Petitioner.

Joshua Mitchell, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana or Respondent”), appeared as a representative for Humana. Dr. Manohar Chenchugalla, (“Dr. Chenchugalla”), Medical Director for Humana, attended as a witness for Respondent.

Stephanie Lang, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and seven (307)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH1810_Part1.pdf,” and “Evidence Packet 23-FH1810_Part2.pdf.” Absent an objection from the Petitioner, the undersigned admitted the three hundred and seven (307) pages of evidence as Respondent’s Composite Exhibit 1 (“RCE-1”).

Petitioner did not introduce any exhibits at the Fair Hearing.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana Long Term Care plan. *See* page 1 of RCE-1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED]. *Id.* at 63. Petitioner lives with [REDACTED] primary caregiver and [REDACTED] *Id.* at 64.
3. Petitioner is currently diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 69. In the past, Petitioner

has had [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 69 - 70. Petitioner also has [REDACTED], is a risk for
[REDACTED]. *Id.* at 70. On more than half the days, Petitioner is easily
[REDACTED]. *Id.* at 72.
Petitioner needs supervision. *Id.* Petitioner talks to friends, relatives, or others by phone,
computer, or other means once a week. *Id.* at 77.

4. On December 1, 2022, Petitioner was admitted into the VITAS Healthcare (“VITAS”) hospice care program for routine home care, by order of Dr. John Gardner. *Id.* at 14. In the VITAS Pre-Admit Evaluation of Petitioner, it is reported that Petitioner sleeps for fourteen (14) hours in twenty-four (24) hours. *Id.* at 17. On December 6, 2022, Dr. Rober Levin of VITAS, had a face-to-face encounter, via telehealth, with Petitioner and [REDACTED], in attendance, and wrote a history and physical medical report on the encounter, dated December 20, 2023, (“Dr. Levin’s Report”). *Id.* at 36 – 36. Dr. Levin’s Report gave the following statement of prognosis: “Based on the above, it is my medical judgment the patient, [patient’s name], is terminally ill and more likely than not has a prognosis of 6 months or less if the illness runs its expected course, and therefore, is recertified for hospice services.” *Id.* at 38. Dr. Levin has prescribed medications for Petitioner’s [REDACTED], including [REDACTED]. *Id.* at 75.

5. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), which was taken on May 25, 2023, Petitioner needs assistance for the following activities of daily living (“ADLs”): needs total assistance for [REDACTED]
[REDACTED]. *Id.* at 67. Petitioner also uses assistive devices for

[REDACTED]. *Id.* Petitioner rarely has assistance with [REDACTED] ADLs of [REDACTED]; Petitioner has assistance most of the time with [REDACTED] ADLs of [REDACTED]. *Id.*

6. As provided in the 701B, Petitioner needs total assistance (cannot do at all) for all [REDACTED] instrumental activities of daily living (“IADLs”), including [REDACTED]

[REDACTED]. *Id.* at 68. Regarding [REDACTED] IADLs, Petitioner always has assistance with using the [REDACTED]; Petitioner has assistance most of the time with [REDACTED]; and Petitioner rarely has assistance with [REDACTED]. *Id.*

7. Petitioner’s primary caregiver is [REDACTED]. *Id.* at 77. Petitioner was not present during the 701B assessment, with [REDACTED] answering all the questions on [REDACTED] behalf. *Id.* at 64. As provided in the 701B, [REDACTED] does not work outside the home, and there is no one else to assist with Petitioner’s care. *Id.* at 77. [REDACTED] feels overwhelmed but feels somewhat confident that [REDACTED] is able to continue to provide care for Petitioner. *Id.* at 78 – 79. According to the Supplemental Assessment dated September 6, 2023, [REDACTED] can provide care, assistance, supervision or companionship for Petitioner for three (3) hours each day of the week, except on Thursdays when [REDACTED] can provide just two (2) hours. *Id.* at 105. [REDACTED] has caregiver burnout from [REDACTED] own medical issues and other contributing factors, including financial, emotional and physical issues. *Id.* at 106.

8. Aside from the companion services at issue in this case, according to the testimony of Humana’s Medical Director, Dr. Chenchugalla, recent Plan authorizations dated September of

2023, authorized Petitioner to receive a total of seventy (70) hours of home health care each week, including twenty-one (21) hours of adult companion care services, fourteen (14) hours of homemaker services, and thirty-five (35) hours of adult companion care services each week. See *infra* ¶ 12. Additionally, Petitioner receives seven home delivered meals per week, and monthly supplies of gloves and wipes. *Id.* at 102.

9. In the Notice of Adverse Benefit Determination (“NABD”), dated May 31, 2023, Humana partially approved Petitioner’s request for an additional sixty-three (63) hours of weekly adult companion care services by approving five (5) of the additional hours requested, but denying the remaining fifty-eight (58). The NABD explained the reason for the denial, 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:

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 63 additional hours of adult companion care (ACC) service[s] per week and 7 home delivered meals (HDM) per week. You currently receive 9 hours of HMK and 21 hours of PC services per week. You reside in a single -family home with [REDACTED]. You are alert and oriented to person, but not to place nor time. You have multiple medical problems including [REDACTED].

You reside at home with your [REDACTED] who can provide companionship. We are approving 5 of the requested 63 hours of ACC. You will now receive 35 hours per week, giving you 5 hours of care daily which is sufficient for your needs. We are also approving requested 7 HDM weekly.

....

Page 44 - 45 of RCE-1.

10. On June 30, 2023, Petitioner requested a plan appeal. *Id.* at 56. Subsequently, Petitioner received a Notice of Plan Appeal Resolution (“NPAR”), dated July 27, 2023, upholding the determination. *Id.* at 56 - 58. The NPAR explained the reason for the decision as follows:

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

You have requested that the 58 hours of adult companion care each week that was denied in your initial request to be reconsidered (appeal). The member has several (multiple) medical problems. [REDACTED] sometimes has trouble making [REDACTED] needs known. [REDACTED]. [REDACTED] does [REDACTED]. [REDACTED] lives with [REDACTED]. [REDACTED] helps to care for [REDACTED] does not work outside the home. [REDACTED] is not able to [REDACTED] needs help [REDACTED] needs help [REDACTED] needs help [REDACTED]. The denial of the 58 hours of adult companion care each week is being upheld. The member lives with others who should be able to meet patient needs. The hours the member is currently receiving should be enough to meet [REDACTED] medical needs and can be divided into shifts to better meet [REDACTED] needs.

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

Page 56 - 57 of RCE-1.

11. On June 28, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional companion care services. On July 31, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 20, 2023, at 1:00 p.m. EST.

12. Dr. Chenchugalla is a Long-Term Care Manager and Medical Director for Humana. Dr. Chenchugalla's testimony established that Respondent's determination was based on the 701B assessment. Based on the assessment, recent authorizations were made in September of 2023 to ensure that Petitioner has adequate weekly home health care, for a total of seventy (70) hours of home health care each week, including twenty-one (21) hours of adult companion care services, fourteen (14) hours of homemaker services, and thirty-five (35) hours of adult companion care services each week. Dr. Chenchugalla further testified Petitioner also receives seven (7) home delivered meals each week. Dr. Chenchugalla acknowledged information that [REDACTED] is strained as a caregiver, but because [REDACTED] resides with [REDACTED], there are IADLs that are shared household activities. Dr. Chenchugalla acknowledged that Petitioner also receives home hospice care from provider VITAS. Dr. Chenchugalla concluded that the twenty-one (21) hours per week of adult companion care services, together with the other home health services, are sufficient to meet the medical needs of Petitioner.

13. [REDACTED] testified that Petitioner is bedridden, and that [REDACTED] often during the night, [REDACTED]. [REDACTED] explained that [REDACTED] needs constant

supervision, even though [REDACTED]. For instance, during the night [REDACTED] will wake up in a panic, and shout things, like “where is the baby!” These outbursts disrupt [REDACTED] sleep nightly. [REDACTED] further explained that [REDACTED]’s [REDACTED] take time to take effect, and that they sometimes seem to make [REDACTED] more [REDACTED] testified that [REDACTED] is in a hospital bed in their home, and [REDACTED] believes in [REDACTED] confusion that [REDACTED] is in an institution. [REDACTED] testified that [REDACTED] is under great stress, having been [REDACTED] caregiver for the past fifteen (15) years, and that [REDACTED], too, is not as able as [REDACTED] once was. [REDACTED] noted that although Petitioner receives home hospice care, it is for two (2) bed baths per week, which are about forty-five (45) minutes each; a nurse’s visit once a week; and a doctor’s visit once a month. [REDACTED] testified that the home delivered meals are merely processed foods, being no substitute for true home cooked meals, and that it would be better to have more adult companion care hours each week than the delivery of the processed-food meals. [REDACTED] concluded that around the clock care is medically necessary for Petitioner at this stage.

CONCLUSIONS OF LAW

14. 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).

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

16. Because Petitioner requested additional adult companion care services, Fla. Admin. Code R. 59-1.100(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.)

17. The Florida 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 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:

...

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.

...

Pages 1 – 4, LTC Policy.

18. 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.

Pages 2 – 3, LTC Policy.

19. 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.

Page 7, Definitions Policy.

20. Respondent denied Petitioner's request for an additional sixty-three (63) hours of weekly adult companion care services by approving five (5) of the additional hours requested, but denying the remaining fifty-eight (58) hours. *See supra* ¶ 9. In the NABD, Respondent indicated that Petitioner did not meet all the criteria of medical necessity but did not specify which prong of medical necessity was used to make its decision. *See supra* ¶ 9. In the NPAR, Respondent upheld the denial of the remaining additional fifty-eight (58) hours of adult companion care services for Petitioner by determining that "the member's currently approved services are adequate to meet the member's care needs." *See supra* ¶ 10.

21. As provided in the LTC policy, adult companion care services are intended to provide "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" *See supra* ¶ 17.

22. Based on the record and testimony, Respondent denied Petitioner's request for additional adult companion care services as "in excess of the recipient's needs." The record

demonstrates that “[t]he member has several (multiple) medical problems. [REDACTED] sometimes has trouble making [REDACTED] needs known. [REDACTED] has trouble thinking clearly or remembering things. [REDACTED] does not leave [REDACTED] lives with [REDACTED]. [REDACTED] helps to care for [REDACTED] [REDACTED] does not work outside the home. [REDACTED] is not able to [REDACTED] [REDACTED] needs help [REDACTED] needs help [REDACTED] [REDACTED] needs help with [REDACTED]. The denial of the 58 hours of adult companion care each week is being upheld. The member lives with others who should be able to meet patient needs. The hours the member is currently receiving should be enough to meet [REDACTED] medical needs and can be divided into shifts to better meet her needs.” *See supra* ¶ 10.

23. Adult companion care services are to provide socialization so a member is not isolated. In this case, Petitioner lives with [REDACTED] who does not work outside the house, [REDACTED] has the company of home health aides for several hours a day, and [REDACTED] talks to friends, relatives, or others by phone, computer, or other means once a week. *See supra* ¶ 3. Adult companion care services are also to provide supervision when necessary to protect the safety of the enrollee. In this case, Petitioner is bedbound, and is not a risk for wandering. *See supra* ¶ 10, 13. [REDACTED]

testified that [REDACTED] uses a hospital bed, which would have a side rail to prevent falls. *See supra* ¶

13. Adult companion care is also to provide assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee. In this case, according to the 701B, Petitioner needs total assistance for her IADLs of meal preparation, laundry, and light housekeeping tasks. *See supra* ¶ 6. However, assistance with these activities is concurrently accomplished by providing not only twenty-one (21) hours of

weekly adult companion care, but by also providing fourteen (14) hours of homemaker services each week by home health aides, and by shared household responsibilities with her son, Mr. Butler. *See supra* ¶¶ 7, 8. Petitioner receives seven (7) home delivered meals each week. *See supra* ¶ 8. ██████ asserted in his testimony that the home delivered meals are substandard because they are made of processed food and not of freshly cooked food. *See supra* ¶ 13. However, as a natural support, *i.e.*, family member living with Petitioner, it is supposed and expected that one would also share in the daily activity of home cooked meals for ██████, at the least to share the freshly cooked meals that ██████ is preparing, or having prepared, for ██████. Finally, ██████ testified that ██████ sleep is interrupted during the night because ██████ will awaken in panic and shout out. *See supra* ¶ 13. In the VITAS home hospice intake, it reports that Petitioner sleeps fourteen (14) hours a day, *see supra* ¶ 4, and it was established that Petitioner takes the ██████ to ease ██████ and ██████ during the night. *See supra* ¶¶ 4, 13. Although ██████ testified that the ██████ do not work as well as they should for Petitioner, *see supra* ¶ 13, the total of seventy (70) hours in home health care may be divided into different shifts, day or night. Accordingly, Respondent has shown that Petitioner’s request for additional adult companion care services is “in excess of the patient’s needs.” *See supra* ¶ 18.

24. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has proven by a preponderance of the evidence that the additional fifty-eight (58) hours of weekly of adult companion care services at issue are not medically necessary. *See supra* ¶ 18.

25. Based on the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner has not proven by a preponderance of the evidence that Respondent's denial of an additional fifty-eight (58) hours of adult companion care services per week is incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of additional adult companion care services is **AFFIRMED**.
Petitioner's appeal based on Respondent's denial of additional adult companion care services is **DENIED**.

DONE AND ORDERED this 1st day of November 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH1870
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DEBBIE WINICKI, 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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