

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



FILED

Nov 13, 2023, 11:23 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1968

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 October 3, 2023, at 9:03 a.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Joshua Mitchell

Grievance and Appeals Fair Hearing Specialist

Sunshine State Health 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 adult companion care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED]

[REDACTED] appeared on behalf of the Petitioner. [REDACTED]

[REDACTED] Petitioner's [REDACTED] appeared as a witness for Petitioner.

Joshua Mitchell, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana") appeared on behalf of Respondent. Dr. Wayne Sherman ("Dr. Sherman"), Medical Director for Humana, attended as a witness for Respondent.

Emily, interpreter ID number 661136, appeared to offer translation services for Petitioner.

Sandra Durden, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Petitioner submitted a letter from Petitioner's physician. The letter appears in the Office of Fair Hearings' document management system as page 5 of file title "Internal Document (2).pdf". The undersigned admitted the letter as Petitioner's Exhibit 1 ("PE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 275-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file titles "Evidence Packet 23-FH1968_Part1.pdf" and "Evidence Packet 23-FH1968_Part2.pdf". The undersigned admitted the 275-page packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. 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.* Petitioner [REDACTED]. *Id.* at 26. Petitioner does not need supervision. *Id.* at 34. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 32. [REDACTED] spends approximately twenty (20) hours per week caring for Petitioner. *Id.* at 40.

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), Petitioner’s needs for assistance with activities of daily living (“ADLs”) are as follows: for [REDACTED], Petitioner needs assistance (but not total help); [REDACTED]
[REDACTED] Petitioner uses [REDACTED]; and needs no assistance with [REDACTED]
[REDACTED]. *Id.* at 29.

4. In regards to [REDACTED] instrumental activities of daily living (“IADLs”), Petitioner’s needs for assistance are as follows: for [REDACTED]
[REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED]
[REDACTED] Petitioner needs assistance (but not total help); and for [REDACTED], Petitioner needs supervision or prompting. *Id.* at 30.

5. Petitioner talks to friends, relatives or others (by phone, computer, or other means) once a day. *Id.* at 39. Petitioner spends time with someone who does not live with [REDACTED] once a day. *Id.* Petitioner participates in activities outside the home that interest [REDACTED] once a day. *Id.*

6. Petitioner’s physician, Angel J. Rodriguez, MD (“Dr. Rodriguez”), provided a letter that states as follows:

[Petitioner] is a [REDACTED] with a history of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] who is fully homebound.

Patient requires Full maximal assistance with all activities of daily living including [REDACTED].

Based on the above facts, I am confident that you will agree that hours extended of HHA aide to assist with ADLs is indicated and medically necessary for this patient.

If you have any questions regarding this matter, please do not hesitate to call me.

...

Page 23 of RCE 1.

7. Petitioner requested an additional fifty-six (56) hours of adult companion care services.

Id. at 7. Petitioner’s request was denied in the Notice of Adverse Benefit Determination (“NABD”), dated April 10, 2023. *Id.* at 7 – 11. The NABD explained the basis of 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 an additional 56 hours of adult companion care service each week. You have several (multiple) medical problems. You do not have [REDACTED]. You sometimes have t [REDACTED]. You sometimes [REDACTED].

You have not had any recent changes in your health. You have not recently been in the hospital.

You live alone. You use a [REDACTED]. You do not need help [REDACTED]. You need some help [REDACTED]. You need some help with [REDACTED].

Your request for an additional 56 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.

...

Pages 7 -8 of RCE 1.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated May 5, 2023, upholding the denial of adult companion care services. *Id* at 19 –

21. The NPAR explained as follows:

[Petitioner] has several (multiple) medical problems. [REDACTED] does not have trouble [REDACTED] sometimes has trouble [REDACTED] lives [REDACTED] You help to care for [REDACTED] uses [REDACTED] does not need help [REDACTED] needs some help [REDACTED] needs help with [REDACTED].

The denial of the additional 56 hours of adult companion care each week is being upheld. The hours [REDACTED] is currently receiving should be enough to meet [REDACTED] medical needs and can be divided into shifts to better meet [REDACTED] needs.

...

Page 19 of RCE 1.

9. On August 14, 2023, Petitioner requested a Fair Hearing to challenge the denial of adult companion care services. On September 7, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 3, 2023, at 9:00 a.m. EST.

10. [REDACTED] is Petitioner's [REDACTED] testified to the following:

- a. Petitioner has been diagnosed with [REDACTED]
- b. Petitioner does not know what day it is, [REDACTED] does not [REDACTED], nor [REDACTED] [REDACTED] has to be fed directly.
- c. [REDACTED] is concerned that Petitioner will [REDACTED].
- d. Petitioner's aide visits from 8:00 a.m. until 3:00 p.m., Monday through Friday. Petitioner is alone from 3:00 p.m. until [REDACTED] can leave work and visit [REDACTED]. [REDACTED] does not stay with [REDACTED] overnight.
- e. [REDACTED] is concerned that Petitioner may turn on the stove and start a fire.
- f. Petitioner has [REDACTED].
- g. Petitioner lives in a building for residents aged 50 and up.

11. Dr. Sherman is a Medical Director for Humana. Dr. Sherman testified to the following:

- a. Adult companion care is for non-medical care – it is primarily for socialization and supervision.

- b. Petitioner currently has 14 hours of adult companion care and Dr. Sherman believes that is all that is medically necessary for him. Petitioner also has 13 hours of homemaker services and 7 hours of personal care, weekly.
- c. The 701B was used to determine what amount of hours are necessary for Petitioner.
- d. Petitioner's hours can be broken into shifts. Services are not awarded when Petitioner 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 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 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:

- 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.

...

4.2.1.9 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.

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.

17. The Florida Medicaid 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. Petitioner requested an additional fifty-six (56) hours, weekly, of adult companion care services. *See* ¶ 7. In the NABD, dated April 10, 2023, Respondent denied Petitioner's request. *Id.* Respondent indicated that the requested services were not medically necessary but did not identify which component of medical necessity the denial of medically was based on. *Id.* In the NABD, Respondent explained that "the hours you are receiving should be enough to meet your medical needs and can be divided into shifts to better your medical needs". *Id.*

19. As provided in the LTC Policy, adult companion care services are intended to provide for the "health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee." *See supra* ¶ 15. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee. *Id.*

20. As Petitioner bears the burden of proof, Petitioner must show that that the requested services are medically necessary. A component of medical necessity is that 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." See ¶ 16. As shown by the record, Petitioner lives alone, see ¶ 2, but [REDACTED] visits after work, for at least twenty (20) hours each week. See ¶¶ 2, 10. Further, Petitioner has the following services: fourteen (14) hours of adult companion care, thirteen (13) hours of homemaker services, and seven (7) hours of personal care services, weekly. See ¶ 11. In all, Petitioner has thirty-four (34) hours of services that would allow [REDACTED] the opportunity to visit with [REDACTED] home health aide. Moreover, Petitioner talks to friends or relatives by phone or other means, and spends time with someone who lives with [REDACTED] once per day. See ¶ 5. The record shows that Petitioner does not need supervision – however, [REDACTED] expressed concern that Petitioner may elope or inadvertently start a fire with the stove. See ¶¶ 2, 10. However, there was no evidence to show that Petitioner is engaging in these activities. Accordingly, Petitioner has not shown that the requested adult companion care services are "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."


21. Lastly, Petitioner's physician submitted a letter expressing that Petitioner needs more services to provide assistance with activities of daily living. See ¶ 6. However, this is not the purpose of adult companion care.

22. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that the requested adult companion care services are medically necessary. Accordingly, Petitioner did not demonstrate that Respondent's decision to deny Petitioner's request for fifty-six (56) hours of adult companion care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 13th day of November, 2023, in Tallahassee, Leon County, Florida.

 Joseph Mabry
23-FH1968
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JOSEPH MABRY, 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.

Copies Furnished To:





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