



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

FILED

Nov 09, 2023, 11:54 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2010

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 13, 2023, at 9:01 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Markeshi Lee

Medicaid Fair Hearing Specialist

Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of twenty-three (23) hours per week of adult companion care services was correct.

PRELIMINARY STATEMENT

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

Markeshi Lee, Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”), represented Respondent. Dr. Avra Carpousis-Bowers (“Dr. Bowers”), Medical Director for Humana, attended as a witness for Respondent.

Lee Ann Williams, Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent a seven (7)-page evidence packet. The seven (7)-page evidence packet appears in the Office of Fair Hearings’ document management system as “23-FH2010 DAR and Evidence.pdf.” Absent an objection from the Respondent, the undersigned admitted the seven (7)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-six (276)-page evidence packet. The two hundred and seventy-six (276)-page evidence packet appears in the Office of Fair Hearings’ document management system as files titled “Evidence Packet_Part 1.pdf”, “Evidence Packet_Part 2.pdf”, “Evidence Packet_Part 3.pdf”, and “Evidence Packet_Part 4.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and seventy-six (276)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. See RCE 1 at 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 lives in the community with [REDACTED] who is Petitioner’s natural support. *Id.* at 26, 66. Petitioner’s other [REDACTED] is named as an assistant for Petitioner and serves as needed. *Id.* at 66. Petitioner is diagnosed with the following: [REDACTED] [REDACTED] [REDACTED] *Id.* at 32 – 33.

3. [REDACTED] assisted Petitioner with answering questions on the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), dated April 13, 2023. *Id.* at 24 – 47. According to the 701B, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: needs total assistance (cannot do at all) with [REDACTED]; needs assistance (but not total help) with [REDACTED]; and needs supervision or prompting with [REDACTED]. *Id.* at 29 – 30. Regarding how much assistance Petitioner has with her ADLs, Petitioner rarely has assistance with [REDACTED] and Petitioner has assistance most of the time with [REDACTED]. *Id.* at 30.

4. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: Petitioner needs total assistance (cannot do at all) with [REDACTED]; needs assistance (but not total help) with [REDACTED]; and needs supervision or prompting with [REDACTED]. *Id.* at 31. Regarding how much assistance Petitioner has with [REDACTED] IADLs, Petitioner rarely has assistance with [REDACTED]; has assistance most of the time with [REDACTED] and always needs assistance with [REDACTED]. *Id.* at 31 – 32.

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

...

Member is an [REDACTED] who resides in the community with [REDACTED] who works full time outside the home.

...

No falls reported by CG. Member always has transportation to [REDACTED] medical appointments as POA advises [REDACTED] flies down from Atlanta, GA to take member to [REDACTED] medical appointments. If [REDACTED] cannot make it [REDACTED] states [REDACTED] schedules for clinic transportation.

...

Member has physical limitations due to [REDACTED] age and health conditions.

...

Through the use of LTC services, member is getting assistance meeting [REDACTED] IADL's.

...

Member requires supervision [REDACTED].

...

RCE 1 at 26, 28, 30, 32, 35

6. According to the 701B, Social Resources Section, Petitioner talks to friends, relatives, or others (by phone, computer, or other means) at least once a day. *Id.* at 41. This section also states that Petitioner spends time with someone who does not live with [REDACTED] two to six times a week and participates in activities outside the home that interest [REDACTED] a few times a year. *Id.*

7. According to the 701B, Mental Health Section, Petitioner has not been diagnosed with a mental condition or psychiatric disorder by a health professional. *Id.* at 35. This section states that over the past few weeks from the date of the 701B, April 13, 2023, Petitioner has not been bothered with any of the following problems nearly every day: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]. *Id.*

8. According to the 701B, Caregiver Section, [REDACTED] has provided care for Petitioner for two or more years. *Id.* at 42. Further, [REDACTED] provides twenty-one (21) hours per week of care for Petitioner. *Id.* [REDACTED] is not in crisis and is somewhat confident in [REDACTED] ability to continue providing care to Petitioner. *Id.* at 43.

9. Regarding the last month prior to the date of the 701B, April 13, 2023, Petitioner has not had any of the following problem behaviors or recurring problems: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*

10. On March 30, 2023, Respondent issued a Notice of Adverse Benefit Determination (“NABD”), terminating twenty-three (23) hours of adult companion care services for Petitioner. *Id.* at 7 – 14. The NABD explained the basis of the termination 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.

...

The facts that we used to make our decision are:

This determination of the Medical Director has been made 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 currently receive 23 hours of Adult Companion Care (non-medical care for supervision and socialization) each week; 7 hours of homemaker service each week; a personal emergency response system; and 4 hours of personal care service each week. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status.

You have several (multiple) medical problems. You live with [REDACTED] [REDACTED] helps to care for you. [REDACTED] works full-time outside the home. You do not have trouble [REDACTED] [REDACTED]

You use a [REDACTED]. You need some help [REDACTED] [REDACTED] You need some help [REDACTED]. You need help [REDACTED]. You need some help [REDACTED].

The service of 23 hours of Adult Companion Care each week is being terminated. You live with others who should be able to meet your companionship needs.

You are being approved for an additional 10 hours of personal care service each week.

These hours should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

...

RCE 1 at 7 – 8.

11. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated May 1, 2023, upholding the termination of twenty-three (23) hours per week of adult companion care services. *Id.* at 16 – 18.

12. On August 15, 2023, Petitioner requested a Fair Hearing to challenge the termination of adult companion care services. On September 19, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 13, 2023, at 9:00 a.m. EST.

13. Dr. Bowers, Medical Direct for Humana, testified as follows:

a. Dr. Bowers referenced evidence submitted by Petitioner, noting Petitioner’s Depends should not be left on for more than 4 hours and Petitioner’s caregiver works twelve-hour shifts.

b. At the time of the review, March 30, 2023, Petitioner was receiving 23 hours per week of adult companion care services. Adult companion care is non-medical care, supervision, and socialization. Adult companion care aides cannot and should not be changing a diaper. Adult companion care aides are there for socialization, to do things the member enjoys doing, to give companionship, and provide supervision if the member has [REDACTED].

c. Petitioner is alert and oriented so [REDACTED] can operate a [REDACTED] [REDACTED].

d. It was determined that the authorized personal care services were not meeting Petitioner’s needs, so Respondent increased Petitioner’s personal care services by ten (10) hours.

- e. Petitioner now has thirty-eight (38) hours of home health services per week, which is a little over six (6) hours of service per day. Petitioner would never be in [REDACTED] Depends for more than four (4) hours.
- f. Petitioner's medical doctor stated that Petitioner cannot stay in the Depends more than four (4) hours at a time. Petitioner does not need constant supervision.
- g. Dr. Bowers reviewed the 701B, noting Petitioner lives with [REDACTED] primary caregiver, [REDACTED].
- h. Dr. Bowers reviewed Petitioner's ADL and IADL assistance needs.
- i. Petitioner's hours are meeting [REDACTED] medical needs. Tasks that require total assistance are given thirty (30) minutes and tasks that require some assistance (needs assistance (but not total help)) are given twenty (20) minutes. Petitioner is getting service hours that exceed [REDACTED] needs to accommodate [REDACTED] schedule. Respondent is giving personal care hours instead of adult companion care hours so Petitioner has assistance with her Depends.
- j. Respondent is giving Petitioner eight (8) hours of homemaker services to meet Petitioner's needs because of the joint sharing of household responsibilities between a home health aide and [REDACTED].
- k. Petitioner does not need any skilled services. See RCE 1 at 34.
- l. The thirty-eight hours of home health services provided each week do meet Petitioner's medical needs.

m. Dr. Bowers does not have concerns of Petitioner being isolated because Petitioner does not live alone, does not need supervision, and receives thirty-eight hours of home health services each week.

14. Petitioner's Authorized Representative and [REDACTED], testified as follows:

a. The home health aide puts Petitioner to bed at 4:00 p.m. to 5:00 p.m. Petitioner needs to be changed every four (4) hours.

b. There used to be multiple home health aides but now there is one.

c. Petitioner is unable to get up and answer the door. Home health aides are given a security code to access the front door. [REDACTED] is concerned about multiple people having the security code.

d. [REDACTED] is also concerned that some home health aides do not show up.

e. Other family members visit Petitioner very seldom because they are busy or have their own lives.

f. [REDACTED] lives in Atlanta, Georgia (approximately 695 miles away) and Petitioner's [REDACTED] live in Fort Lauderdale.

g. The current home health aide is with Petitioner beginning at 9:00 a.m. and [REDACTED] returns home around 9:00 p.m.

h. [REDACTED] does not want to divide Petitioner's service hours into shifts because sometimes the aides do not show up.

i. [REDACTED] has switched providers three (3) times for Petitioner.

15. Petitioner submitted a letter from Dr. Vivian Sanchez, M.D. of Conviva Care Solutions. The letter states in pertinent part:

Patient [Petitioner], DOB: [REDACTED] suffers from [REDACTED] and spends most of [REDACTED].

Because of this, [Petitioner] is high risk for [REDACTED] therefore [Petitioner] should not be left in place more than 4 hours at the time due to high risk for [REDACTED].

PCE 1 at 4.

16. Petitioner submitted a letter from Dumpster Divas, LLC. The letter states in pertinent part:

I, [REDACTED], works as an owner/employee for Dumpster Divas LLC. My work schedule is Monday through Saturday 09:00a until 09:00 Pm. Also, I reside and rent a room . . .

PCE 1 at 6.

CONCLUSIONS OF LAW

17. 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).

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

19. Because Respondent terminated existing services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. 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.).

20. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. See RCE 1 at 85 – 106. 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.

...

RCE 1 at 69 – 72.

21. 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.

RCE 1 at 85 -

22. 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.

Definitions Policy at page 7.

23. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 19. Section 4.2.1.1 of the SMMC LTC Policy reflects that adult companion services are “[t]he 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* ¶ 19. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.” *See supra* ¶ 19.

24. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive the terminated adult companion care service hours. To be medically necessary, adult companion care services must meet the criteria set forth in section 1.3.14(b) of the SMMC LTC Policy. *See supra* ¶ 20. The record indicates that Respondent has shown that the twenty-three (23) hours per week of adult companion care services are in excess of Petitioner's needs at this time. Petitioner lives in a private residence with [REDACTED]. *See supra* ¶ 2, 5. There was no testimony or evidence provided that [REDACTED] is unable to continue to provide care to Provider. In fact, the 701B states [REDACTED] is not in crisis and is somewhat confident in [REDACTED] ability to continue providing care to

Petitioner. See supra ¶ 9. [REDACTED] testified that the adult companion care hours were medically necessary because Petitioner's doctor recommended that Petitioner's Depends need to be changed every four (4) hours. See supra ¶ 14, 15. However, Dr. Bowers testified that adult companion care is non-medical care, supervision, and socialization, and that adult companion care aides cannot and should not be changing a diaper. See supra ¶ 13. Further, Dr. Bowers testified that it was determined that the authorized personal care services were not meeting Petitioner's needs, so Respondent increased Petitioner's personal care services by ten (10) hours; that Petitioner would never be in [REDACTED] depends for more than four (4) hours with [REDACTED] authorized services; and that Petitioner's thirty-eight (38) hours of home health services provided each week do meet Petitioner's medical needs. *Id.* Also, Petitioner talks to friends, relatives, or others (by phone, computer, or other means) at least once a day. See ¶ 6. Moreover, Petitioner's hours of combined services allow [REDACTED] the opportunity to visit with [REDACTED] home health aides as well as [REDACTED] friends in the community who assist [REDACTED]. See ¶ 5. In all, as testified to by Dr. Bowers, Petitioner is not at risk for social isolation. See ¶ 13.

25. The 701B states Petitioner rarely has assistance with [REDACTED] [REDACTED] and Petitioner has assistance most of the time with [REDACTED]. See ¶ 3. The 701B also states that Petitioner rarely has assistance with [REDACTED] [REDACTED] has assistance most of the time with [REDACTED] and always needs assistance with [REDACTED]. See ¶ 4. However, the record reflects that Petitioner lives with [REDACTED] caregiver who provides twenty-one (21) hours per week of care and Petitioner receives thirty-eight (38) hours of home health services each week. According to the 701B, Petitioner's

LTC services are meeting [REDACTED] IADL needs. See ¶ 5. Also, Petitioner does not have the problem behavior or recurring problem of [REDACTED]. See ¶ 9. Question 83 of section G, Mental Health Section, of the 701B states that Petitioner does not need supervision. *Id.* Further, the 701B states that that Petitioner does not have the following problem behaviors or recurring problems: [REDACTED]

[REDACTED] *Id.* Moreover, neither Petitioner nor [REDACTED] provided testimony or evidence concerning the specific tasks Petitioner requires supervision to complete or the amount of time needed. Therefore, Petitioner does not have a medical need for the requested adult companion care service hours for supervision. Lastly, Dr. Bowers testified that she does not have concerns about Petitioner being isolated because Petitioner does not live alone, does not need supervision, and receives thirty-eight hours of home health services each week. *Id.* Dr. Bowers provided convincing and persuasive testimony that Petitioner’s twenty-three (23) hours per week of adult companion care services are not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment” and are “in excess of the patient’s needs.”

26. Upon consideration of the testimony provided, Petitioner’s Composite Exhibit 1, Respondent’s Composite Exhibit 1, and the applicable laws and policies, the undersigned finds that Respondent has met the burden of proving that the termination of twenty-three (23) hours of Petitioner’s adult companion care service is warranted due to lack of medical necessity. Accordingly, the undersigned concludes that Respondent did prove by a preponderance of the evidence that Respondent’s termination of adult companion care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's termination of Petitioner's adult companion care services is **AFFIRMED**.

Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and **ORDERED** this 9 day of November, 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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