



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

FILED

Dec 22, 2023, 10:38 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2248

Plan ID [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on November 17, 2023, at 10:11 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Chantal Pierre
Clinical Appeals Coordinator
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to reduce Petitioner’s home health services (private duty nursing) was correct.

PRELIMINARY STATEMENT

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

[REDACTED] (“ [REDACTED] ”), appeared for Fair Hearing to provide testimony on behalf of Petitioner.

Chantal Pierre ("Ms. Pierre"), Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared for Fair Hearing on behalf of Respondent. Andrew Metinko, M.D. ("Dr. Metinko"), Medical Director for Sunshine, appeared for Fair Hearing as a witness for Respondent. Andra Josifov, Registered Nurse and Case Manager for Sunshine, appeared for Fair Hearing as a witness for Respondent. Laura Buck, ECC Supervisor for Sunshine, appeared for Fair Hearing as a witness for Respondent. Sabrina Lecgister, Senior Manager of Case Management for Sunshine, appeared for Fair Hearing as a witness for Respondent.

Diana Hearod, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for Fair Hearing as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a five hundred and seventy-eight (578)-page evidence packet, a four (4)-page evidence packet, and a nine (9)-page evidence packet. The five hundred and seventy-eight (578)-page packet appears in the Office of Fair Hearings' document management system as file title "23-FH2248 Emailed Evidence.pdf." The four (4)-page packet appears in the Office of Fair Hearings' document management system as file title "23-FH2248 Additional Documents.pdf." The nine (9)-page packet appears in the Office of Fair Hearings' document management system as file title "23-FH2248 Faxed Evidence.pdf." Absent an objection from the Petitioner, the undersigned admitted the five hundred and seventy-eight (578)-page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1"), the four (4)-page packet as Petitioner's Composite Exhibit 2 ("PCE 2"), and the nine (9)-page packet as Petitioner's Composite Exhibit 3 ("PCE 3").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty-nine (169)-page evidence packet. The one hundred and sixty-nine (169)-page

packet appears in the Office of Fair Hearings' document management system as file titles "[REDACTED] packet [Petitioner].pdf" and "[REDACTED] packet [Petitioner]-Addendum.pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred and sixty-nine (169)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine Managed Medical Assistance ("MMA") program. See RCE 1 at page 2. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

2. Petitioner is [REDACTED] *Id.* at 36. Petitioner lives at home in the community with [REDACTED], and [REDACTED]. *Id.* at 27. Petitioner's medical history include

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 19-22, 36 and PCE 3 at page 3. Petitioner requires [REDACTED] and related

[REDACTED]

three times throughout the day and night. See RCE 1 at 17, 36-42.

3. Petitioner is prescribed the following medications: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] . *Id.* at 20, 35-36.

4. Petitioner requested continuation of private duty nursing services for the certification period of August 25, 2023, to October 23, 2023, specifically, 12 hours per day, 7 days per week, or a total of 84 hours per week. *Id.* at 14. In a Notice of Adverse Determination (“NABD”), dated August 24, 2023, Respondent reduced Petitioner’s services. *Id.* at 6-10. The NABD explained the basis for the reduction as follows:

- ✓ We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (*See Rule 59G-1.010*)
- ...
- ✓ Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient’s needs.

The facts that we used to make our decision are:

Sunshine Health Policy on Review of Private Duty Nursing Requests, FL.UM.26, Sunshine Health Policy on Medically Fragile Children-FL.UM.82.00. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: Request for home health private duty nursing services. This is care or treatment by a licensed nurse in the home. This for 12 hours 7 days is denied at this time. Partial approval for nursing for 6 hours 7 days a week is approved. There are no notes of any change in your child’s current condition at nighttime, or [REDACTED] at nighttime during sleeping hours. This means a type of [REDACTED] method using [REDACTED]. Request may be reviewed again. If further up-to-date clinical notes are sent for review which support the medical need for this request in private duty nursing service hours.

Id. at 6-7.

5. On August 24, 2023, Petitioner requested a plan appeal for the reduction of private duty nursing services. *Id.* at 54-57, 76-82. In a Notice of Plan Appeal Resolution (“NPAR”) dated August 25, 2023, Respondent upheld their reduction. *Id.* The NPAR explained as follows:

...

The reason for our decision was your request for continuation of S9124 PRIVATE DUTY NURSING (PDN) SERVICES for 84 hours per week was recently partially denied due to lack of medical necessity, and partially approved for 6 hours per day, or 42 hours per week. That request was the initial review by a Medical Director, and it was partially denied because there was not enough supportive information to justify the medical need for the 84 hours of PDN services being requested. Because you appealed that decision, your request was re-evaluated by a second Medical director. Based upon this secondary review, with the submission of additional supporting documentation, the previous denial is partially overturned. PDN services are authorized for 10 hours per day, Monday through Friday, and for 12 hours total on the weekend OR alternatively, for 62 hours total per week which may be scheduled according to member and [REDACTED] need. These services are authorized for the requested period of 60 days. There are no clinical notes that support additional PDN hours. The member does not have a [REDACTED]. [REDACTED] does not have a [REDACTED]. [REDACTED] does not require [REDACTED]. If the [REDACTED] is unable to care for the member, there needs to be a signed [REDACTED] Medical Limitation. PPEC services may also be an option to assist with gaps in care. This request will be reconsidered if new information which details increased nursing needs is provided. FL.UM.26, Review of Private Duty Nursing Requests, the Sunshine Health Member Handbook, Services covered by Sunshine Health, Florida Medicaid Private Duty Nursing Services Coverage Policy, and/or Florida Medicaid Home Health Visits Service Coverage Policy were referenced in making this decision. This decision was made with regards to Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT). This decision was made by a Medical Director Board Certified in Pediatrics.

Id. at 54-55.

6. On September 11, 2023, Petitioner requested a Fair Hearing to challenge the reduction of private duty nursing services. On October 19, 2023, undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions (“Scheduling Order”), setting the hearing for November 17, 2023, at 10:00 a.m. EST.

7. As of the date of the Fair Hearing, Petitioner is authorized to receive private duty nursing services for ten (10) hours per day, Monday through Friday, and for twelve (12) hours total on weekends, or alternatively, sixty-two (62) hours per week. *Id.* at 54-55.

8. Dr. Metinko testified to the following:
- a. Sunshine reviewers took into account Petitioner's multiple medical conditions, plan of care, and administration of medications. See ¶ 2-5, 7. Dr. Metinko opined that although Petitioner was born [REDACTED], most are resolved.
 - b. Regarding Petitioner's medications, Petitioner has various [REDACTED] and no supplemental oxygen requirements. See ¶ 3.
 - c. Petitioner's [REDACTED] is being treated and evaluated by speech therapy. See RCE 1 at 21, 27. Petitioner receives [REDACTED]. *Id.* at 40.
 - d. Petitioner attends school and [REDACTED] nurse attends with [REDACTED] to access the [REDACTED]. Sunshine approved Petitioner for ten (10) hours at 5 days per week while [REDACTED] attends school. Twelve (12) hours were approved for the weekends. *Id.* at 54-55.
 - e. Petitioner resides in the home with both [REDACTED]. Dr. Metinko asserts that [REDACTED] has noted [REDACTED] own medical conditions but there is no submitted medical limitation form to calculate the [REDACTED].
 - f. Dr. Metinko provided his medical opinion that after [REDACTED] it is expected for the [REDACTED] to provide some of Petitioner's feedings and administer antibiotics for various infections and deliver [REDACTED].
 - g. Overall, Sunshine's position is that Petitioner's current plan of care should be sufficient for Petitioner's needs.

9. [REDACTED] testified to the following:
- a. [REDACTED] agreed with the approved ten (10) hours per day Monday through Friday, but disagreed with the approved twelve (12) hours on weekend. [REDACTED] argued that twelve (12) hours would cover [REDACTED] with a fulltime job and [REDACTED] working. [REDACTED] Petitioner's [REDACTED] works on-call and comes home around 7:30 – 8 p.m. [REDACTED] is training to be a restaurant cook working part-time at 4 hours a day and expected to work on weekends. [REDACTED] work schedule is subject to change with the holidays or the employer's needs. A typical schedule is 6 a.m. to 4:30 p.m.
 - b. Petitioner is [REDACTED].
 - c. [REDACTED] knows how to do [REDACTED], but expressed concern that [REDACTED] work schedule will hinder [REDACTED] from providing this care.

10. [REDACTED] sent an e-mail correspondence that includes [REDACTED] statements as to [REDACTED] health status, as seen on page 1 of PCE 1 that states the following:

Attached also include [REDACTED] from past [REDACTED]
[REDACTED] This is the last visit [REDACTED]
I have [REDACTED] just about everyday that it is very difficult for me to care for [REDACTED]
[REDACTED] my last visit at the [REDACTED]
[REDACTED]

See PCE 1 at page 1, 10-13.

11. The Sunshine Health Review of Private Duty Nursing Requests (June 2015) ("FL.UM.26") provides as follows in regards private duty nursing services:

PURPOSE:

To establish clinical criteria on which to review requests for private duty nursing services to provide medically necessary, age-appropriate nursing care to eligible members with medical needs beyond a skilled care nursing visit. The services will assist in maintaining the member in their home and community environment, in a safe manner.

...

DEFINITIONS:

Private Duty Nursing Services: are services that are medically necessary skilled nursing services that can be provided to members under the age of 21 in their home or other authorized settings to support the care required by their complex medical problems and require more extensive and continual care than can be provided through a home health nurse visit. Private duty nursing is furnished for the purposes of performing skilled interventions or monitoring the effects of prescribed treatment.

...

Limitations and Exclusions:

- Members, who may benefit from private duty nursing, include those eligible members who are under the age of 21, only
- Banking or flex hours of approved private duty nursing hours is not allowed. Only the number of hours that are approved as medically necessary can be approved. The total number of hours per week, hours per day, and days per week approved must be followed. Any variations would need to be requested and approved in advance by Sunshine Health.
- Private duty nursing is not covered for respite care. Examples are parent or legal guardian recreation, socialization, and volunteer activities or periodic relief to attend to personal matters unrelated to the medical necessary care of the member.
- Private duty nursing can be covered outside the member's residence if the services are unavailable through other public or private resources, including schools (with documentation of such) and the services are medically necessary while the member is outside his/her home.
- Private duty nursing services can be considered for the medically complex member at school if both of the following are met:
 - The member's primary care physician provides documentation that he/she considers going to school a viable option given the member's medical status, and
 - The school system is not currently providing the intensity of nursing care required by the child, and private duty nursing services would enable the member to attend school (with documentation of such).
- Private duty nursing services are not covered in the following locations:
 - Hospitals
 - Nursing facilities
 - Intermediate care facilities for individuals with intellectual disabilities

- Physician offices
- Clinics
- Prescribed pediatric extended care centers
- There are times during the day when skilled interventions are not required for a member receiving private duty nursing services. **In these cases, parents or legal guardians must provide assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) for the member, to the fullest extent possible.** If parents or legal guardians need training to safely perform these ADL and IADL tasks, the home health provider must provide training and document the methods used to train the parent or legal guardian in the member’s medical record. **If the parents or legal guardians are willing and capable of providing more ADL and IADL care, private duty nursing can be authorized to supplement the care provided by those parents or legal guardians.**
- **Private duty nursing services can be approved for a member whose parent or legal guardian is not available or able to provide ADL or IADL care.** Documentation must be provided with a request for private duty nursing services in order to substantiate a parent or legal guardian’s inability to participate in the care of the member (i.e., work or school schedules and medical documentation). If a parent or legal guardian is unable to provide a work schedule, a statement attesting to the work schedule must be presented to Sunshine Health when making the request.
- For MMA, CMS, SMI and Child Welfare members, a home health agency can allow payment for up to 40 hours per week of private duty nursing services provided by a parent or legal guardian if that parent or legal guardian has a valid license as a RN or LPN in the state of Florida and is employed by a contracted home health agency. Parents or legal guardians must participate in providing ADL and IADL care to the fullest extent possible and are expected to continue to provide non-reimbursed care as the primary parent or legal guardian.
 - If a child is receiving private duty nursing services that are performed by a primary parent or legal guardian, the servicing agency must submit the “Sunshine Health Request for Authorization for Private Duty Nursing by a Parent or Legal Guardian” form with the request for authorization to Sunshine Health Plan. If a parent or guardian requests to provide PDN services after the start date of the authorization, the form may be submitted by the agency for Sunshine Health signature prior to the authorization end date. The Sunshine Health Request for Authorization for Private Duty Nursing by a Parent or Legal Guardian” form does not replace the need for medical necessity review of services.
 - The Sunshine Health prior authorization nurse receives the submitted forms, reviews for completion, signs the form and faxes a copy of the signed form to the requesting agency. The signed form is electronically attached to the member’s record in TruCare.

- Additionally, the Sunshine Health prior authorization nurse will contact the members assigned care manager (CM) to communicate outcome of approval by calling the assigned CM and following up with an email.
- Approval is not provided for additional private duty nursing hours for the member so that the member's parent or legal guardian who is providing private duty nursing for the member can also work outside the home or for respite. The parent or legal guardian is not eligible to participate in this program if the required care cannot be provided because of a medical condition or disability of the parent or legal guardian.
- The absence of an available care giver does not make the requested services skilled care, and therefore is not criteria used for determining medical necessity of private duty nursing.
- Services that can be provided safely and effectively by a non-clinically trained person are not considered skilled when a non-skilled caregiver is not available.
- Services that involve payment of family members or nonprofessional caregivers for services performed for the member are not considered as medically necessary for authorization of private duty nursing services.
- Long Term Care members may receive nursing care of both a supportive and healthy related nature, specific to the needs of a medically stable, physically handicapped member aged 21 and older who requires more individual and continuous care than an intermittent nursing visit. The scope and nature of these services do not otherwise differ from private duty nursing services. This service is providing under attendant nursing care authorizations.

See RCE 1 at 83, 85-86 (emphasis added).

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 (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

14. Because Respondent reduced a previously approved service, 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.)

15. The Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016) (“PDN Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.261, governs private duty nursing services available under Florida Medicaid. The PDN Policy provides the following, in pertinent part:

1.1 Description

Florida Medicaid private duty nursing (PDN) services provide medically necessary skilled nursing to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

1.3.6 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

Note: Subparagraph (a)(5) of the medical necessity definition shall not be applied when determining the medical necessity of private duty nursing services. All other medical necessity criteria apply and must be met in order to receive reimbursement from Florida Medicaid

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

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

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of PDN services per day, per recipient, when the recipient meets all of the following criteria:

- Is under the care of a physician and has a physician’s order for PDN services
- Requires more extensive and continual care than can be provided through a home health visit

- Requires services that can be safely provided in their home or the community

...

4.3 Early and Periodic Screening, Diagnostic, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

...

5.0 Exclusion

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0
- The recipient does not meet the eligibility requirements listed in section 2.0
- The service unnecessarily duplicates another provider's service

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved POC
 - Babysitting
 - Certification of the POC by a physician
 - Nursing assessments related to the POC
 - Professional development training or supervision of home health staff or other home health personnel
 - Respite care to facilitate the parent or legal guardian attending to personal matters
 - Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
 - Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (except as described in section 4.2.1)
 - Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facilities for individuals with intellectual disabilities
 - Nursing facilities
 - Prescribed pediatric extended care centers

- Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence

Id. at page 137-142.

16. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. *See* 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

17. Petitioner is under age 21, and therefore EPSDT applies to this request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

18. 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:

2.83 Medically Necessary or Medical Necessity

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.

19. The Agency’s Florida Medicaid Home Health Visit Services Coverage Policy (November 2016) (“Home Health Visit Policy”) has been incorporated, by reference, into Rule 59G-4.130,

F.A.C. The Home Health Visit Policy provides as follows:

1.1 Description

Florida Medicaid home health visits provide medically necessary skilled nursing and home health aide services to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

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

4.2 Specific Criteria

Florida Medicaid reimburses for:

- Up to four intermittent home health visits, per day, for recipients under the age of 21 years and pregnant recipients age 21 years and older
- Up to three intermittent home health visits, per day, for non-pregnant recipients age 21 years and older

...

4.2.2 Home Health Aide Visits for Recipients Under the Age of 21 Years

Florida Medicaid reimburses for home health aide visits for recipients under the age of 21 years who have a medical condition or disability that substantially limits their ability to perform ADLs or IADLs.

4.2.2.1 Parental Responsibility

Florida Medicaid reimburses for home health aide visits rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

Id. at page 149-150.

20. In the instant case, Petitioner requested continuation of private duty nursing services for 12 hours per day, 7 days per week, or a total of eighty-four (84) hours per week. *See* ¶ 4. In the NABD, dated August 24, 2023, Respondent reduced Petitioner’s services to 10 hours per day, Monday through Friday, and 12 hours total on the weekend, or a total of sixty-two (62) hours per week. *See* ¶ 4. Respondent has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was correct. *See* ¶ 14.

21. The PDN Policy states that Florida Medicaid reimburses for services that meet all of the following: (1) are determined medically necessary; (2) do not duplicate another service; and (3) meet the criteria specified in the policy. *See* ¶ 15. The Definitions Policy requires that the services must “[b]e 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* ¶ 18. The Home Health Visit Policy specifies that home health visits provide medically necessary skilled nursing

and home health aide services to recipients whose medical condition or illness requires the care to be delivered in their home or in the community. See ¶ 19.

22. Here, the record clearly shows that Petitioner requires skilled nursing and home health assistance due to [REDACTED] medical conditions. See ¶ 2-3. As demonstrated in the record, Petitioner's medical history include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See ¶ 3. Petitioner requires [REDACTED]

[REDACTED]

[REDACTED]. See ¶ 3. According to Dr. Metinko's

testimony, Respondent took into consideration Petitioner's multiple medical conditions, administration of medications as well as [REDACTED] living situation as part of their review for the continuation of private duty nursing services. See ¶ 8. Dr. Metinko opined that although

Petitioner was born an [REDACTED]

[REDACTED] See ¶ 8. Petitioner is prescribed various [REDACTED]

[REDACTED] and [REDACTED]. See ¶ 3, 8. Petitioner's [REDACTED]

[REDACTED] and evaluated by speech therapy. See ¶ 8. To facilitate school

attendance, Respondent approved Petitioner for ten (10) hours per day at 5 days per week so [REDACTED]

nurse can access the [REDACTED]. See ¶ 8. Respondent determined that ten (10)

hours per day, Monday through Friday, and twelve (12) hours on the weekend, or a total of 62

hours per week should be sufficient hours to meet [REDACTED] needs. See ¶ 4, 5, 8.

23. Regarding private duty nursing services, Respondent's FL.UM.26 maintains that "parents or legal guardians must provide assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) for the member, to the fullest extent possible." See ¶ 11. Dr. Metinko asserted that no medical limitation form was submitted in reference to [REDACTED] medical conditions to calculate [REDACTED] limitations. See ¶ 8. In an email correspondence provided by [REDACTED], [REDACTED] stated that she is "[REDACTED]" See ¶ 10. The corresponding medical records do not present confirmation [REDACTED]. See ¶ 10. At Fair Hearing, [REDACTED] explained that [REDACTED] disagreed with the approved twelve (12) hours on weekends. See ¶ 9. [REDACTED] explained that [REDACTED] is training to be a cook, currently working part-time 4 hours a day, and expected to work on weekends. See ¶ 9. [REDACTED] testified that [REDACTED] work schedule is tentative pending the Fair Hearing, but [REDACTED] work hours are subject to change for the holidays or upon the needs of the employer. See ¶ 9. Petitioner's [REDACTED] works on-call and gets home sometimes between 7:30 p.m. and 8 p.m. See ¶ 9. Dr. Metinko provided his medical opinion that after [REDACTED], it is expected for the [REDACTED] to provide some of Petitioner's [REDACTED] and administer antibiotics for various infections and [REDACTED]. See ¶ 8. [REDACTED] testified that [REDACTED] knows how to do [REDACTED] but expressed concern that [REDACTED] work schedule will hinder [REDACTED] from providing this care. See ¶ 9. The record is unsubstantiated as to [REDACTED] medical limitations. It appears that [REDACTED] work schedule is speculative at this time. The record does not demonstrate that Petitioner's [REDACTED] are not willing and capable of providing care to meet Petitioner's needs with the currently approved services. Based on the aforementioned facts, Respondent proved by


a preponderance of the evidence that the continuation of private duty nursing services at 12 hours per day, 7 days per week, or a total of 84 hours per week are “in excess of [Petitioner]’s needs.”

24. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that the continuation of the previously approved level of home health (private duty nursing) services does not meet the medical necessity criteria. Looking at all the evidence relevant to the particular needs of this Petitioner, the Respondent demonstrated that the continuation of the previously approved home health services is not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent’s decision to reduce Petitioner’s home health (private duty nursing) services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of home health services (private duty nursing) is **AFFIRMED**. Petitioner’s appeal based on Respondent’s reduction of home health services (private duty nursing) is **DENIED**.

DONE AND ORDERED this 22nd day of December, 2023, in Tallahassee, Leon County, Florida.

Kimberly Roche
 23-FH2248
2023.12.22
07:56:21 -05'00'

KIMBERLY ROCHE, 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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