



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

FILED

Dec 18, 2023, 12:59 pm
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2292

Plan ID No.: [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 7, 2023, 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner’s Authorized Representative

For the Respondent: Nicole Vega
Regulatory Research Coordinator
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 an additional twenty (20)-hours of Personal Care Services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner’s Authorized Representative and [REDACTED],
[REDACTED] (“[REDACTED]”), appeared on behalf of the Petitioner.

Nicole Vega (“Ms. Vega”), Regulatory Research Coordinator for Sunshine State Health Plan, Inc. (“Sunshine”), appeared on behalf of Respondent. Dr. John Carter (“Dr. Carter”), Long Term Care Medical Director for Sunshine, attended as a witness for Respondent. The following attended on behalf of Sunshine but did not testify: Kasi Narine, Utilization Management for Sunshine; Ruth West, Clinical Supervisor for Sunshine; Alshenitha Williams-Jamieson, Care Coordinator Supervisor for Sunshine; Lauren Greenwald, Utilization Management for Sunshine and Lashelle Williams, Care Coordinator for Sunshine.

Stephanie Lang (“Ms. 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 one-hundred and thirty-six (136)-page evidence packet. The one-hundred thirty-six (136)-page packet is identified in the Office of Fair Hearings’ document management system as file title “MFH packet [Petitioner].pdf.” Absent an objection from the Petitioner undersigned admitted the one-hundred and thirty-six (136)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”)

FINDINGS OF FACT

1. Petitioner is an enrolled Recipient of Sunshine. RCE 1 at 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED]. *Id.* at 71. Petitioner lives with [REDACTED]. *Id.* at 71.
3. Petitioner is diagnosed with [REDACTED]
[REDACTED] *Id.* at 75, 77-78.

4. According to the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), completed on July 14, 2023, Petitioner’s needs for assistance with activities of daily living (“ADLs”) are as follows: for [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Petitioner needs total assistance (cannot do at all); and for [REDACTED] Petitioner needs assistance (but not total help). *Id.* at 75. Petitioner always has assistance with [REDACTED] ADLs. *Id.*

5. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: Petitioner needs total assistance (cannot do at all) for [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; and for [REDACTED], [REDACTED] and [REDACTED], Petitioner needs assistance but not total help. *Id.* at 76. Petitioner always has assistance with [REDACTED] IADLs. *Id.*

6. Petitioner’s [REDACTED] is [REDACTED] primary, full-time caregiver. *Id.* at 75. [REDACTED] provides all care for [REDACTED] through Participant Directed Option (“PDO”) services. *Id.* at 36. The 701 B notes that [REDACTED] does not work outside the home and has no assistance in providing care for [REDACTED]. *Id.* at 85. [REDACTED] reported some mental or emotional strain but reported that [REDACTED] was not in crisis. *Id.* at 86. Petitioner’s current plan of care includes 40 hours of PDO personal care services, weekly. *Id.* at 39.

7. The 701 B noted the following:

Member has [REDACTED]
[REDACTED]. Member is able to [REDACTED]
[REDACTED].
Member uses a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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: The request for an extra 20 hours per of week personal care services is denied as not medically needed. Based on the assessment, the member's current currently approved services are adequate to meet the member's care needs. The members' present care plan includes 40 hours per week of personal care services. This decision was made with Sunshine Health Policy LT. UM .09 Long Term Care Ancillary Service Criteria.

Id. at 4-5.

9. Petitioner requested a plan appeal on the denial of personal care services. Respondent issued a Notice of Plan Appeal Resolution ("NPAR") dated August 7, 2023, upholding the denial.

Id. at 96. The NPAR explained as follows in pertinent part:

On 08/03/2023, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby Denies your plan appeal. As a result, [RECIPIENT] *will not receive* requested services, effective 08/03/2023.

The reason for our decision was on appeal request for an extra 20 hours per week of personal care services is denied as not medically needed. Based on the assessment, the members currently approved services are adequate to meet the members care needs. The member's present care plan includes 40 hours per week of personal care services. The prior decision is upheld. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

Id. at 96.

10. On September 14, 2023, Petitioner requested a Fair Hearing to challenge the denial. On September 28, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for November 7, 2023, 9:00 a.m., Eastern Standard Time.

11. At the Fair Hearing, [REDACTED] testified to the following:

- a. [REDACTED] is with [REDACTED] 24/7 and has no time for a break.
- b. [REDACTED] used to come to help on the weekends, but the [REDACTED] no longer comes to help.
- c. [REDACTED] wants the additional hours to be provided by home health aides on the weekend.

12. Dr. Carter is a Long-Term Care Medical Director for Sunshine. Dr. Carter testified to the following:

- a. Petitioner is a [REDACTED] who lives with [REDACTED].
- b. Petitioner is a [REDACTED].
- c. ADLs, IADLs and living situation are considered in determining the services needed and number of services needed.
- d. Petitioner needs total assistance for almost all tasks but [REDACTED].
- e. In assessing Petitioner's needs for care, Petitioner does not live alone, [REDACTED] provides [REDACTED] care under the PDO option, and additional services were denied.
- f. The assessment of the caregiver was also considered in that Petitioner's [REDACTED] indicated [REDACTED] was not in crisis but had some emotional and mental strain.
- g. Petitioner's [REDACTED] does not work outside the home.
- h. Petitioner is not a [REDACTED] Though [REDACTED] has limited [REDACTED].

13. In making its determination, Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09, which states in pertinent part as follows:

PURPOSE:

To establish clinical criteria on which to review Sunshine Health Long Term Care (LTC) line of business ancillary services for members residing in a home and community based environment. The goal of the ancillary services is to provide these supportive services in the home to address the member’s cognitive and functional deficits, which may be a result of their medical conditions. The services will assist in maintaining the members in their home and community environment, in a safe manner, to avoid the risk for nursing home placement.

...

1. Determinants for Services

When considering the level of support the member requires and which of the ancillary services may support the member’s cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member’s support needed due to ADL deficits, living situation, and supervision needs.

a) Activities of Daily Living (ADL’s)/Instrumental Activities of Daily Living (IADL’s)

- Independent where member is able to provide the task without support, with or without assistive devices
- Minimal functional impairment where the ADL’s require one of the following:
 - Supervision
 - At least minimum assistance
 - Member ambulates with assistance of a person or a device
 - Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
 - Member has ADLs requiring total assistance
 - Member is non-ambulatory
 - Member transfers require one (1) to two (2) person assist
 - Member’s treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone.
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).

- Lives with non-family (with consideration of the number of days and hours that non-family members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

...

7. Personal Care Services

In accordance with Rule 59G-4.215, F.A.C., for member under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparing of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the member. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years. A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member. Personal care services include but may not be limited to the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders

The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times

- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

Id. at 111-129.

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 Florida Statutes ("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 Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).

16. Because Petitioner is requesting additional 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 Statewide 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 personal 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

...

4.2.2.6 Personal Care Services

In accordance with Rule 59G-4.215, F.A.C., for Recipient 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 Recipient. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years. A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are

essential to the health and welfare of the Recipient, rather than the Recipient's family.

18. The Florida Medicaid Definitions Policy ("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.

19. Petitioner requested an additional twenty-(20) hours of personal care services. Respondent denied this request. See ¶ 8. In an NPAR dated August 7, 2023, Petitioner's request for a plan appeal was denied. See ¶ 9. The denial was based on medical necessity. See ¶ 9.

20. Florida Medicaid LTC plans cover services that meet all of the following: are determined medically necessary; do not duplicate another service; and meet the criteria as specified in the LTC Policy. See ¶ 16. Section 4.2.2.6 of the LTC Policy defines personal care services as intended "[t]o 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." See ¶ 16.

21. The Definitions Policy states that all 5 criteria of medical necessity must be met. Among the criteria, the personal cares 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 ¶ 17.

22. In his testimony, Dr. Carter explained the basis for the denied hours was the most recent 701B from July 14, 2023. The Recipient’s ADLs and IADLs listed in the 701B were reviewed. Petitioner currently has assistance with all of [REDACTED] ADLs and IADLs. Further, the 701 B indicated that the caregiver ([REDACTED]) was experiencing mental and emotional strain but was not in crisis. See ¶ 6, 11.

23. Here, the current care plan for the Petitioner includes 40 hours of personal care. See ¶ 6. In addition, Petitioner lives with [REDACTED], [REDACTED]. Through the Participant Direction Option, [REDACTED] is [REDACTED] full-time, paid, primary care giver. See ¶ 11. [REDACTED] does not work outside the home. See ¶ 11.

24. Petitioner has the burden of proof to show that the denial of the request for additional personal care services by Respondent was incorrect. See ¶ 14. To satisfy that burden, Petitioner must provide evidence to show that Petitioner’s current ADLs and IADLs are not being managed under the current plan of care. No evidence was presented by Petitioner to show that Petitioner’s needs were not being met by the current plan of care. While the 701 B did reflect that [REDACTED] is experiencing mental and emotional strain, the requested personal care hours are defined to assist the enrollee, not the caregiver. See ¶ 16.

25. Further, the Petitioner has abilities to use various home devices such as an Amazon Echo and capabilities to control [REDACTED] environment and add independence to [REDACTED] daily life. See ¶ 7.


26. Respondent denied the request as being in excess of the patient's needs. See ¶ 7, 8. [REDACTED] indicated that the additional hours were requested due to needing a "mental break." See ¶10. The intent of LTC policy is to assist members with ADLs and IADLs. Petitioner provided no information as to which ADLs and IADLs are not being fully attended to with the current plan of care. See ¶ 10. Therefore, additional the twenty (20)-hours of personal care weekly requested by Petitioner are not medically necessary.

27. Upon consideration of Respondent's Composite Exhibit 1, the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of Petitioner's request for additional personal care hours was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of personal care hours is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and **ORDERED** this the 18th day of December 2023, in Tallahassee, Leon County, Florida.

 Lynne Ringers
23-FH2292
2023.12.18
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LYNNE RINGERS, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11

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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