



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

FILED

Jan 03, 2024, 1:00 pm
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2372

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on November 1, 2023, at 9:00 a.m., Eastern Standard Time (EST).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Lee Ann Williams
Medical/Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that the reduction of personal care services was correct.

PRELIMINARY STATEMENT

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

Lee Ann Williams, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“AHCA” or “Agency”), appeared on behalf of the Respondent. Dr. Chris Kunis (“Dr. Kunis”), Medical Director at eQHealth Solutions, Inc. (“eQHealth”), appeared as a witness for the Respondent.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty (40)-page evidence packet, that appears in the Office of Fair Hearings’ document management system as file title “[REDACTED] FH 11.01.2023.pdf,” and an eighty (80)-page evidence packet, that appears in the Office of Fair Hearings’ document management system as file title “23-FH2372 Agency Evidence Legal Authorities.pdf.” Absent an objection from the Respondent, the undersigned admitted the forty (40)-page evidence packet as Respondent’s Composite Exhibit 1 (“RCE 1”), and the eighty (80)-page evidence packet as Respondent’s Composite Exhibit 2 (“RCE 2”).

Petitioner did not timely submit evidence for the hearing.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. See page 2 of RCE 2.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] old with the following diagnosis: [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 16, 33.

3. Petitioner attends school Monday through Thursday, from 8:00 a.m. to 2:30 p.m., and Friday, from 8:00 a.m. to 1:30 p.m. *Id.* at 17. Petitioner is [REDACTED]

[REDACTED]. *Id.* Petitioner receives forty (40) hours of [REDACTED]. *Id.*

Petitioner lives with [REDACTED].

Id. Petitioner's [REDACTED] has medical limitations, and [REDACTED] is employed with a variable/flexible work schedule of 37.5 hours per week. *Id.* Petitioner's [REDACTED] works Monday through Friday, 8:30 a.m. to 4:30 p.m. *Id.*

4. With respect to activities of daily living ("ADLs"), Petitioner requires assistance with [REDACTED]. *Id.* at 33 – 34.

5. Respondent reduced Petitioner's personal care services from seventy-two (72) hours per week to fifteen (15) hours per week. *Id.* at 18. On April 17, 2023, eQHealth sent Petitioner a Notice of Outcome reducing Petitioner's personal care services. *Id.* at 22 - 24. The Notice explained that the services were reduced because they were not medically necessary and explained as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically the requested services are not medically necessary under the following standard(s):

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

The rationale for our decision is as follows:

PR Principal Reason – Denial:

The service is denied because it is for the convenience of the recipient, recipient’s caregiver or the provider.

The request is excessive based on the delay and the work and school schedules. PCS is not intended for monitoring and supervision and parents have to provide to the best of their ability.

Date of Action is 4/17/2023.

Pages 22 - 23 of RCE 1.

6. On September 22, 2023, Petitioner requested a Fair Hearing due to Respondent’s reduction of Petitioner’s personal care services. On October 13, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for November 1, 2023, at 9:00 a.m. EST. All parties were duly notified. *Id.* at 8 - 14.

7. Dr. Kunis’s testimony established that there are numerous services provided to Petitioner during the day in addition to personal care services, including [REDACTED], in addition to Petitioner attending school. Dr. Kunis testified that parents, as caregivers, must provide as much services as they can. Dr. Kunis explained that Petitioner is receiving other services that overlap with the twelve (12) hours of personal care services [REDACTED] receives each day. Dr. Kunis testified that personal care services are not intended for monitoring and supervision, or in a child’s case, for babysitting. Dr. Kunis acknowledged that Petitioner needs assistance for [REDACTED]. But, Dr. Kunis further explained, Petitioner is receiving [REDACTED]. Dr. Kunis testified, that based on Petitioner’s

█'s work schedule, three hours of personal care services during the week comports with Petitioner returning home from school until █ comes home from work. Dr. Kunis reiterated that if parents are available, they must provide as much care, according to AHCA regulations.

8. █ testified that most of the other therapy services are being provided at school, not in the home, and that the █ does not want to come to the home until Petitioner's behavior improves. █ testified that █ sometimes works on the weekends from home, so █ is not always available on the weekends to assist Petitioner with █ personal care needs. █ testified that Petitioner █. █ further testified that Petitioner needs assistance with toileting, incontinence, and feeding. █ explained that █ needs █ staff members to assist █. █ testified that █ is Petitioner's behavior analyst, providing █ with thirty-eight (38) to forty (40) hours of service per week. █ testified that █ works full-time during the week, but when █ comes home from work █ has █ other young children to attend to.

CONCLUSIONS OF LAW

9. 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). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

10. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b), which states "[e]ach fair hearing shall be a de novo, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule."

11. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-I.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

12. In the instant case, Respondent is reducing existing services. As such, Fla. Admin. Code R. 59G-I.100(17)(g) assigns the burden of proof to 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.).

13. The Statewide Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy") which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, establishes the coverage and provision for personal care services available under the Florida Medicaid program. The Florida Medicaid Home Health Policy states as follows:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability. . . .

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.

1.3.1 Activities of Daily Living (ADL)

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

1.3.2 Babysitting

Custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient.

1.3.7 Home Health Services

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and Home Health services.

1.3.8 Instrumental Activities of Daily Living (IADL)

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

1.3.9 Intermittent Home Health Visits

Medically necessary skilled nursing and home health aide services that are provided at intervals for the length of time necessary to complete the service.

1.3.10 Medically Necessary/Medical Necessity

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

...

2.0 Eligible Recipient

2.1 General Criteria

An eligible recipient must be enrolled in the Florida Medicaid program on the date of service and meet the criteria provided in this policy.

Provider(s) must verify each recipient’s eligibility each time a service is rendered.

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary home health visit services. Some services may be subject to additional coverage criteria as specified in section 4.0.

If a service is limited to recipients under the age of 21 years, it is specified in section 4.0. Otherwise, the service is covered for recipients of all ages Home Health services.

...

4.0 Coverage Information

4.1 General Criteria

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

- Are determined to be 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 personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or ADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician’s order for personal care 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

...

4.2.1 Parental Responsibility

Florida Medicaid reimburses for personal care services 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.

...

4.3 Early and Periodic Screening, Diagnosis, 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 § 1.0.
- The recipient does not meet the eligibility requirements listed in § 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 plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- 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 when a recipient is enrolled in the Consumer- Directed Care Plus program)
- Services provided in any of the following locations:
 - o Hospitals
 - o Intermediate care facility for individuals with intellectual disabilities
 - o Nursing facilities
 - o Prescribed pediatric extended care centers
 - o 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
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

PC Policy at pages 38 – 43.

14. The Florida Medicaid Definitions Policy (“Definitions Policy”) (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, “contains definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule.” The Definitions Policy provides the following definitions relevant to this case:

2.2 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

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

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 severe 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.

15. In this case, Respondent reduced Petitioner's personal care services from seventy-two (72) hours per week to fifteen (15) hours per week, based on medical necessity. See supra ¶ 5. Respondent's Notice of Outcome did not specify which of the five medical necessity criteria are no longer met. See supra ¶ 5. However, as established by the evidence and testimony, Petitioner's personal services were reduced as "in excess of" Petitioner's needs.

16. Section 4.2 of the PC Policy provides that coverage is for services that are medically necessary, as defined in the PC Policy: The Florida Medicaid program provides coverage to its recipients for personal services. See supra ¶ 13. Personal care services provide "assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:" See supra ¶ 13. Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. See supra ¶ 13. These services cannot be authorized for Babysitting, Companion sitting or leisure activities, Escort services, Housekeeping, Respite Care. See supra ¶ 13. Personal care services must meet the Medical Necessity criteria defined in Fla. Admin. Code R. 59G-1.010. See supra ¶ 13. To be Medically Necessary, the services requested and the requested quantity of services must meet the five criteria set forth in section 2.83 of the

Definitions Policy. *See supra* ¶ 13. Specifically, the type of service requested, and the quantity of service requested must not be in excess of the recipient's needs.

17. The evidence presented in this case reflects that Respondent's reduction of personal care services is warranted under the circumstances of this case. Specifically, Petitioner always needs assistance with [REDACTED]. *See supra* ¶ 4. Petitioner always has assistance with [REDACTED] ADLs, because [REDACTED] has personal care services, other services, and parental involvement. *See supra* ¶ 4.

18. Section 4.2.1. of the PC Policy provides for personal care services to be 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. *See supra* ¶ 13.

19. As Respondent bears the burden of proof, Respondent must show that the reduction of personal care services was correct. Here, the Petitioner receives a total of fifty-five (55) hours per week of combined services: fifteen (15) hours of personal care services per week and forty (40) hours of [REDACTED]. *See supra* ¶ 5. In addition, Petitioner attends school attendance from morning to afternoon, [REDACTED]: *See supra* ¶

3. Dr. Kunis provided credible and persuasive testimony that the approved level of services are adequate to meet Petitioner's functional needs. *See supra* ¶ 7.

20. The Definitions Policy requires that personal care 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 supra ¶ 14. The Notice of Outcome explains that Petitioner is "already receiving other services that should meet your needs." See supra ¶ 5. Considering the PC Policy's definitions for parental responsibility and personal care services, supra ¶ 13, Respondent demonstrated that Petitioner's aforementioned needs, supra ¶ 2 – 4, and 7, are sufficiently met by the 15 hours per week of personal care services. Given that Respondent established that the reduction of personal care services is warranted in this matter, the 57 additional hours of personal care services at issue are "in excess of [Petitioner's] needs." See supra ¶ 13. Accordingly, the record shows that the additional personal care services at issue do not meet medical necessity criteria.

21. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that the reduction of personal care hours meets Petitioner's needs. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has not demonstrated that additional hours of personal care services are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent has proven by a preponderance of the evidence that Respondent's reduction of Petitioner's personal care services was correct.

22. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of the evidence that Respondent's reduction of Petitioner's personal care services is correct.

Based on the foregoing,

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of personal care services is **DENIED**.

DONE AND ORDERED this 3rd day of January, 2024 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH2372
2024.01.03 08:57:42 -05'00'

DEBBIE WINICKI, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:

[REDACTED]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com