

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



FILED

Mar 15, 2024, 12:16 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2983

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 11, 2024, at 10:12 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette
Clinical Appeals 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 home health services (private duty nursing) was incorrect.

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.

Kimberly Bouchette ("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. Audrine Wells, Supervisor for Sunshine, appeared for Fair Hearing as a witness for Respondent. Julian Laverde, Case Manager for Sunshine, appeared for Fair Hearing as a witness for Respondent.

The following individuals appeared for Fair Hearing as observers: Lori Huskisson, Chief Legal Counsel for Florida Department of Health; Aldria White-Futrell, Compliance Officer for Florida Department of Health; and Lee Ann Williams, Medical/Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA").

The following individuals appeared to offer translation services for the Petitioner: Claudia interpreter number 331867 of Cyracom; and Jose, interpreter number 702381 of Voiance Language.

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and fourteen (214)-page evidence packet. The two hundred and fourteen (214)-page packet appears in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner].pdf". Absent an objection from the Petitioner, the undersigned admitted the two hundred and fourteen (214)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Children’s Medical Services (“CMS”) Managed Medical Assistance (“MMA”) program. See RCE 1 at page 2. CMS 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 13. Petitioner lives at home in the community with [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 17, 23, 28, 77. [REDACTED] works outside of the home approximately sixty (60) hours per week, typically from 1 p.m. to 10 p.m. *Id.* at 58. Petitioner’s medical conditions includes [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 26-28, 30, 52, 69.

3. The record does not indicate any prescribed medications. Petitioner attends school from 8 a.m. to 12 p.m., where [REDACTED] also receives speech therapy (“ST”), occupational therapy (“OT”), and applied behavioral therapy (“ABA”). *Id.* at 15, 29, 76, 85.

4. Petitioner’s Board Certified Behavior Analyst (“BCBA”), [REDACTED] (“[REDACTED]”), wrote a medical necessity letter dated August 23, 2023. The letter states as follows:

[Petitioner] was referred to [REDACTED] for a Functional Behavioral Assessment due to [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[Petitioner] was diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Medical Necessity and Recommendation:

[Petitioner] needs supervision with [REDACTED] daily living routines like [REDACTED]
[REDACTED].

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Id. at 19 [sic].

5. Petitioner requested home health services (private duty nursing) for the certification period of August 10, 2023, to February 05, 2024, 8 hours per day, 7 days per week, or a total of 1440 hours. *Id.* at 13, 15. In a Notice of Adverse Determination (“NABD”), dated August 18, 2023, Respondent denied Petitioner’s request. *Id.* at 5-10. The NABD explained the basis of the denial as follows:

- ✓ We determined that your requested services are **not medically necessary** because the services do not meet 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 Plan Personal Care Services Policy and Procedure, FL.UM.25.00, 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. These services have also been reviewed under Early and Periodic Screening, Diagnostic and Treatment (EPSDT).

We got a request. This is for personal care/ home health aide services. This is a trained and certified health care worker. They help in the home with daily activities. The request is denied. The notes turned in does not fully prove the medical need for the home health aide service hours requested. [REDACTED]

[REDACTED]

[REDACTED] It is unclear why your child cannot attend day care. There are no office visit notes with details of specific limitations that make these services medically needed. Your child is only [REDACTED]. [REDACTED] would be expected to need help with activities of daily living. [REDACTED] would need adult supervision for safety. There is no note of any significant change in [REDACTED] medical condition that now supports the need for the requested services. Specifically:

- There is no signed physician's chart note detailing your child's specific functional limitations that require home health aide services. Please send this.
- It is unclear if your child attends school, and if so, a school schedule must be provided. Please send this.

Note that it is a Medicaid requirement that parents or legal guardians must provide supervision and assistance with activities of daily living to the fullest extent possible. There is no note as to what level of parental or guardian help is currently present or should be expected. The clinical notes turned in does not support the medical need for a home health aide outside of the parent work schedule:

- Information is needed addressing whether there is a second care giver in the home, and if so, the caregivers' work hours. Please address this.

If the parent is unable to care for the child, there needs to be a signed Parent Medical Limitation. Respite care to facilitate the parent or legal guardian attending to personal matters is not a covered benefit. Services specifically noted to not be a covered benefit include custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically needed for the child. Resubmission of this request is encouraged when clinical notes addressing medical need and the child's specific functional limitations, as well as child and parent schedules are submitted for review.

Id. at 6-7.

6. On August 31, 2023, Petitioner requested a plan appeal for the denial of home health services. *Id.* at 59-60. In a Notice of Plan Appeal Resolution (“NPAR”) dated September 27, 2023, Respondent upheld their reduction. *Id.* at 65-66. The NPAR explained as follows:

...
The facts that we used to make our decision are: the appeal request for S9122 PERSONAL CARE/HOME HEALTH AIDE (HHA) SERVICES is denied. The information submitted with this request does not fully support the medical need for the HHA service hours requested. There is no record that your child is [REDACTED] [REDACTED] [REDACTED] due to a medical condition. The reasons for this decision are based on a set of standards. This included FL.UM.25 Review for Personal Care Services 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. This decision was made with regards to Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT).

Id. at 65-66.

7. On November 27, 2023, Petitioner requested a Fair Hearing to challenge the denial of home health services. On December 12, 2023, undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions (“Scheduling Order”), setting the hearing for January 11, 2024, at 10:00 a.m. EST.

8. [REDACTED] is Petitioner’s [REDACTED]. [REDACTED] testified to the following:

- a. [REDACTED] argued that Petitioner requires 24/7 care because [REDACTED] [REDACTED]. Petitioner is [REDACTED] [REDACTED]. See ¶ 4.

- b. [REDACTED] argued that Petitioner only [REDACTED]
[REDACTED]. See RCE 1 at 21-22.
9. Dr. Metinko is a Medical Director for Sunshine. Dr. Metinko testified to the following:
- a. Sunshine reviewers took into account Petitioner’s multiple medical conditions, current therapies, functional limitations, and therapy notes in making their decision. See ¶ 2-6, 14.
- b. In reviewing for home health services, functional limitations must be severe enough to require moment-to-moment assistance from a home health aide, and supplement gaps in care from the parent’s work schedule, and preclude conventional alternatives like daycare or babysitters. See ¶ 13-14, 18.
- c. In his review, Dr. Metinko opined that the neurology evaluation dated [REDACTED]
[REDACTED], indicated that Petitioner was [REDACTED] at [REDACTED]. The OT evaluation dated April 2023 indicated Petitioner is ambulatory, social, cooperative with therapy, with functional limitations with [REDACTED]
[REDACTED]. See RCE 1 at 77, 85.
- d. Dr. Metinko contended that there is ambiguous or incomplete information regarding Petitioner’s caregivers and their availability. Any other adult living in the home becomes a caretaker and should provide a work schedule. *Id.* at 77-78.
- e. Sunshine could not identify how conventional care options such as daycare, after school, or a babysitter could not be furnished to meet Petitioner’s needs.

CONCLUSIONS OF LAW

10. 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).

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

12. Because Petitioner is requesting a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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.)

13. 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 104-107.

14. Appendix 9.1 of the PDN Policy provides Review Criteria for Private Duty Nursing Services.

These Review Criteria state as follows:

Review Criteria for Private Duty Nursing Services

First level reviewers evaluate all of the following information to ensure requested services are appropriate. Reviewers will approve the frequency and duration of services that are medically necessary.

If the first level reviewer cannot determine medical necessity, or additional hours are requested, the case will be referred to a physician reviewer for final determination.

1. Service Criteria for First Level Reviewers:

All documentation submitted must substantiate the recipient’s specific diagnoses, system and organ function, home environment, and necessary skilled nursing requested. Providers must include assessments from both the private duty nursing services provider and the treating physician.

First level reviewers will consider information that includes, at a minimum, the following:

- a. Provider assessment of:
 - Home environment
 - Care required in the home or community

- b. Provider documentation of organ system dysfunction, including:
 - Genitourinary system
 - Initiate or continue teaching of self-catheterization and voiding schedule
 - Catheter change, irrigation, or reinsertion
 - Postvoid residual
 - Suprapubic tube
 - Cardiovascular system
 - Significant arrhythmias
 - Blood pressure monitoring
 - Signs of congestive heart failure
- c. Endocrine system
 - Fluid monitoring for diabetes insipidus
 - Care for diabetes mellitus including
 - Insulin injections and pump
 - Blood sugar testing and monitoring
 - Diet and meal planning
 - Eye, foot, and skin care
- d. Gastrointestinal system and nutrition
 - Initiate and continue teaching of prescribed bowel regimen
 - Manual disimpaction
 - Aspiration precautions
 - Feeding tube care (includes pump management)
 - Total parenteral nutrition
 - Formula medication administration
 - Site care and dressing
- e. Hematologic system
 - Administration of injectable anticoagulants
- f. Neurologic system
 - Seizure precautions and interventions
 - Vagal nerve stimulator
- g. Musculoskeletal system
 - Cast care
 - Wound care
 - Decubiti and pressure ulcers
- h. Respiratory system
 - Tracheostomy care
 - Technology dependent child

2. Clinical Indicators for Private Duty Nursing

All documentation must substantiate the need for skilled nursing based on the following clinical indicators:

- a. **Clinical Presentation - One or more of the following must be satisfied:**

- Illness, injury, exacerbation, or surgery
 - Discharge from inpatient facility
 - Newborn or infant and poor weight gain
- b. Skilled intervention required - One or more of the following must be satisfied:**
- Modification of initial or ongoing treatment or medication regimen
 - Lack of adherence
 - Management of plan of care
 - Exacerbation of known illness
- c. Care required in the home or community - One or more of the following indicators must be satisfied:**
- Activity restrictions requiring at least minimum assistance in transfer, bed mobility, or locomotion to leave home or residence
 - Isolation or immunocompromised host or communicable disease

Id. at page 109-110.

15. 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.

16. 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.

17. 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.

18. 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

Recipients who meet the following criteria may receive any combination of skilled nursing or home health aide visit services up to the coverage limits specified in this policy:

- Is under the care of a physician and have a physician's order for home health services
- Require services that can be safely provided in their home or in the community

...

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.

...

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
- 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
- Intermittent home health visits rendered less than an hour apart
- 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
- 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
- Yard work, gardening, or home maintenance work

Id. at page 111-116.

19. In the instant case, Petitioner requested home health services (private duty nursing) for the certification period of August 10, 2023, to February 05, 2024, 8 hours per day, 7 days per week, or a total of 1440 hours. *See* ¶ 5. In the NABD, dated August 18, 2023, Respondent denied Petitioner’s request. *See* ¶ 5. Petitioner has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. *See* ¶ 12.

20. The Home Health Visit Policy specifies that “Florida Medicaid 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 ¶ 18. 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 ¶ 13. 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 ¶ 17.

21. As demonstrated in the record, Petitioner’s medical history includes [REDACTED]
[REDACTED]
[REDACTED] See ¶ 2. The record does not indicate Petitioner is prescribed any medications. See ¶ 3. According to Dr. Metinko’s testimony, Respondent took into consideration Petitioner’s multiple medical conditions, current therapies, functional limitations, and therapy notes in their review for the requested private duty nursing services. See ¶ 9. Dr. Metinko opined that in reviewing for home health services, functional limitations must be severe enough to require moment-to-moment assistance from a home health aide, and supplement gaps in care from the parent’s work schedule, and preclude conventional alternatives like daycare or a babysitter. See ¶ 9.

22. The record shows that Petitioner has functional limitations with [REDACTED] activities of daily living such as [REDACTED]. See ¶ 4, 8. Petitioner attends school and is cooperative with [REDACTED] therapies. See ¶ 3, 9. The record appears to show ambiguity as to the extent of Petitioner’s functional limitations and caregiver status. See ¶ 4, 8, 9. The letter from Petitioner’s BCBA, [REDACTED]

[REDACTED], dated August 23, 2023, along with [REDACTED]'s testimony indicates Petitioner is [REDACTED]. See ¶ 4, 8. Dr. Metinko opined that the neurology evaluation dated [REDACTED], indicated that Petitioner was [REDACTED] at [REDACTED]. See ¶ 9. [REDACTED] argued that Petitioner requires 24/7 care because [REDACTED] has difficulty [REDACTED]. See ¶ 8. [REDACTED] argued that Petitioner only [REDACTED]. See ¶ 8. The OT evaluation dated April 2023 indicated Petitioner is ambulatory, social, cooperative with therapy, with functional limitations with [REDACTED]. See ¶ 9. Petitioner lives at home in the community with [REDACTED], [REDACTED], and [REDACTED]. See ¶ 2. [REDACTED] works outside of the home approximately sixty (60) hours per week, typically from 1 p.m. to 10 p.m. See ¶ 2. According to Dr. Metinko, any other adult living in the home becomes a caretaker and should provide a work schedule. See ¶ 9. The scope of private duty nursing services is intended to address medically necessary skilled nursing needs "more extensive and continual care than can be provided through a home health visit." See ¶ 13. The record does not clearly demonstrate that the nature and severity of Petitioner's medical conditions warrant private duty nursing in accordance with the Home Health Visit Policy and the PDN Policy. See ¶ 2, 13, 18. It appears from the record Petitioner's request for services may better align with a need for assistance with activities of daily living, rather than for necessary skilled nursing specific and consistent with Petitioner's medical conditions. See ¶ 2, 8. The purpose of the requested private duty nursing services does not appear to align as the most appropriate service available to meet Petitioner's needs. The request for private duty nursing services is unsubstantiated by the evidence of this case. Based on the aforementioned facts,


Petitioner failed to prove by a preponderance of the evidence that the home health services (private duty nursing) at 8 hours per day, 7 days per week, or a total of 1440 hours, are “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment,” and not “in excess of [Petitioner]’s needs.”

23. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested home health (private duty nursing) services is medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the requested home health (private duty nursing) services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of home health (private duty nursing) services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE AND ORDERED this 15th day of March, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche
23-FH2983
2024.03.15 10:30:47
-04'00'

KIMBERLY ROCHE, 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:

[REDACTED]
[REDACTED]

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CMSPlanContract@flhealth.gov

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