

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



FILED

Apr 02, 2024, 9:45 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0040

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 February 28, 2024, at 9:10 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette
Clinical Appeals Coordinator
Children's Medical Services

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 personal care home health aide services was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED] (" [REDACTED] "), appeared on behalf of the Petitioner.

Kimberly Bouchette of Children’s Medical Services (“CMS”)/Sunshine Health (“Ms. Bouchette”) appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. Andrew Metinko, MD, Medical Director with CMS/Sunshine Health (“Dr. Metinko”) and Sharmaine Martin, Registered Nurse and Care Manager with CMS/Sunshine Health (“Ms. Martin”).

Lori Huskisson, Esq. Chief Legal Counsel for the Florida Department of Health, Joane White with the CMS/Department of Health and Nadine Macko, Supervisor with CMS/Sunshine Health all appeared as observers.

Lee Ann Williams, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Tyra #354179 appeared as a Spanish translator. Alejandro #353384 appeared as a Spanish translator. Translation services were for [REDACTED].

Petitioner did not file or introduce any exhibits at the Fair Hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and sixty (260)-page evidence packet. The two hundred and sixty (260)-page evidence packet appears in the Office of Fair Hearings document management system as file title “MFH packet (recipient’s name) Part 1.pdf,” and “MFH packet (recipient’s name) Part 2.pdf.” Absent an objection from the Petitioner, the undersigned admitted the two hundred and sixty (260)-page evidence 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. See page 2 of RCE 1. CMS /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 30. Petitioner is diagnosed with [REDACTED] [REDACTED] *Id.* at 12. Petitioner has requested personal care services to be administered by a home health aide Monday through Friday from 3:00 p.m. until 11:00 p.m. and on Saturday and Sunday 7:00 a.m. until 3:00 p.m. *Id.* at 19-20. Recipient’s primary physician, [REDACTED], M.D. wrote that the recipient was in need of assistance with [REDACTED] ADLs, including [REDACTED] [REDACTED] [REDACTED]. *Id.* at 17. [REDACTED] wrote that the recipient was not able to perform the ADLs without physical assistance from another. *Id.* at 18.

3. In a Notice of Adverse Benefit Determination (“NABD”), dated September 11, 2023, Respondent denied Petitioner’s personal care services and home health aide request. 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 your child’s needs.

...

The facts that we used to make our decision are: Florida Medicaid Home Health Services Coverage and Limitations Handbook and Children’s Medical Services Health Plan Florida Medicaid Member Handbook, Section: Accessing Services. Sunshine Health Policy on Medically Fragile Children, FL. UM.82.00. Sunshine Health Policy on Review for Personal Care Services Request, FL.UM.25.00. The review of these services were also considered under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: Your request for home health aide services. This is care provided by a trained and certified health care worker to assist a person in the home with daily activities. This is denied due to lack of medical need. We have tried many times to get the notes in order to find the medical need for this service. We did not get any notes from your child’s doctor. Request for approval of this request can be done when clinical notes are sent in for review. Please discuss this decision with your child’s doctor or your Children Medical Service care manager should you have any

questions.

...

Pages 5 and 6 of RCE 1.

4. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated October 27, 2023, that denied the request for a home health aide. *Id.* 26. The NPAR explained as follows:

On 10/27/2023, after consideration of the information you provided to Children’s Medical Services Health Plan in support of your plan appeal, Children’s Medical Services Health Plan hereby Denies your plan appeal. As a result, (recipient’s name) will not receive home health aide services, effective 10/27/23.

The facts that we used to make our decision are: your request for S9122 HOME HEALTH AIDE (HHA) SERVICES was recently denied due to lack of medical necessity (need). That request was the initial review by a Medical Director after prior administrative approvals due to health plan integration, and it was denied because there was not enough supportive information to justify the medical need for HHA services (a trained and certified health care worker to assist a person in the home with daily activities). Because you appealed that decision, your request was re-evaluated by a second Medical Director. Based upon this secondary review, the previous denial is upheld. There is not enough information submitted to justify the medical necessity for the requested HHA services. Your child has a diagnosis of Autism but attends school. The clinical documentation provided does not fully support the need for HHA services and is unclear why conventional sitter service would be inadequate or unsafe. Supervision would normally be required for children at this age and is not unique to this member. Adult supervision does not require a home health aide. There is no documentation as to what level of parental or guardian participation is currently present or should be expected. If parent is unable to care for member, there needs to be a signed Parent Medical Limitation. 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 necessary for the member. Reconsideration of this request may occur when clinical information addressing medical necessity and the member’s specific functional limitations are submitted for review. The reason for this decision are based on a set of standards. This included FL.UM.25 Review for Personal Care Services request, 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).

Pages 26 and 27 of RCE 1.

5. On December 28, 2023, Petitioner requested a Fair Hearing to challenge the denial of the home health aide. On February 2, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 28, 2024, at 9:00 a.m. EST.

6. [REDACTED] is the recipient's [REDACTED]. [REDACTED] testified that [REDACTED] did not understand why the service was denied. [REDACTED] testified that [REDACTED] signed the document requesting services. [REDACTED] stated that [REDACTED] needs physical help with [REDACTED] ADLs and that [REDACTED]. [REDACTED] stated that [REDACTED] needed to be watched all of the time after [REDACTED] comes home from school at 2:30 p.m. The [REDACTED] resides in the home, but [REDACTED] is confined to the [REDACTED].

7. Dr. Metinko testified on behalf of the Respondent. Dr. Metinko reviewed the medical records that had been made available. The records did not indicate any [REDACTED]. [REDACTED]. Based upon the information submitted, the recipient does not meet the threshold for services with [REDACTED] diagnosis. The recipient is [REDACTED].

There is no explanation why that period of time could not be covered by after school care or a day care program which would be a less costly method of providing a service. Also, there is some ambiguity in the recipient's functional limitations in the information supplied by the pediatrician. One of the diagnosis' listed as a reason for the need of a home health aide is [REDACTED].

Such a suggestion is not a valid basis for a home health aide and takes away from the reliability of the other content of the statement. Dr. Metinko attempted numerous times to establish a peer-to-peer review with the primary physician but was unable to get a response to that request. Also, the [REDACTED] is in the home and supervises the [REDACTED], but Dr. Metinko was not aware the [REDACTED] may be limited by the use of a wheelchair. Also, there is a spouse for [REDACTED] that lives in the household. Such an individual could be considered when reviewing the request for this type of service. While no one part of this information may result in a denial of services, the lack of information being made available formed the basis of the denial of services. Full disclosure of relevant information is essential to making a complete decision. With further clarification, it may be possible that some level of service may be warranted.

8. In [REDACTED] rebuttal statement, [REDACTED] stated that [REDACTED] works from 3:00 p.m. until 11:00 p.m. and [REDACTED] does not have enough money for after school care. Petitioner's [REDACTED] takes care of the children in the home after school when [REDACTED] can, however, [REDACTED] does have some medical issues of [REDACTED] own. [REDACTED]

9. Dr. Metinko requested permission to provide a brief rebuttal. Dr. Metinko stated that all adults in the household that are members of the family unit will be considered as part of the family unit for consideration of [REDACTED] request for services. For that purpose, all adults would need to provide information concerning work times, health issues and other such information that would be used to determine a request for services.

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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

12. Because Petitioner is contesting the denial of a new service, Fla. Admin. Code R. 59G1.100(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.)

13. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“Policy”) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215, governs Personal Care services available under Florida Medicaid. The Policy provides the following with respect to personal care services:

a. 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.

...

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 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 IADLs 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.

...

4.2.2 Services Provided by Independent Personal Care Providers

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

...

4.3 Early and Period 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 1095(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.

14. The Policy further addresses excluded services as follows:

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 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:
 - Hospitals
 - Intermediate care facility 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.

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 [redacted] 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, provides the applicable definitions for Florida Statewide Medicaid Managed Care policy. The Definitions Policy provides the following definitions applicable to the instant 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)

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)

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.

18. In the NABD, dated September 11, 2023, Respondent denied Petitioner's request for personal care services and a home health aide. See ¶ 3. Respondent explained that the request for personal care and home health aide services were not "individualized, specific, consistent with symptoms or diagnosis of illness or injury" and were "in excess of the patient's needs". *Id.* In the NPAR, dated October 27, 2023, Respondent upheld the denial of the request for personal care and home health aide. See ¶ 4. In the NPAR Respondent explained:

. . .

Based upon this secondary review, the previous denial is upheld. There is not enough information submitted to justify the medical necessity for the requested HHA services. Your child has a diagnosis of [REDACTED] but attends school. The clinical documentation provided does not fully support the need for HHA services and is unclear why conventional sitter service would be inadequate or unsafe. Supervision would normally be required for children at this age and is not unique to this member. Adult supervision does not require a home health aide. There is

no documentation as to what level of parental or guardian participation is currently present or should be expected. If a parent is unable to care for member, there needs to be a signed Parent Medical Limitation. 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 necessary for the member. Reconsideration of this request may occur when clinical information addressing medical necessity and the member's specific functional limitations are submitted for review.

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19. As Petitioner bears the burden of proof, Petitioner must show by a preponderance of the evidence that the Respondent's denial of the request for personal care and home health aide was incorrect. As provided in the Policy, personal care services are to "provide medically necessary assistance . . . with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL)." See ¶ 13. As shown by the record, Petitioner is diagnosed with [REDACTED]. See ¶ 2. Regarding [REDACTED] ADLs, [REDACTED] wrote that Petitioner needs assistance with [REDACTED]. [REDACTED]. See ¶ 2. Although [REDACTED] provided a list of activities with which Petitioner need assistance, Petitioner has not identified how the eight (8) hours per day, seven (7) days a week of personal care/home health aide will be utilized. For example, how much time each [REDACTED] needs with which ADLs and IADLs. In addition, Petitioner has not supplied sufficient information concerning the home/family unit to allow Respondent to fully evaluate the Petitioner's request for services. As Respondent previously indicated, upon receipt of complete medical records, household and family information, and a determination of the functional limitations/needs of the Petitioner, this matter may be reconsidered for services. *Id.* at 27.


20. Upon consideration of the testimony provided, evidence submitted, and applicable

polices, the undersigned concludes that the Petitioner has not proved by a preponderance of the evidence that the requested personal care services and home health aide was medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the personal care / home health aide services were not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the Petitioner has not proved by a preponderance of the evidence that Respondent's denial of the requested eight (8) hours per day, seven (7) days a week, of personal care / home health aide services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

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

DONE and ORDERD this 2nd day of April 2024, in Tallahassee, Leon County, Florida.


George L.
Winslow, Jr.
24-FH0040
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GEORGE WINSLOW, 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]
[REDACTED]

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