

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



FILED

Apr 22, 2024, 10:26 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0181

[REDACTED]

vs.

SIMPLY HEALTH CARE PLANS, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above-styled case on March 22, 2024, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Sharon Nealy
Grievance and Appeals, Fair Hearing Coordinator
Simply Health Care Plans, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of an additional seven (7) hours per week of Homemaker Services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional twenty-one (21) hours per week of Personal Care Services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] appeared on behalf of Petitioner.

Sharon Nealy ("Ms. Nealy"), Grievance and Appeals, Fair Hearing Coordinator for Simply Health Care Plans, Inc. ("Simply"), appeared as a representative for Simply; Dr. Marni Nicholas ("Dr. Nicholas") appeared as a witness for Simply.

Linda Latson, ("Ms. Latson"), Registered Nurse and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA") appeared as an observer.

Lacey, Interpreter Number 700113, and Yamilet, Interpreter Number 35662, certified Translators appeared to provide translation services for Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a three page (3)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' Case management system as file titles: "24-FH0181Received Mail DAR, Supporting Documents.pdf. " Absent an objection from Respondent, the undersigned admitted the three (3)-page packet as Petitioner's Composite Exhibit 1 ("PCE1")

Respondent sent to the Office of Fair Hearings and Petitioner a fifty-two (52)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' Case Management system as file title: "FL Simply Evidence Packet [PETITIONER].pdf." Absent an objection from

Petitioner, the undersigned admitted the fifty-two (52)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Simply's Long-Term Care ("LTC") plan. See RCE 1 at 7. Simply is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in the State of Florida.

2. As of the date of the Fair Hearing, Petitioner is an [REDACTED] who lives with [REDACTED], [REDACTED]

3. Petitioner has the following health conditions: [REDACTED], [REDACTED]
[REDACTED],
[REDACTED] *Id.* at 15-18.

4. According to the Florida Department of Elder Affairs 701B Assessment ("701B") completed July 5, 2023, regarding Petitioner's Activities of Daily Living ("ADLs"), Petitioner needs total assistance with [REDACTED] Petitioner needs assistance but not total help with [REDACTED] *Id.* at 15. The 701B was completed while Petitioner was residing in a [REDACTED] on. *Id.* at 13. The skilled nursing staff and Petitioner's [REDACTED] gave the answers to the questions on the 701B. *Id.*

5. According to the 701B Assessment, regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with [REDACTED]
[REDACTED]
[REDACTED] Petitioner needs assistance but not total help with using [REDACTED]. *Id.* at 15.

6. At the time of the Assessment, per Ms. Cussato's testimony, Petitioner was living at [REDACTED] and would soon transfer out of this arrangement to live with [REDACTED] [REDACTED] July 14, 2023. *Id.* at 31.

7. Petitioner requested an additional fourteen (14)-hours per week of Homemaker Services and an additional thirty-five (35) hours per week of Personal Care Services. On July 14, 2023, Respondent issued a Notice of Adverse Benefit Determination ("NABD") denying the request *Id.* at 38-39. The NABD stated the reasons for Respondent's denial as follows, in pertinent part:

We determined that your requested services are **not medically necessary** because the services do not meet either of the reason(s) checked below: (See Rule)

...

Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:

1. 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;
2. 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; and
3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
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 facts that we used to make our decision are: We will cover some of the care you asked for (APPROVE - T1019- PC- 14 HRS/WEEK
Approve - S5130- HMK- 7 HRS/WEEK

[REDACTED]. We cannot cover some of the care that was asked for (DENY - T1019- PC- 21 HRS/WEEK

Deny - S5130- HMK- 7 HRS/WEEK).

We have reviewed your records. You do not [REDACTED]. You are able to help with your self care. With the care approved, you are getting enough care for your needs (combined 21 hours of weekly care). This is based on the Florida Medicaid Statewide Managed Care Long Term Care Program Coverage Policy, 4.0, 6.2.

Id.

8. Petitioner requested a plan appeal regarding the denial of an additional seven (7) hours per week of Homemaker services and an additional twenty-one (21) hours per week of Personal Care Services. In a Notice of Plan Appeal Resolution (“NPAR”) dated September 29, 2023, Respondent denied the plan appeal. *Id.* at 50-51. The reasoning for the determination was explained as follows, in pertinent part:

On 09/14/2023 we received your timely plan appeal request regarding Simply Healthcare Plans, Inc.'s Notice of Adverse Benefit Determination dated 07/14/2023, NABD Number **UM46899367**, PARTIALLY DENYING, the T1019 - Personal Care - 5 hours per day (35 hrs/week); S5130 - Homemaker Service - 2 hours per day (14 hrs/week); [REDACTED]

[REDACTED] We will cover some of the care you asked for (APPROVE - T1019- PC- 14 HRS/WEEK Approve - S5130- HMK- 7 HRS/WEEK Approve - [REDACTED]). We cannot cover some of the care that was asked for (DENY - T1019- PC- 21 HRS/WEEK Deny- S5130- HMK- 7 HRS/WEEK). We have reviewed your records. You do not [REDACTED] You are able to help with your self care. With the care approved, you are getting enough care for your needs (combined 21 hours of weekly care). This is based on the Florida Medicaid Statewide Managed Care Long Term Care Program Coverage Policy, 4.0, 6.2.

On 09/29/2023, after consideration of the information you provided to Simply in support of your plan appeal, Simply hereby DENIES, your plan appeal. We reviewed your appeal. This was denied on 07/14/2023. You had 60 days to file an appeal from the date of the denial. This is why it remains denied. Your case was looked at by a Grievance and Appeals Analyst for Simply.

Id.

9. Petitioner is currently authorized to receive the following services pursuant to the NABD of July 14, 2023: fourteen (14) hours per week of Personal Care Services and seven (7) hours per week of Homemaker Services. *Id.* at 38.

10. On January 25, 2024, Petitioner requested a Fair Hearing due to the denial of additional Homemaker and Personal Care Services. On February 22, 2024, the undersigned issued a Second Order Scheduling Telephonic Hearing with Prehearing Instructions for March 22, 2024, at 9:00 a.m. EST.

11. At the Fair Hearing, [REDACTED] testified as follows:

- a. She brought [REDACTED] from the nursing home and states [REDACTED].
- b. Her [REDACTED] is [REDACTED], has [REDACTED] and [REDACTED].
- c. She has to keep [REDACTED] close by because [REDACTED].
- d. [REDACTED] lost her job working from home because [REDACTED], and she cannot be on the phone.

12. Dr. Nicholas testified to the following:

- a. At the time of the assessment, the Petitioner was in a [REDACTED] and preparing to transition [REDACTED].
- b. Petitioner needs to call the care manager for a reassessment if there has been a change in condition.

CONCLUSIONS OF LAW

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

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

15. Because Petitioner is requesting new or additional services, 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.).

16. The Florida Medicaid Statewide 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 the Homemaker and 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 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 (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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

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
- 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)

1.3.10 LTC Supplemental Assessment

An evaluation conducted by the LTC plan of the level of natural supports that are available to the enrollee and to capture additional information regarding the functional needs of the enrollee.

...

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

- (a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
- (b) All other LTC supportive services must meet all of the following:

- 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 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

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

...

4.0 Coverage Information

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 Specific Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

...

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained Homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.2 Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees 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 enrollee. The scope and nature of these services do not otherwise differ from Personal Care services furnished to persons under the age of 21 years.

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

Florida Statewide Managed Care Long Term Care Program Coverage Policy

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.

Homemaker Services

18. In an NABD dated July 14, 2023, Respondent denied Petitioner's request for fourteen (14) hours per week of Homemaker services. See ¶ 7. Respondent approved seven (7) hours per week of Homemaker Services. Id. Petitioner requested a plan appeal to challenge the denial of seven (7) hours per week of Homemaker services. See ¶ 8. As established on the record by the evidence and testimony, Respondent denied Petitioner's request for seven (7) hours per week of Homemaker services because the services were not medically necessary. See ¶ 7, 8. Based on the NPAR and testimony of Dr. Nicholas, the undersigned concludes that the services were denied on the basis of being "in excess of [Petitioner's] needs." See ¶ 7-8, 12.

19. 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 LTC Policy. See ¶ 16. Section 4.2.1.9 of the LTC Policy defines homemaker services as the

Provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

See ¶ 16. Section 1.3.14 of the LTC Policy requires that all LTC supportive services, such as Homemaker 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 ¶ 16.

20. The evidence presented in this case reflects that the denial of seven (7) hours per week of Homemaker services is warranted. With regard to IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED], and [REDACTED]. Petitioner needs assistance but not total help with [REDACTED]. See ¶ 5. However, as Dr. Nicholas testified, these needs can be adequately fulfilled with the seven (7) hours per week of Homemaker Services that are being provided as well as the [REDACTED] Petitioner has by [REDACTED]. See ¶ 2, 5, 9, 12.

21. Petitioner has been diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]. See ¶ 3.

22. Petitioner did not identify any specific Homemaker tasks or needs of Petitioner's that would not be met if the Homemaker services are not increased. See ¶ 11. Further, Dr. Nicholas provided credible and persuasive testimony regarding review of Petitioner's needs and how the currently authorized services are at a level sufficient to meet Petitioner's needs. See ¶ 12.

23. Considering the totality of Petitioner's circumstances, including [REDACTED], level of functional need for assistance with IADLs, amount of currently approved services, and the fact that [REDACTED] has the [REDACTED] of the [REDACTED], Petitioner failed to prove by a preponderance of the evidence that the request for an additional seven (7) hours per week of Homemaker services is not "in excess of [Petitioner's] needs." See ¶ 15, 16.

24. In light of both parties' testimony, Respondent's Composite Exhibit 1, Petitioner's Composite Exhibit 1, and the applicable laws and policies, the undersigned Hearing Officer finds

that Petitioner did not meet ■■■ burden of proving that an additional seven (7) hours per week of Homemaker services is medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of Petitioner's request for an additional seven (7) hours per week of Homemaker services was incorrect.

Personal Care Services

25. Petitioner requested an additional thirty-five (35) hours per week of Personal Care Services. In an NABD dated July 14, 2023, Respondent authorized fourteen (14) hours per week of Personal Care Services and denied the remaining twenty-one (21) hours of the request. See ¶ 7. In an NPAR dated September 29, 2023, denied Petitioner's plan appeal. As established on the record by the evidence and testimony, Respondent denied Petitioner's request for additional Personal Care services because the services were not medically necessary. See ¶ 7, 8. Based on the NPAR and testimony of Dr. Nicholas, the undersigned concludes that the services were determined to be "in excess of [Petitioner's] need." See ¶ 8, 12.

26. 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 LTC Policy. See ¶ 16. The LTC and 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 ¶ 16-17.

27. Petitioner's currently authorized Personal Care services are provided:

In accordance with Rule 59G-4.215, F.A.C., for enrollees 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 enrollee. The scope and nature of

these services do not otherwise differ from Personal Care services furnished to persons under the age of 21 years.

See ¶ 16.

28. The evidence presented in this case reflects that denial of Petitioner's request for an additional twenty-one (21) hours per week of Personal Care services is warranted. Petitioner receives fourteen (14) hours per week of Personal Care Services and seven (7) hours per week of Homemaker Services. See ¶ 9. Specifically, regarding ADLs and IADLs, Petitioner needs total assistance with [REDACTED]; Petitioner needs assistance but not total help with [REDACTED]. See ¶ 4. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED] [REDACTED]. Petitioner needs assistance but not total help with [REDACTED]. See ¶ 5.

29. Petitioner has been diagnosed with the following: [REDACTED] [REDACTED], [REDACTED]. See ¶ 3.

30. There was no evidence presented that any of Petitioner's ADLs or IADLs would no longer be met as a result of the denial of the requested Personal Care services. Further, Dr. Nicholas provided credible and persuasive testimony regarding the review of Petitioner's needs and that the current level of services as well as the natural support of her family is sufficient to meet Petitioner's needs. See ¶ 12.

31. Petitioner is currently authorized to receive the following services: seven (7)-hours per week of Homemaker services and fourteen (14)-hours per week of Personal Care Services. See ¶ 9.

32. Considering the totality of Petitioner's circumstances, including [REDACTED], level of functional need for assistance with ADLs and IADLs, amount of currently approved services, and the [REDACTED] provided by [REDACTED], Petitioner failed to prove by a preponderance of the evidence that an additional twenty-one (21) hours per week of Personal Care services are not "in excess of [Petitioner's] needs." See ¶ 15-16.

33. In light of both parties' testimony, Respondent's Composite Exhibit 1, Petitioner Composite Exhibit 1, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner did not meet their burden of proving that an additional twenty-one (21) hours per week of Personal Care services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional twenty-one (21) hours per week of Personal Care services was incorrect.

DECISION

Respondent's denial of Petitioner's request for an additional seven (7) hours per week of Homemaker services **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

Respondent's denial of Petitioner's request for an additional twenty-one (21)-hours per week of Personal Care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE AND ORDERED this 22nd day of April 2024, in Tallahassee, Leon County, Florida.

Lynne Ringers

Lynne Ringers

24-FH0181

2024.04.22

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LYNNE RINGERS, 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]

Simply Health Care Plans, Inc.
MedicaidFairHearings@Simplyhealthcareplans.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com