



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

FILED

Apr 29, 2024, 3:47 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0230

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on March 11, 2024, at 1:57 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chrissie Simmons
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 Respondent's denial of Petitioner's For Cause disenrollment request was incorrect.

PRELIMINARY STATEMENT

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

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

Chrissie Simmons (“Ms. Simmons”), Medical/Health Care Program Analyst and Fair Hearing Liaison with the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a fourteen (14)-page evidence packet. The fourteen (14)-page evidence packet appears in the Office of Fair Hearings’ document management system as file title “24-FH0230_SOM_[PETITIONER].pdf”. Absent an objection from Petitioner, the undersigned admitted the fourteen (14)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Following the hearing, the undersigned held the record open until March 18, 2024, at 5:00 p.m. EST to allow Petitioner to submit additional documentation. As of the date of this Final Order, the Office of Fair Hearings has not received any additional documentation from Petitioner.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine Health Plan. (“Sunshine”). *See* page 1 of RCE 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. On January 8, 2024, [REDACTED] requested to change Petitioner’s Medicaid plan from Sunshine to AmeriHealth Plan (“AmeriHealth”). *Id.* at 1. [REDACTED] requested the change due to an unreasonable delay or denial of service. *Id.* The Agency auto denied Petitioner’s request for failure to complete the managed care plan’s Grievance process as required. *Id.*
3. On January 10, 2024, the Agency issued to Petitioner a letter of Denial of For Cause Plan Change. *Id.* at 2. The letter reads as follows in pertinent part:

The reason given for the requested For Cause plan change, outside of your Open Enrollment period, was the enrollee experienced an unreasonable delay or denial of service pursuant to Section 409.969(2), F.S. The Agency has considered your request and denied it as it does not meet the requirements for a For Cause plan change as outlined in Rule 59G-8.600. The request was denied because the enrollee failed to go through the managed care plan's Appeal process as required (See Rule 59G-8.600(3)(b)5).

...

Page 2 of RCE 1.

4. On January 22, 2024, Petitioner requested a Fair Hearing regarding the denial of a For Cause disenrollment request. *Id.* at 1. On February 26, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, scheduling the hearing for March 11, 2024, at 2:00 p.m. EST.

5. [REDACTED] is the [REDACTED] of Petitioner. [REDACTED] testified to the following at the Fair Hearing:

- a. Petitioner has been visiting [REDACTED] (“[REDACTED]”) for some time and has developed a relationship with [REDACTED]. [REDACTED] had to change offices and the insurance did not cover Petitioner at the new office, which left Petitioner without a doctor. [REDACTED] stated this is unfair and that Petitioner needed an injection to be done.
- b. [REDACTED] stated there was a Grievance filed with Sunshine online.

6. Ms. Simmons is a Medical/Health Care Program Analyst with the Agency. Ms. Simmons testified to the following at the Fair Hearing:

- a. On January 8, 2024, [REDACTED] requested a plan change from Sunshine to AmeriHealth due to an unreasonable delay or denial of services. The system automatically denied the request because [REDACTED] reported [REDACTED] had not filed a Grievance with Sunshine and had therefore not completed the Grievance process as required. On January 10,

2024, the Agency issued to Petitioner the For Cause denial letter. On January 22, 2024, Petitioner requested a Fair Hearing.

- b. On the For Cause Request Questionnaire submitted by [REDACTED], [REDACTED] responded “no” to the question asking if the member had filed an appeal/grievance with their current plan. See page 9 of RCE 1. This resulted in an automatic denial. [REDACTED] was advised that [REDACTED] request did not meet the criteria for a For Cause plan change. *Id.* at 10, 12.

CONCLUSIONS OF LAW

7. 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).

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

9. Because Petitioner is requesting a change of managed medical care plans outside of their enrollment period, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

10. Fla. Admin. Code R. 59G-8.600 governs Disenrollment from Managed Care Plans. It states the following:

- (1) Purpose. A Florida Medicaid recipient (herein referred to as an enrollee) who is required to enroll in the Statewide Medicaid Managed Care (SMMC) Managed Medical Assistance (MMA) or Long-term Care (LTC) program, may request to change managed care plans. Requests must be submitted via

telephone to the Agency for Health Care Administration (AHCA) or its enrollment broker. Enrollees required to enroll in SMMC programs should not interpret this rule as an exemption from participation in Florida Medicaid's SMMC program. This rule applies to the process and reasons that SMMC managed care plan enrollees may change plans.

- (2) Requests for disenrollment must be completed in accordance with sections 409.969, Florida Statutes (F.S.), and Title 42, Code of Federal Regulations (CFR), section 438.56 (42 CFR 438.56).
- (3) For Cause Reasons.
 - (a) Reasons outlined in 42 CFR 438.569(d)(2) and Section 409.969(2), F.S., constitute cause for disenrollment at any time from a managed care plan:
 1. The managed care plan does not cover the service the enrollee seeks because of moral or religious objections.
 2. The enrollee would have to change his or her residential or institutional provider based on the provider's change in status from an in-network to an out-of-network provider with the managed care plan.
 3. Fraudulent enrollment.
 - (b) Reasons outlined in 42 CFR 438.56(d)(2) and Section 409.969(2), F.S., constitute cause for disenrollment from a managed care plan when the enrollee first seeks resolution through the managed care plan's grievance process, as confirmed by AHCA, in accordance with 42 CFR 438.56(d)(5), except when there is an allegation of immediate risk of permanent damage to the enrollee's health:
 1. The enrollee needs related services to be performed concurrently, but not all related services are available within the managed care plan's network, and the enrollee's primary care provider or another provider has determined that receiving the services separately would subject the enrollee to unnecessary risk.
 2. Poor quality of care.
 3. Lack of access to services covered under the managed care plan's contract with AHCA, including lack of access to medically-necessary specialty services.
 4. There is a lack of access to managed care plan providers experienced in dealing with the enrollee's health care needs.
 5. The enrollee experienced an unreasonable delay or denial of service pursuant to section 409.969(2), F.S.

11. In this case, the evidence admitted and testimony presented is insufficient to support a *de novo* reversal of the Agency's decision, and establishes that the Petitioner's request cannot be granted. Here, Petitioner bears the burden of proof. See supra ¶ 9. As provided by statute, a For Cause plan change is permissible when "the enrollee experience[s] an unreasonable delay or denial of service pursuant to section 409.969(2), F.S." (Rule 59G-8.600(3)(b)5). However, the enrollee must "first [seek] resolution through the managed care plan's grievance process." (Rule 59G-8.600(3)b). As shown by the record, Petitioner had not completed the required Grievance process at the time of the For Cause disenrollment request. See supra ¶¶ 2, 6. On [REDACTED] For Cause Request Questionnaire, [REDACTED] responded "no" to the question asking if the member had filed an appeal/grievance with their current plan. See supra ¶ 6. As such, the Agency appropriately denied this request. Furthermore, Petitioner bears the burden of proof in this case and did not submit any evidence supporting [REDACTED] claim that a Grievance was filed and completed with the plan, such as a Grievance Resolution letter. There may only be a departure from the required Grievance process "when there is an allegation of immediate risk of permanent damage to the enrollee's health." (Rule 59G-8.600(3)b). There is no allegation of immediate risk of permanent damage to Petitioner's health in this case. Accordingly, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of Petitioner's For Cause disenrollment request was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of Petitioner's For Cause disenrollment request is **AFFIRMED**.
Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and ORDERED this 29th day of April, 2024, in Tallahassee, Leon County, Florida.



Alani Day
24-FH0230
2024.04.29 10:09:48 -04'00'

ALANI DAY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32408-5407

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:



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MedicaidHearingUnit@ahca.myflorida.com