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

FILED
May 30, 2024, 3:33 pm
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

AHCA Case No.: 24-FH0322
Plan ID No.: [redacted]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on February 29, 2024, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

For the Respondent: Kimberly Bouchette
Sunshine Health
Children's Medical Services

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of ninety (90) hours per week of home health – personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. [redacted] ("[redacted]"), Petitioner's Authorized Representative and [redacted], appeared for the Fair Hearing on behalf of Petitioner and provided testimony.

Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine Health and Children's Medical Services ("CMS"), appeared for the Fair Hearing as representative for Respondent. Dr. Andrew Metinko ("Dr. Metinko"), Medical Director for CMS, appeared for the Fair Hearing as a witness for Respondent. The following made an appearance for Respondent but did not testify: Joanne White, Dr. Mansooreh Salari, Michelle Eckley, Lori Huskisson, and Jacqueline Vanigan.

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

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty-seven (87)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "MFH packet [Petitioner's name].pdf." Absent an response or objection from Petitioner on the Order Regarding Respondent's Composite Exhibit 1, the undersigned hereby admits the evidence packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS. *See* Respondent's Composite Exhibit 1 at page 2. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner is [redacted] and lives with [redacted] and [redacted]. *Id.* at 15, 57. Petitioner has the following diagnoses: [redacted]

[redacted]. *Id.* at 13 - 14. Petitioner is under evaluation for possible [redacted]. *Id*. Petitioner's prescriptions include the following medications: [redacted]. *Id.* at 26.

3. On [redacted], Petitioner's physician, [redacted] ("[redacted]"), wrote a prescription for the following home health services: "90 days Monday to Saturday = 15 hours." *Id*. at 13. Box 15 on the prescription form indicates the skill level required is "Aide." *Id*. Petitioner's Plan of Care, signed by [redacted] on [redacted], indicates that Petitioner "needs supervision all the time because [redacted] *Id*. at 25.

4. On October 23, 2023, Petitioner requested home health services. *Id*. at 4-8. On October 27, 2023, CMS issued a Notice of Adverse Benefit Determination ("NABD") denying the request. *Id*. The NABD explained the basis of the determination as follows, in pertinent part:

> Children's Medical Services Health Plan has reviewed a request for home health services which we received on October 23, 2024. After our review, this service has been: DENIED as of October 27, 2023.
>
> We made our decision because:
> *(Check all boxes that apply)*
>
> ☒ We determined that the requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010).
>
> ☐ Must be needed to protect your child's life, prevent significant illness or disability to your child, or to alleviate your child's severe pain.
>
> ☒ Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of your child's needs.
>
> ☐ Must meet accepted medical standards and not be experimental or investigational.
>
> ☐ Must be able to be 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.

☐ Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.

(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)

☐ The requested service is not a covered benefit.

☐ Other authority:

The facts that we used to make our decision are: Sunshine Health Policy on Review for Personal Care Services Requests FL.UM.25.00 and Florida Medicaid Personal Care Services Coverage Policy Agency for Health Care Administration, November 2016. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request to approve a home health aide for your child is denied due to lack of medical need. This is a trained health care worker to help a person in the home. The clinical notes sent with this request does not support the medical need for a home health aide. Your child appears to need adult supervision, childcare, and babysitting services. Adult supervision does not require a home health aide. All young children need adult supervision and help with activities of daily living (basic self-care).

Id. at 4 - 5.

5. However, on November 8, 2023, Petitioner requested a plan appeal. *Id*. at 31. On November 29, 2023, CMS issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial. *Id*. at 38-40. The NPAR states the following, in pertinent part:

On 11/08/2023 we received your timely plan appeal request regarding Children's Medical Services Health Plan Notice of Adverse Benefit Determination dated 10/27/2023, NABD Number [redacted], denying the service to be provided to [Petitioner].

The request has been reviewed. The review was completed by a licensed doctor. The doctor was not a part of the first review or the findings from that review.

The Medical Director involved is a Board Certified MD with a specialty in Pediatrics.

> On 11/21/2023, 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, [Petitioner] will not receive home health services, effective 11/21/2023.
>
> The facts that we used to make our decision are: The previous denial to authorize a home health aide for your child is upheld. The clinical information submitted with this request does not support the medical need for a home health aide. Your child appears to need adult supervision/childcare/babysitting services. Adult supervision does not require a home health aide. All young children need adult supervision and assistance with activities of daily living. The reasons for this decision are based on a set of standards. This included Criteria: SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Requests FL.UM.25; Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was made with regards to EPSDT.

Id. at 38-39.

6. On January 31, 2024, [redacted] requested a Fair Hearing on behalf of Petitioner regarding the denial of home health – personal care services. On February 15, 2024, the undersigned Hearing Officer issued a notice to all parties of record, scheduling the Fair Hearing to be convened by telephone on February 29, 2024, at 1:00 p.m. EST.

7. [redacted] testified about Petitioner's medical diagnoses, behavioral problems, and medication. [redacted] asserted that a trained professional is needed to care for Petitioner due to [redacted] Further, [redacted] testified that Petitioner needs constant supervision to prevent [redacted]. [redacted] testified that Petitioner's behavior negatively affects [redacted] ability to work.

8. Dr. Metinko testified that Petitioner is diagnosed with [redacted]. Dr. Metinko provided credible and persuasive testimony that Petitioner's request was denied due to a lack of sufficient documentation as well as ambiguity concerning the description of Petitioner's behavior and functional abilities, the parents' work schedules, and the number of adults in the household.

9. With regard to Petitioner's functional abilities, clinical notes from [redacted] indicate that Petitioner does not need total assistance with activities of daily living. [redacted]

Id. 15, 17. No cognitive issues were noted. *Id*. at 15. Petitioner's Personal Care Services Plan of Care ("POC") did not mention a diagnosis of [redacted] *Id*. at 24. However, the documentation shows that Petitioner is not incontinent and not non-verbal. Further, there is no cognitive impairment.

10. With regard to the parents' work schedules, no work schedule was provided for Petitioner's [redacted]. Petitioner's [redacted] provided the following work schedule: 8:00 a.m. – 11:00 a.m. and 3:00 p.m. to 9:00 p.m. Monday through Friday. *Id*. at 29 – 30, 57. The work could not be verified because no phone numbers were provided, and the business address listed for the evening work closes at 5:00 p.m. Further, [redacted] declined a home visit. Petitioner attends [redacted] from 9:00 a.m. to 12:00 p.m., after school care from 12:00 p.m. to 3:30 p.m., and behavior analysis therapy from 3:30 a.m. to 8:00 p.m. While it appear some gaps in care could be possible, [redacted]'s work schedule could not be verified; therefore, the need for services was not demonstrated.

11. In making its medical necessity determination, CMS relied upon the Sunshine Health Policy on Review for Personal Care Services, FL.UM.25.00. *Id*. at 61 - 71. The policy states as follows, in pertinent part:

> **DEFINITIONS**:
> **Personal Care Services** are services that assist a member with ADLs or IADLs. These services can be provided to members up to the age of 21. Personal care service assistance can be in the form of hands-on assistance (actually performing

the task for the member) or cuing along, with supervision, to ensure the member performs the personal care task properly. The personal care services must be prescribed by a treating physician, provided by a home health aide or independent personal care provider, and supervised by a registered nurse if provided through a home health agency, or supervised by the parent or legal guardian if provided by a non-home health agency, or supervised by the member, if the services are provided by a non-home health agency and the member is a legal adult between the ages of 18 up to 21 with no legal guardian.

POLICY:
Sunshine Health's Review of Personal Care Services Requests clinical policy supports the utilization management review process for the MMA, Children's Medical Service (CMS) and Child Welfare benefits described in the Florida Provider's Handbook entitled, Personal Care Services Coverage Policy.

PROCEDURE:
Personal Care Services Criteria:
Personal care services are covered for members who are under the age of 21. In order to be considered for approval, the member's treating physician must order the service. The member must meet all of the following criteria:

- Member must have one of the functional impairments noted in the "Level of Functional Impairment" section below.
- Member has a documented medical condition or disability that substantially limits the member's ability to perform their Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL) or has a documented cognitive impairment such as Autism which prevents him/her from knowing when or how to carry out the personal care task.
- Member has a documented functional limitation and evidence is documented
- Member requires more individual and continuous care than can be provided through a home health aide visit
- Member does not have a parent or legal guardian able to provide ADL or IADL care
- Member would normally perform the age-appropriate personal care task without the medical condition or disability, and his/her parent or legal guardian is not able to provide ADL or IADL care

Limitations and Exclusions

- Members, who may benefit from personal care services, include those eligible members who are under the age of 21, only.
- Banking or flex hours of approved personal care service hours is not allowed. Only the number of hours that are approved as medically necessary can be approved. The total number of hours per week, hours

per day, and days per week approved must be followed. Any variations would need to be requested and approved in advance by Sunshine Health.

- Personal care services are not covered in the following locations:
    - Hospitals
    - Nursing facilities
    - Intermediate care facilities for individuals with intellectual disabilities
    - Physician offices
    - Clinics
    - Prescribed pediatric extended care centers
- Personal care services can be covered outside the member's residence if the services are unavailable through other public or private resources, including schools (with documentation of such) and the services are medically necessary while the member is outside his/her home.
- **Personal care services can be provided to a member whose parent or legal guardian is not able to provide ADL or IADL care. Supporting documentation must be provided to substantiate a parent or legal guardian's inability to participate in the care of the member.**
- **Personal care services can be authorized to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible.** Where needed, the home health service provider 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. The home health services provider must document the methods used to train a parent or legal guardian in the medical record.
- Personal care services do not include:
- Social services
- Transportation services (except when necessary to protect the health and safety of the recipient and no other transportation service is available or when provided as an IADL for recipients under the age of 21 years)
- Escort services
- Care, grooming, or feeding of pets and animals
- Yard work, gardening, or home maintenance work
- Day care or after school care
- Assistance with homework
- Companion sitting or leisure activities
- Housekeeping (except light housekeeping), homemaker, and chore services, including any shopping except grocery shopping when provided as an IADL for recipients under the age of 21 years
- Respite care
- Services which can be effectively and efficiently obtained outside the recipient's place of residence without any medical contraindications

- Baby-sitting

Level of Functional Impairment:
The information below must be provided by the treating provider to determine the level of functional impairment:

- Minimal functional impairment as evidenced by one (1) of the following indicators:
    - ADLs requiring at least minimum assistance
    - Ambulates with assist of person/device
    - Transfers requiring at least minimum assistance
- Moderate functional impairment as evidenced by two (2) the following indicators:
    - ADLs requiring at least minimum assistance
    - Ambulates with assist of person/device
    - Transfers requiring at least minimum assistance
- Maximum functional impairment as evidenced by all of the following indicators:
    - ADLs requiring total assistance
    - Non-ambulatory

o Transfers requiring one (1) to two (2) persons assist

- Maximum and persistent functional impairment without available parent or legal guardian support as evidenced by all of the following indicators:
    - ADLs requiring total assistance
    - Non-ambulatory
    - Transfers requiring one (1) to two (2) persons assist
    - Treating physician certified that all the above impairments are present

Review Process
To assist in determining the medical necessity of personal care services, the clinical criteria established in this policy will be applied. A request for medical necessity review is consistent with Sunshine Health medical policies:

- FL.UM.02.01 - Medical Necessity Review and Continuity of Care
- FL.UM.02.00 – Use of Clinical Criteria
- Any decision to deny, reduce, suspend or terminate services must be made by a Sunshine Health Medical Director as outlined in the policy Use of Clinical Criteria FL.UM.02.00 Determinations and provider notifications will be made according to the expediency of the case as described in the Timeliness of UM Decisions and Notification FL.UM.05.00

Information Required for Review

The treating provider must submit to Sunshine Health's utilization management department the following information when initially requesting personal care services:

Plan of Care

- Plan of Care (POC) and/or MD order.

Medical condition, disability, cognitive, or functional limitation

- Documentation of the member's current medical condition, disability, cognitive limitation or functional limitation and how this is substantially limiting the member's ability to perform specific Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs)
    - ADLs include: eating (oral feedings and fluid intake), bathing, dressing, toileting, transferring, and maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product while the member is unable to control his/her bowel or bladder).
    - IADLs include: personal hygiene, light housekeeping, laundry, meal preparation, transportation, grocery shopping, using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments), medication management, and money management.
- Service Need
    - Documented need for services that cannot be provided by a home health aide, including information on the reason that the member requires more individual and continuous care than can be provided through a home health aide visit.

Support for ADLs and IADLs

- Description of parent or legal guardian ability to support member's ADLs and IADLs, including:
    - Information on the level of ADL and IADL support that the parent or legal guardian is able to safely provide.
    - If training needs are needed to enable the parent or legal guardian to safely provide ADL or IADL support, description of the level of training needed.

Living situation consideration for members age 18 up to 21

- Provide information on the member's housing situation:
    - Lives alone
    - Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
    - Lives with non-family (with consideration of the number of days and hours that non- family members are not available to assist the member).

Age-appropriate personal care tasks

- Provide information related to the age appropriateness of the member being able to perform the specific ADL or IADL task, such as grocery shopping, preparing meals, money management medication administration, laundry, or light housekeeping.

The length of the initial authorization can be for up to 180 days.

Id. 61-63. (emphasis supplied).

CONCLUSIONS OF LAW

12. 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).

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

14. Because Petitioner requested new services, 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.).

15. Petitioner's request for home health – personal care services is governed by the Florida Medicaid Home Health Visit Services Coverage Policy (November 2016) ("Home Health Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.130. *See* Respondent's Composite Exhibit 1 at pages 75 - 86. The Home Health Policy provides the following, in pertinent part:

1.0 INTRODUCTION
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.

1.1.1 Florida Medicaid Policies

This policy is intended for use by home health providers that render services to eligible Florida Medicaid recipients. It must be used in conjunction with Florida Medicaid's General Policies (as defined in section 1.3) and any applicable service-specific and claim reimbursement policies with which providers must comply.

Note: All Florida Medicaid policies are promulgated in Rule Division 59G, Florida Administrative Code (F.A.C.). Coverage policies are available on the Agency for Health Care Administration's (AHCA) Web site at http://ahca.myflorida.com/Medicaid/review/index.shtml.

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

. . .

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)

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

1.3.2 Babysitting

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

1.3.7 Home Health Services

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

1.3.8 Instrumental Activities of Daily Living (IADLs)

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

1.3.9 Intermittent Home Health Visits

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

1.3.10 Medically Necessary/Medical Necessity

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

. . .

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

See the Florida Medicaid personal care and private duty nursing services coverage policies if the recipient is under the age of 21 years and requires more care than can be furnished through a home health visit.

4.2.1 Short-term Nursing in an Intermediate Care Facility (ICF)

Florida Medicaid reimburses for short-term skilled nursing visits provided by an RN or LPN in an ICF when the services are medically necessary to avoid transferring the recipient to a nursing facility.

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.

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

. . .

5.0 EXCLUSION

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in 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
- 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

Id. at 77 - 80. (emphasis supplied)

16. 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.

17. Petitioner is under the age of 21 years, and therefore EPSDT applies to the request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Section 409.905(2), Florida Statutes, 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.

18. The Florida Medicaid Definitions Policy ("Definitions Policy") (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, states as follows, in pertinent part:

> **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

2.18 Caregiver

Person(s) attending to the needs of another person, who is physically or mentally impaired, injured, incapacitated, or a child unable to care for him or herself.

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

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

2.83 Medically Necessary or Medical Necessity

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate 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 pages 1 - 7.

19. In this case, Respondent denied Petitioner's request on the basis of medical necessity. Specifically, Respondent determined that the home health -personal care services at issue are in excess of Petitioner's needs. *See* supra ¶ 4 - 5.

20. Here, Petitioner has the burden of proof. The Home Health Policy is clear that 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. *See* supra ¶ 15. Further, parents and legal guardians must participate in providing care to the fullest extent possible. *See* supra ¶ 15. Medicaid does not reimburse for babysitting or supervision. *See* supra ¶ 15. Babysitting is defined as custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient. *See* supra ¶ 15.

21. In the instant case, the record does not show that ninety (90) hours per week of home health – personal care services are warranted. As Petitioner is under the age of twenty-one (21), Florida Medicaid would cover the requested if they were medically necessary. A component of medical necessity is that the services must not be "in excess of the patient's needs." Here, Dr. Metinko provided credible and persuasive testimony that Petitioner does not have functional issues or cognitive problems that warrant the requested services. *See* supra ¶ 9. Moreover, as Dr. Metinko testified, home health services – personal care services are intended to supplement

the care provided by the parents. In this case, a parent work schedule for Petitioner's [redacted] was not provided nor was documentation submitted to demonstrate that the parents have a medical limitation preventing them from caring for Petitioner and the extent of any limitations. [redacted]'s work schedule provided could not be verified, and it was unclear whether and to what extent [redacted] was unable to care for Petitioner. Therefore, the record does not reflect that the requested services are not in excess of Petitioner's needs at this time.

22. Petitioner's provider recommended home health – personal care services in this case based on a need for supervision due to the high risk of [redacted]. *See* supra ¶ 3. However, 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. *See* supra ¶ 18.

23. Upon consideration of the testimony, evidence, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that the home health – personal care services at issue are not in excess of Petitioner's needs. As such, the record does not reflect that the requested services meet medical necessity criteria. Looking at all the evidence relevant to the particular needs of this Petitioner, Petitioner has not demonstrated that the home health 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 – personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of ninety (90) hours per week of home health - personal care services is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial of home health – personal care services is hereby **DENIED**.

DONE and ORDERED this 30th day of May 2024, in Tallahassee, Leon County, Florida.

Laura Gallagher
24-FH0322
2024.05.30
13:32:40 -04'00'

LAURA GALLAGHER, 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]

Children's Medical Services
CMSPlanContract@flhealth.gov

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com