

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



FILED

Jul 26, 2024, 12:03 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.:24-FH1353

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 3, 2024, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Lee Ann Williams
Medical Health Care Provider Analyst
Fair Hearing Liaison

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 an additional twenty (20) hours per week of Personal Care services was incorrect.

PRELIMINARY STATEMENT

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

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

Lee Ann Williams, (“Ms. Williams”) Medical Health Care Provider Analyst for the Agency for Health Care Administration (“Agency or AHCA”), appeared as representative for Respondent. Rakesh Mittal, M.D. (“Dr. Mittal”), Physician Consultant, with eQHealth Solutions of Florida, Inc., (“eQHealth”), attended as a witness for the Respondent.

Petitioner did not submit any documents as evidence for the Fair Hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a seventy-two (72)-page evidence packet. The seventy-two (72)-page packet appears in the Office of Fair Hearings’ document management system as file titles: “[REDACTED] FH 07.03.2024.pdf.” Absent an objection from the Petitioner, the undersigned admitted the seventy-two (72)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty (80)-page evidence packet. The eighty (80)-page packet appears in the Office of Fair Hearings’ document management system as file titles: “24-FH1353 AHCA EVIDENCE.pdf.” Absent an objection from the Petitioner, the undersigned admitted the eighty (80)-page packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. See Respondent’s Composite Exhibit 2 at page 2.

2. Petitioner is [REDACTED]. RCE 1 at page 22. [REDACTED]
[REDACTED]. *Id.* at 22. [REDACTED] is employed outside of the home from 8:00 a.m. until 5:00 p.m. Monday through Friday and on Saturday and Sunday from 8:00 a.m. until 12:00 p.m. *Id.* at 71. At the time of the hearing, [REDACTED] was not seeking personal care services on Saturday but did request two (2) hours for Sunday along with the eight (8) hours per day, Monday through Friday.

3. As of the date of the Fair Hearing, Petitioner is [REDACTED]. *Id.* at 22. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 22-23.

4. As provided in the Florida Home Health Assessment Tool survey form dated March 28, 2024, Petitioner’s needs for assistance with activities of daily living (“ADLs”), are as follows: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Id.*
at 56. [REDACTED]
[REDACTED] *Id.* at 54. [REDACTED]

[REDACTED] *Id.* at

53. The Florida Home Health Assessment Tool did not address Instrumental Activities of Daily Living (“IADLs”).

5. In a Notice of Outcome (“NOC”), dated March 29, 2024, Respondent denied Petitioner’s request for eight (8) hours of personal care services per day, Monday through Friday. *Id.* at 30-

31. The NOC explained the basis of the denial as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically, the requested services are not medically necessary under the following standard(s):

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.

PR Principal Reason – Denial:

Submitted information does not support the medical necessity for requested frequency and/or duration.

[REDACTED]
[REDACTED]
[REDACTED].

Deny requested PCS units. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 30-31

6. Petitioner requested a reconsideration regarding the denial of the eight (8) hours of personal care services per day, Monday through Friday. The Petitioner received a Notice of Reconsideration Determination (“NRD”), dated April 20, 2024, upholding the denial of the eight (8) hours of personal care service per day, Monday through Friday. The NRD explained as follows:

The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically, the services must be:

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.

The medical basis for the reconsideration decision is as follows:

The patient is a [REDACTED]
[REDACTED]
[REDACTED] After reconsidering the submitted information, the original decision has to be upheld based upon the severity of delay and the work hours. PCS is not intended for monitoring and supervision and parents have to provide to the best of their ability.

Pages 39-40 of RCE 1.

7. On April 18, 2024, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On May 31, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 3, 2024, at 1:00 p.m.

8. [REDACTED] testified to the following:

- a. [REDACTED] is the Recipients [REDACTED] and caregiver as the Recipient resides with [REDACTED]. [REDACTED] works outside of the home and is employed between 8:00 a.m. and

5:00 p.m. with [redacted] work requirements. [redacted] also works on Saturday and/or Sunday from 8:00 a.m. until 12:00 p.m. [redacted]

[redacted]

[redacted].

b. [redacted] testified that [redacted]'s medical condition was permanent, and it will not get better with medication or surgery. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

c. On cross examination, Dr. Mittal inquired what personal care services were needed for 8 hours a day? [redacted] testified that [redacted] needed supervision when

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

9. Dr. Mittal testified to the following:

a. Dr. Mittal testified that the rules and regulations concerning Medicaid services were made by the State of Florida and by the Agency for Health Care Administration. eQHealth does not make any of the rules, but only follows the laws as written. In considering this request for services, the recipient is not attached to or using any medical machines or devices on a permanent basis. It is clear that the recipient does need some assistance with ADLs such as feeding, bathing and toileting. However, there are no reports or documentation to indicate that assistance with ADLs requires 8 hours per day. The testimony from [REDACTED] does not identify any specific events or occurrences that would require personal care services for 8 consecutive hours. Dr. Mittal testified that monitoring or supervision was not a covered service. Personal Care services are performed by trained individuals that assist the recipient with ADL or medically necessary requirements. Dr. Mittal testified that based upon the information and documentation provided, the recipients' needs would be met with personal care services of four (4) hours per day, Monday through Friday and two (2) hours on Sunday for a total of 22 hours per week. The forty-two (42) per week as requested by [REDACTED] would result in an excess of twenty (20) additional hours beyond the needs of the recipient. The additional twenty (20) hours would be in excess of the recipients' needs and therefore the requested additional hours do not meet

medical necessity. The request for the additional 20 hours of personal care was denied based upon not meeting the requirements of medical necessity. An additional 20 hours of services would exceed the recipients' medical needs.

CONCLUSIONS OF LAW

10. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(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 seeking additional personal care services, Fla. Admin Code R. 59-1.100(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.)

13. 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.

14. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Pursuant to section 409.905(2), Florida Statutes:

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.

15. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. 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:

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.

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

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

...

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

7.0 Authorization

7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid's General Policies on authorization requirements.

...

Personal Care Task	General Time Allowances
Bathing	

Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient's needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
Grooming and Skin Care	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
Positioning	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
Transfers	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
Toileting and Maintaining Continence	

Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy at pages 5 – 7, and 10

17. As provided in the NOC and NRD, Respondent denied Petitioner’s request for twenty (20) additional personal care service hours per week. See ¶¶ 5, 6. As explained in the NOC, Respondent determined that it was not medically necessary for Petitioner to receive twenty (20) additional hours weekly of personal care services. See ¶ 5.

18. The Florida Medicaid program covers personal care services that are determined to be medically necessary, do not duplicate another service, and meet the criteria as specified in the LTC Policy. See supra ¶ 16. Personal care services are intended to provide, “assistance with ADLs and age appropriate 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.” *Id.* As shown in the Florida Home Health Assessment Tool, Petitioner needs minimum assistance with most ADLs. *See supra* ¶¶ 4, 5.

19. The record in this case does not show that the requested additional personal care services are warranted. As Petitioner bears the burden of proof, Petitioner must show that the additional hours are medically necessary for Petitioner’s personal care services. Here, ██████ explained that the recipient was home alone for approximately 4 hours after the care assistant completed the 4-hour shift. ██████ did not identify what specific ADLs needed to be performed that required the additional 4 hours per day (20 hours per week) of personal care. The letters from the recipient’s physician generally identified the need for assistance with ADLs and IADLs but did not identify which ADLs or IADLs would go unassisted without the additional 20 hours of care. RCE 1 at pages 63-65.

20. Respondent used the Florida Home Health Assessment Tool and other medical reports and documents submitted into evidence when making its determination; and based on the usage of those documents, determined that 22 hours per week of personal care services are sufficient for Petitioner’s needs. *See* ¶ 9a. Dr. Mittal opined that he agreed with the functional assessment of the recipients’ needs and the requested additional 20 hours of personal care services did not meet medical necessity. Dr. Mittal testified that the additional 20 hours of personal care services would be in excess of the patients’ needs. *See* ¶ 9a. Looking at all the


evidence relevant to the particular needs of Petitioner, Petitioner has not proven that the services at issue are necessary to correct or ameliorate defects or a physical and mental illness or condition.

21. Upon consideration of the testimony, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable laws and Florida Medicaid policies, the undersigned Hearing Officer concludes that Petitioner has not demonstrated that the denial of the request for an additional 20 hours of personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of Petitioner's request for an additional 20 hours of personal care services per week is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE and **ORDERED** this 26th day of July 2024, in Tallahassee, Leon County, Florida.

 George L. Winslow, Jr.
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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:



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