



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

FILED

Aug 06, 2024, 12:31 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 24-FH1667

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on July 19, 2024, at 9:33 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette
Clinical Appeals Coordinator
Sunshine State Health Plan, Inc.

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 thirty-six (36) hours per week of home health aide - personal care services was incorrect.

PRELIMINARY STATEMENT

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

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

Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. (“Sunshine Health”), appeared on behalf of Respondent. Dr. Andrew Metinko (“Dr. Metinko”), Medical Director for Children’s Medical Services of Sunshine Health (“CMS”), appeared at the Fair Hearing as a witness for Respondent. The following employees of the Respondent attended the Fair Hearing but did not testify: Anita Melton, Department of Health Office of CMS Compliance Unit; Dr. Mansooreh Salari, Medical Director for CMS; and Elyssa Luke, Counsel for CMS at the Department of Health.

Lee Ann Williams, Medical Healthcare Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Cristal, ID Number 072379, appeared at the Fair Hearing to provide translation services.

Petitioner did not introduce any exhibits at the hearing.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-one (121)-page evidence packet. The evidence appears in the Office of Fair Hearings’ document management system as “MFH Packet [Petitioner’s surname].pdf.” Absent an objection from Petitioner, the undersigned admitted the one hundred and twenty-one (121)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS operated by Sunshine Health. See RCE 1 at page 1. Sunshine Health is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. *Id.* at 4. Petitioner has the following medical conditions: [REDACTED] [REDACTED] *Id.* at 16.

3. Petitioner requested seventy-six (76) hours per week of home health aide - personal care services. *Id.* at 5. On March 14, 2024, CMS issued a Notice of Adverse Benefit Determination (“NABD”) partially approving Petitioner’s request for home health aide - personal care services. *Id.* at 4 – 9. The NABD explained the basis of the decision as follows:

We made our decision because:

(Check all boxes that apply)

We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010).

Must be needed to protect your child’s life, prevent significant illness or disability, or 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 facts that we used to make our decision are:

Sunshine Health Policy on Review for Personal Care Services Requests, FL.UM.25.00, 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 home health aide for 76 hours a week for your child is partially approved. Your child has been receiving 40 hours a week. There are no notes of any change in [redacted] current condition that would lead to a need in increase in hours. The extra 36 hours per week are therefore denied. More services beyond the first 30 days are denied at this time due to missing notes. We did not receive any reason as to why all parents/guardians are unable to provide care. We did not receive a parent/guardian work/school form and/or medical limitations form for each caregiver. This form is needed by Florida Medicaid.

...

RCE 1 at 4 – 5.

4. Petitioner requested a plan appeal and on May 13, 2024, CMS issued a Notice of Plan Appeal Resolution (“NPAR”) denying Petitioner’s appeal. *Id.* at 68 – 71. The NPAR states, in pertinent part:

On 04/17/2024 we received your timely plan appeal request regarding Children’s Medical Services Health Plan Notice of Adverse Benefit Determination dated 03/14/2024, NABD Number [redacted] the home health aide provided to [Petitioner].

...

On 05/10/2024, 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 the requested home health aide, effective 05/10/2024.

The facts that we used to make our decision are: the previous decision regarding home health aide services for your child is upheld. The clinical notes that we received do not document any significant functional limitations. Your child is not incontinent. Your child does not need significant assistance with their activities of daily living. There is no note that they are non-verbal. It is not clear why an aide would be needed to attend school with the member. In addition, the notes state that other adult caregivers live in the home. We were not provided with parent/guardian school/work or medical limitation form for the other adult caregiver. The reasons for this decision are based on a set of standards. This included 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.

...

RCE 1 at 68 – 69.

5. On May 20, 2024, Petitioner requested a Fair Hearing to challenge the denial of home health aide - personal care services. On June 7, 2024, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 19, 2024, at 9:30 a.m. EST.

6. [REDACTED] testified to the following:

- a. Petitioner lives with [REDACTED]
- b. [REDACTED].
- c. [REDACTED] works seven (7) days a week, from 6:00 a.m. to 9:00 p.m. Monday through Saturday, and 9:00 a.m. to 4:00 p.m. on Sunday.
- d. Petitioner is often home alone from 5:00 p.m. until [REDACTED] returns home from work.

7. Dr. Metinko testified to the following:

- a. Respondent approved forty (40) hours per week of services for the aide to attend school with Petitioner.
- b. Respondent denied Petitioner's request for additional personal care services because of Petitioner's school's requirements and because of the lack of documentation regarding functional limitations for Petitioner.
- c. Petitioner has [REDACTED].
- d. Petitioner is independent for [REDACTED]
[REDACTED]
[REDACTED]

8. In making its determination, Respondent relied upon the Sunshine Health Policy and Procedure Review for Personal Care Services FT.UM.25, which states in pertinent part as follows:

POLICY STATEMENT:

Personal care services are covered for members who are under the age of 21. To be considered for approval, the member’s treating physician must order the service.

PURPOSE:

To establish clinical criteria on which to review requests for Personal Care Services to provide medically necessary assistance with activities of daily living (ADL) and age-appropriate instrumental activities of daily living (IADL) that enable a member to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability. This service will assist in maintaining the member in their home and community environment, in a safe manner.

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.

...

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

...

- 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
 - 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

...

RCE 1 at 93 – 96.

CONCLUSIONS OF LAW

9. 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).

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

11. Because Petitioner is requesting 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.).

12. 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.

13. Petitioner is under age 21, and therefore EPSDT applies to [REDACTED] request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

14. The Personal Care Services Coverage Policy (“PCS Policy”), which is incorporated by reference in Rule 59G-4.215, F.A.C., states as follows:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

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.

...

1.3.6 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.

...

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

5.1 General Non-Covered Criteria

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

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework

- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

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

RCE 1 at 104 – 111.

15. 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.

Definitions Policy at page 8.

16. In this case, Petitioner requested an additional thirty-six (36) hours per week of home health aide - personal care services. *See supra* ¶ 3. The personal care services were denied based on medical necessity. *See supra* ¶ 3, 4. In the NABD, dated March 14, 2024, Respondent explained that medical necessity was the basis of the denial, specifically that the requested services in question were not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury” and was “in excess of your child’s needs”. *See supra* ¶ 3.

17. As provided in the PCS Policy, the purpose of personal care services is to provide “medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability”. *See supra* ¶ 14. As Petitioner bears the burden of proof, Petitioner must show that the requested home health aide - personal care services are medically necessary for Petitioner. *See supra* ¶ 11. A component of medical necessity is that services must 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”. *See supra* ¶ 15. Petitioner’s ADLs and IADLs are affected by [REDACTED] age and medical conditions, including [REDACTED]. *See supra* ¶ 2. However, Dr. Metinko provided clear and convincing testimony that Petitioner has [REDACTED]; and that Petitioner is independent for [REDACTED]. *See supra* ¶ 7. [REDACTED] testified that [REDACTED]. *See supra* ¶ 6. However, as testified to by Dr. Metinko, Petitioner only requires supervision for


thoroughness with [REDACTED]. See supra ¶ 7. Accordingly, based on the record, Petitioner did not demonstrate that the requested additional home health aide - personal care services are not in excess of Petitioner's needs.

18. In light of both parties' testimony, Respondent's Composite Exhibit 1, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet [REDACTED] burden of proving that thirty-six (36) additional hours weekly of personal care services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that personal care services are not necessary to correct or ameliorate a defect or mental illness or condition. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of Petitioner's request for additional home health aide - personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of additional home health aide - personal care services is **DENIED**.

DONE AND ORDERED this 6th day of August, 2024 in Tallahassee, Leon County, Florida.

 Kameisha Presley
24-FH1667
2024.08.06
09:54:18 -04'00'

KAMEISHA PRESLEY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:

[REDACTED]
[REDACTED]
[REDACTED]

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