



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

FILED

Sep 17, 2024, 11:59 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

vs.

AHCA Case No.: 24-FH1705

Plan ID No.: [REDACTED]

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 30, 2024, at 2:01 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Joanne Alvarez Martiniez

Appeals Manager

Childrens Medical Services Health Plan

STATEMENT OF ISSUE

On February 21, 2024, the Petitioner requested fifty (50) hours of home health aide services each week for sixty (60) days. The health plan approved thirty (30) days of home health aide services and denied the remaining home health aide services. The issue in this matter is whether the Petitioner proved by a preponderance of the evidence that Respondent's decision to deny fifty (50)-hours per week of home health aide services for thirty (30) days was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative, [REDACTED] (" [REDACTED] "), appeared on behalf of the Petitioner.

James L. VanLandingham, Esq., appeared at the Fair Hearing as Counsel for the Respondent Childrens Medical Services Health Plan (“Respondent” or “CMS”). Joanne Alvarez Martinez, Appeals Manager (“Ms. Alvarez”) appeared on behalf of the Respondent and Dr. Andrew Metinko, M.D. (“Dr. Metinko”), a Medical Director for the Respondent also testified on behalf of the Respondent. Kim Robbins, Case Manager also appeared on behalf of CMS.

Joanne White, Compliance Officer and Elyssa Luke, Esq., both from the Florida Department of Health attended the Fair Hearing for observation purposes. In addition, Chrissie Simmons, Medical Healthcare Program Analyst & Fair Hearing Liaison with the Florida Agency for Healthcare Administration attended the Fair Hearing for observation purposes.

Prior to the hearing, the Respondent submitted two (2) packages of proposed evidence in this matter that were admitted into evidence without objection. The first package is three hundred and eighty-one pages, is identified herein as “Respondent’s Composite Exhibit 1”, and is maintained in the Office of Fair Hearings Document Management System as “Segment 1 of MFH Packet [the Petitioner’s last name].pdf” and Segment 2 of MFH Packet [the Petitioner’s last name].pdf”. The second package of documents is sixteen (16) pages, is identified herein as “Respondent’s Composite Exhibit 2”, and is maintained in the Office of Fair Hearings Document Management System as “MFH Packet Addendum [the Petitioner’s last name].pdf”. The Petitioner did not submit any documents as proposed evidence in this matter.

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS since October 1, 2021. See Respondent’s Composite Exhibit 1, page 3. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida .

2. The Petitioner is a [REDACTED] that, as reflected in the record, has been diagnosed with [REDACTED].

See Respondent's Composite Exhibit 1, pages 77 and 78. In addition, the Petitioner's [REDACTED] added the Petitioner has also been diagnosed [REDACTED]. Testimony of [REDACTED]. [REDACTED] testimony of [REDACTED].

3. On February 21, 2024, the Petitioner requested fifty (50) hours of home healthcare services per week. See Respondent's Composite Exhibit 1, page 6. In a Notice of Adverse Benefit Determination ("NABD"), dated February 28, 2024, the Respondent denied the requested home health aide services. See Respondent's Composite Exhibit 1, pages 6-12. The NABD explained the basis of the denial as follows:

- 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. The Sunshine Health Member Handbook, Services covered by Sunshine Health. Florida Medicaid Private Duty Nursing Services Coverage Policy, Agency for Health Care Administration. Florida Medicaid Home Health Services Coverage and Limitations Handbook Agency for Health Care Administration. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: Request for home health aide is partially approved for the previously authorized 50 hours per week, but only for 30 days. This is a trained health care worker who helps people with daily care needs. More notes will be needed to approve further home health aide services beyond 30 days. All prior approvals for home health aide services were administratively approved, and not reviewed for medical need. This is a review for medical need by a Medical Director (doctor). The notes sent with this request does not support the medical need for the hours being requested. There is no signed doctor's chart note stating your child's functional limitations that need home health aide assistance. Please provide this. Note that it is a Medicaid requirement that parents or legal guardians must provide supervision and assistance with activities of daily living to the fullest extent possible. This is basic selfcare. There is no note as to what level of parental or guardian participation is currently present or should be expected. The clinical notes sent with this request does not support the medical need for a home health aide outside of the parent work schedule. Parent or Legal Guardian work schedule signed by supervisor at place of employment cannot be verified. Please provide contact information that will allow verification. If the parent is unable to care for the member, there needs to be a signed Parent Medical Limitation. Services specifically noted to not be a covered benefit include custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are noted to be medically needed for your child. We will review again when clinical notes addressing medical need and your child's specific functional limitations, as well as member and parent schedules are sent for review.

...

Id.

4. The Petitioner requested a plan appeal on March 5, 2024, and received a Notice of Plan Appeal Resolution (“NPAR”), dated April 5, 2024, that affirmed the previous denial. See

Respondent's Composite Exhibit 1, pages 94-97. The NPAR explained as follows:

The facts that we used to make our decision are: the previous decision regarding home health aide services for your child is upheld due to lack of medical necessity. The clinical information submitted with this request does not support the medical need for a home health aide. The clinical notes that we received do not document any significant functional limitations. Your child is not incontinent (your child does not wear diapers during the day). Your child does not need significant assistance with their activities of daily living (such as toileting and eating). The notes do not indicate that your child is non-verbal. Your child appears to need adult supervision. Adult supervision does not require a home health aide. 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.

...

Id.

5. On May 22, 2024, the Petitioner requested a Fair Hearing to challenge the denial of a home health aide for fifty (50) hours per week. On June 11, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 2, 2024, at 10:00 a.m. EST. On July 1, 2024, the Petitioner requested a continuance, which was unopposed by the Respondent and granted by this Hearing Officer. The Fair Hearing was rescheduled for August 6, 2024, at 10:00 a.m. EST but again the Petitioner requested another continuance, that was unopposed and granted by this Hearing Officer. By an agreement of the Parties, the Fair Hearing was reset and held on August 30, 2024, at 2:00 p.m.

6. The Sunshine Policy and Procedure Id. FL.UM.25.00, entitled Review for Personal Care Service Requests, June 2015, is applicable for members under the age of 21 and states in-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.

...

Limitations and Exclusions

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....

See Respondent's Composite Exhibit 1, pages 134-144.

7. The Petitioner's [REDACTED] testified that [REDACTED] has "[REDACTED]" and that the Florida Medicaid regulations are guidelines but not absolute to deny [REDACTED] home health care. [REDACTED] testified that it is possible [REDACTED] will "[REDACTED]" and the home health aide will be there to revive [REDACTED]. On cross examination, [REDACTED] acknowledged the [REDACTED]

8. Dr. Metinko testified for the Respondent that the Petitioner was one of the plan members

that came to CMS from their business acquisition from Wellcare, another Medicaid provider, that the previous authorizations for a home health aide were strictly administrative, and that this is the first time a medical evaluation was performed to determine whether the home health aide services were medically necessary. Dr. Metinko testified that the Petitioner is not non-verbal, can express [REDACTED], is not incontinent, and that the assistance the Petitioner requires for [REDACTED] Activities of Daily Living (“ADLs”) are considered “age appropriate”. In addition, Dr. Metinko testified the denial in this case was based on the lack of physician notes that the home health aide services were medically necessary. Dr. Metinko also testified regarding the home health aide notes in the record that state the Petitioner is [REDACTED]

[REDACTED] See Respondent’s Composite Exhibit 1, pages 24 and 25. Dr. Metinko also pointed out that the Petitioner’s Plan of Care in the Record does not reflect the rendition of medically necessary care that is provided to the Petitioner. See Respondent’s Composite Exhibit 1, page 77. Dr. Metinko also pointed to the speech language notes in Respondent’s Exhibit 2 that states the Petitioner’s language skills are within functional limits and that the Petitioner’s pragmatic skills are appropriate with the Petitioner’s age. See Respondent’s Composite Exhibit 2, pages 5-16. Dr. Metinko stated there are no ADLs performed by the home health aide for the Petitioner and that a “peer-to-peer” discussion was held with the Petitioner’s provider who agreed that that a home health aide was not medically necessary. Finally, it was the conclusion of Dr. Metinko and the Respondent that the services of a home health aide for the Petitioner is not medically necessary and that there is no basis for the continuation of home health aide services.

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 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).

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

11. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

12. Because the Petitioner requested new services from the Respondent that were denied, Fla. Admin. Code R. 59G- 1.100(17)(g) assigns the burden of proof to Petitioner to demonstrate that the decision to deny the services by the Respondent was incorrect. 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. The Agency's Florida Medicaid Personal Care Services Coverage Policy, November 2016 ("Policy") has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215, governs Personal Care services available under Florida Medicaid. The Policy provides the following with respect to personal care services:

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.

...

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 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

...

4.2.1 Parental Responsibility

Florida Medicaid reimburses for personal care services 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.

...

4.2.2 Services Provided by Independent Personal Care Providers

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

...

4.3 Early and Period 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 1095(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.

The Policy further addresses excluded services as follows:

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 recipients place of residence
- Yard work, gardening, or home maintenance work.

See Respondent’s Composite Exhibit 1, pages 62-65

14. 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.

15. 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.

16. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides the applicable definitions for Florida Statewide Medicaid Managed Care policy. The Definitions Policy provides the following definitions

applicable to the instant case:

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

2.64 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- 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.

See Definition Policy, pages 1-7.

17. In the NABD, dated February 28, 2024, the Respondent approved thirty (30) days of home health aide services and denied five (5) months (150 days) of home health aide services. See ¶ 4. The Respondent explained in the NABD that medical necessity for fifty (50) hours per week for six (6) months was not reflected in the file. *Id.*

18. The Respondent's February 28, 2024, NABD denying the Petitioner's request for a home health aide for fifty (50) hours per week and stated in-part as follows:

The notes sent with this request does not support the medical need for the hours being requested. There is no signed doctor's chart note stating your child's functional limitations that need home health aide assistance. Please provide this. Note that it is a Medicaid requirement that parents or legal guardians must provide supervision and assistance with activities of daily living to the fullest extent possible. This is basic selfcare. There is no note as to what level of parental or guardian participation is currently present or should be expected. The clinical notes sent with this request does not support the medical need for a home health aide outside of the parent work schedule... Services specifically noted to not be a covered benefit include custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are noted to be medically needed for your child.

See ¶ 3. In addition, the Respondent's April 5, 2024, NPAR upheld the denial of fifty (50) hours per week and stated in-part as follows:

Your child appears to need adult supervision. Adult supervision does not require a home health aide.

See ¶ 4.

19. As the Petitioner bears the burden of proof, the Petitioner must show that the requested services are medically necessary and that the decision of the Respondent to deny the requested

services was incorrect. As provided in the Personal Care Policy, personal care services are to “provide medically necessary assistance . . . with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL).” See ¶ 13. As shown by the record, the Petitioner is diagnosed with a number of conditions, none of which require skilled services. See ¶ 2. At the Fair Hearing, the Petitioner’s [REDACTED] did not provide credible and persuasive evidence or testimony that the services of a home health aide for the Petitioner are medically necessary. See ¶ 7. Moreover, there is no evidence in the record that demonstrates the Petitioner does in-fact require assistance to perform the activities of daily living beyond that of any young child requiring help with activities of daily living, such as [REDACTED]. As stated by the Respondent, all young children need constant supervision and monitoring, including the Petitioner, which does not require a home health aide.

20. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that the requested home health aide services are medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, the Petitioner has not demonstrated that fifty (50) hours per week per week of home health aide services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the Petitioner has not proved by a preponderance of the evidence that the denial of home health aide services week was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

The Respondent’s denial of fifty (50) hours of home health aide services for the Petitioner is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is **DENIED**.

DONE and ORDERED this 17th day of September, 2024, in Tallahassee, Leon County, Florida.

Alan J. Leifer

24-FH1705

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**ALAN LEIFER, Hearing Officer Agency
for Health Care Administration Office
of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308**

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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