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

FILED

Aug 30, 2024, 11:42 am

OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

AHCA Case No.: 24-FH1806
Plan ID No.: [redacted]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 20, 2024, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

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

For the Respondent: Kimberly Bouchette
Plan Representative
Children's Medical Services

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for home health aide services was correct.

PRELIMINARY STATEMENT

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

Kimberly Bouchette, ("Ms. Bouchette") Plan Representative for Children's Medical Services, ("CMS"), appeared on behalf of Respondent. Dr. Andrew Metinko, M.D. ("Dr. Metinko") Medical Director for CMS, appeared as a witness for Respondent. The following attended as observers on behalf of Respondent but did not testify: Elyssa Luke, Esq. and Joane White.

Lee Ann Williams, ("Ms. Williams") Medical Health Care Program Analysis for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eleven (11)-page evidence packet. This evidence packet is identified in the Office of Fair Hearings document management system as file title: "24-FH1806 Evidence.pdf." Absent an objection from the Respondent the undersigned admitted Petitioner's evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and ninety-seven (197)-page evidence packet. This evidence packet is identified in the Office of Fair Hearings document management system as file titles: "MFH packet [Petitioner's Name].pdf." Absent an objection from the Petitioner the undersigned admitted Respondent's evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS. *See* page 2 of RCE 1. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [redacted] is not currently employed outside the home as [redacted] has indicated that [redacted] caregiver responsibilities consume [redacted] entire time availability.

3. Petitioner has been diagnosed as medically complex with the following partial listing of health conditions: [redacted]

RCE 1 at page 15.

4. According to the recipient's primary pediatrician ([redacted], MD), the recipient's daily medical care, in addition to [redacted] routine care for activities of daily living, is medically complex and very time consuming. One example is [redacted] has recommended that ongoing health care assistance in the form of HHA services of four (4) hours per day Monday – Friday would be in the best medical interest of the recipient and is determined to be medically necessary. *Id.* at 15.

5. Most Instrumental Activities of Daily Living ("IADLs") are not age relevant for this recipient at this time, such as money management and telephone use. However, [redacted] is a significant activity that must be performed for the recipient.

6. Petitioner requested home health aide services for the recipient. The Petitioner had requested the continuation of 20 hours per week of the home health aide (HHA). It appears the

hours had previously been scheduled at four (4) hours per day, Monday – Friday. In a Notice of Adverse Benefit Determination ("NABD"), dated May 1, 2024, the request was partially denied. *Id.* at 4-5. 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 reasons checked below: *(See Rule* 59G-1.010).
> . . .
> - Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of your child's needs.
>
> The facts that we used to make our decision are:
> . . .
> Sunshine Health Policy on Review for Personal Care Services Request, FL.UM.25.00. Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was made with regards to Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT).
>
> Rationale: The request to continue to authorize a home health aide for your child for 20 hours each week is partially approved and partially denied. A home health aide is trained worker who gives care in the home. We are approving the initial 30 days only. Extra services beyond the first 30 days are denied at this time. This is due to missing notes. Records tell us your child lives with both parents. We received only one parental signed work schedule. We did not receive a signed work schedule and / or medical limitations form for the other parent ([redacted]). A medical limitation form describes the parent medical disability. This form is required by Florida Medicaid. It is required that parents or legal guardians must give guidance and help with activities of daily living as much as they can. Activities of daily living is basic self-care. Please send this form. The request may be reviewed again for remaining days for the requested certification (time period) when this is sent.

Id.

7. Petitioner requested a plan appeal regarding the denial of the home health aide. In a Notice of Plan Appeal Resolution ("NPAR"), dated May 31, 2024, Respondent denied the plan appeal. *Id.* at 101-102. The NPAR explained as follows:

> On 05/03/2024 we received your timely plan appeal request regarding Children's Medical Services Health Plan Notice of Adverse Benefit Determination dated

> 05/01/2024, NABD Number [redacted], the home health provided to [Petitioner's name].
>
> On 05/30/2024, 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's name] will not receive home health, effective 05/30/2024.
>
> The facts that we used to make our decision are: the previous decision regarding home health aide services for your child is upheld. We did not receive a parent/guardian work/school form and/or medical limitations form for both parents. This documentation is required by Florida Medicaid. Parents/guardians are expected to provide care to the fullest extent possible. The reasons for this decision are based on a set of standards. This included Criteria: SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Request FL.UM.25; Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was made with regards to EPSDT.

Id.

8. On May 31, 2024, Petitioner requested a Fair Hearing to challenge the denial of home health aide services. On July 17, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 20, 2024, at 1:00 p.m. Eastern Standard Time.

9. Dr. Metinko testified to the following:

   a. This recipient of Medicaid services is a [redacted] (See page 15 of RCE 1 for a more complete listing of medical issues). Dr. Metinko testified to the history of home health aide services for the recipient. The home health aide services have been provided at least since [redacted], under a different health care organization. That organization (Well Care Health Plan) was merged into the Sunshine health care organization. Under the prior health care organization and during the transition of the merger, home health aide

services had been administratively approved until an actual medical review could take place. The first actual medical review of these services occurred January 13, 2023, by a medical director, Dr. Phung. The request was for 10 hours per day 5 days per week of home health aide services. Dr. Phung gave a partial authorization of 2 hours per day 5 days a week based upon a lack of a care plan, the [redacted] in the household working 40 hours and the [redacted] not employed. The decision was appealed and reviewed by Dr. Metinko on February 2, 2023, who overturned the partial authorization and granted services at 5 hours per day for 5 days a week. This approval was based upon [redacted]. The next medical director's review occurred on May 9, 2023, by Dr. Phillips. Dr. Phillips gave a partial approved of 4 hours per day at 5 days a week. No appeal was taken from that determination. The next medical review was in November of 2023 which continued the 4 hours per day at 5 five days a week by Dr. Tanpattana. Thereafter, the next medical review was on May 1, 2024, by Dr. Wiggan and the request for services was authorized, but only for 30 days pending receipt and review of missing information. Dr. Wiggan's decision was appealed and Dr. Samerson conducted the appeal review and upheld Dr. Wiggan's decision. The reasons given for the denial of services included an unclear work schedule for the recipient's [redacted] ([redacted]) and unclear reasons for the requested services. Thereafter, [redacted] requested a Fair Hearing review.

b. As the lead medical officer of CMS, Dr. Metinko was requested to review this matter and the existing decisions. Dr. Metinko's review team reviewed the entire file. The review team determined that the recipient's medical appointments were [redacted] appointments per year as opposed to the [redacted] specialist medical appointments during a six month period. This was considered a substantial decrease in appointments due to the recipient's stability. An occupational therapy note indicated that the recipient was [redacted] There was also a medical urology note that expressed concerns about [redacted]. The recipient receives occupational therapy, speech therapy, physical therapy, and feeding therapy. The recipient receives an [redacted] Due to the medical complications, the recipient is approved for a home bound schooling. Dr. Metinko testified that based upon the information the review team had, it was unclear why there was a request for the home health aide. The review team was concerned that there was no work schedule for the [redacted] and no work schedule for the [redacted] even though [redacted] was believed to still be in the household. Dr. Metinko testified that with the [redacted] did not present a reason for the requested services. Dr. Metinko stated the fact that the [redacted] was not employed

outside of the home sealed the determination that the services were not medically necessary. Dr. Metinko did point out that in February of 2023 was the medical director that increased the hours for the home health aide and that was based upon the totality of the recipient's care and extensive medical appointments, which Dr. Metinko now believed that care has been greatly simplified.

c. Dr. Metinko opined that the recipient did not meet the requirements to qualify the recipient for home health aide services. Therefore, the request for a home health aide was denied and found to be in excess of the needs of the recipient and therefore does not meet the criteria of medically necessary.

10. testified as to the following:

a. testified that both and the family and have work very hard to establish a better way of life for . testified that was still attending approximately different medical appointments during a six-month period. *See* also RCE 1 at page 80. testified that is responsible for contacting the doctor/medical facility, coordinating the appointment time, providing transportation, attending the appointment with , keeping meeting with the doctor/staff concerning 's current medical status and implementing any necessary changes or additions to treatment. expressed that this is just one aspect of responsibilities as a caregiver to a child who is medically complex. testified that is on a that involves the

testified that did need help with activities of daily living (ADLs). As outlined above, needs assistance concerning testified that does not understand or recognize safety issues. In addition to serving as the overall caregiver for , is now home schoolteacher. Due to the above-described , is not a good candidate to attend public or private schooling. In , completed the requirements for the home-schooling request. PCE 1 pages 2-11.

b. addressed the issue of the work statement for both . did file a work statement showing that worked the traditional 40 hours per week. RCE 1 at page 79. While does work at home, testified

that [redacted] is isolated to a separate room in the home and is not available during work hours. When [redacted] is not at work, [redacted] does participate in [redacted] care. [redacted] does not work outside of the home for all of the reasons stated in the above paragraph. *Id.* at 70-77.

CONCLUSIONS OF LAW

11. 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).

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

13. Because Respondent is denying an existing service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. 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.)

14. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy") which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, establishes the coverage and provision of personal care services available under the Florida Medicaid program.

The PC Policy states as follows, in pertinent part:

> **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

. . .

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.

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, 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

. . .

- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services

. . .

- 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)
>
> . . .

Personal Care Services Coverage Policy pages 1-6.

15. 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.

16. 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.

17. 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:

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 severe 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 7.

18. The Definitions Policy also provides the following definitions that are relevant to this case:

21.2 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)

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)

Definitions Policy at pages 1 and 6.

19. In the instant case, Petitioner requested home health aide services. In an NABD dated May 1, 2024, Respondent authorized services for 30 days only and thereafter denied Petitioner's request based upon incomplete information. *See* ¶ 6. Petitioner appealed the decision and in an NPAR dated May 31, 2024, Respondent denied Petitioner's plan appeal. See ¶ 7.

20. Petitioner is under the age of 21, and therefore, EPSDT applies to [redacted] request for home health aide services. See ¶ 15-17.

21. The Florida Medicaid program provides coverage to its recipients for home health services. *See* ¶ 14. Home health services provide medically necessary 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. *See* ¶ 14. Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. *See* ¶ 14. These services cannot be authorized for babysitting, companion sitting or leisure activities, escort services, housekeeping, and respite care. *Id*.

22. Home health aide services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. *See* ¶ 17. To be medically necessary, the services requested must meet the five criteria set forth in section 2.83 of the Definitions Policy. *Id*. Specifically, the type

of service requested, and the quantity of service requested must not be in excess of the recipient's needs. *Id*.

23. The evidence presented in this matter by the Respondent does not meet the standard of proof of "a preponderance of the evidence." The initial denial and the plan appeal denial were primarily based upon a lack of information. *See* the NABD and NPAR at ¶ 6 and 7. While a lack of information can form the basis for a denial of a requested service, the information that was stated to be lacking, appeared to be available to the Respondent. The [redacted]'s work schedule, dated April 5, 2024, is found at RCE 1 page 79. The [redacted]'s work schedule and letter of daily events dated May 2, 2024 is found at RCE 1 page 36-43. The primary pediatric care physician, [redacted], M.D., provided a written letter dated [redacted] outlining the medical diagnoses and numerous specialists the recipient must see. RCE 1 at page 15. With that being said, the Respondent also provided additional evidence/testimony during the Fair Hearing. The testimony given by Dr. Metinko stated that the recipient's specialist medical appointments had been determined to [redacted] appointments per year as opposed to the [redacted] appointments every six months. The review team found the reduction of appointments represents a substantial decrease in the caregivers responsibilities. This determination was made based upon the medical records of CMS. This determination did not take into account that the Recipient has a separate Medicaid insurance policy, and the additional appointments were handled under that policy. The recipient still attends [redacted] medical appointments during a six-month time period. *Id.* at 15. These facts were also testified to by [redacted]. The review team also expressed concern that there was no work schedule for the [redacted] or [redacted] of the recipient. That issue has been addressed as stated above in this paragraph. Also, the testimony outlined prior authorizations in this matter.

In February of 2023, Dr. Metinko conducted an appeal and review of this recipient and at that time authorized 5 hours per day, 5 days a week for a home health aide. The approval was based [redacted] The evidence presented supports the position that the reasons given for this approval still exist. Further, subsequent to Dr. Metinko's authorization, in May of 2023, Dr. Phillips conducted another medical review of this recipient and authorized 4 hours per day, 5 days a week for a home health aide. Thereafter, in November of 2023, Dr. Tanpattana conducted a medical review of the Recipient and continued the 4 hours per day, 5 days a week for a home health aide. Thus, three medical reviews by Dr. Metinko, Dr. Phillips and Dr. Tanpattana have all found a need for services of a home health aide. *See* ¶ 9.a.

24. [redacted] testified that [redacted] still needs assistance with [redacted] ADLs, [redacted] still [redacted]. *See* ¶ 10.a. In addition to these needs, the recipient is now a home-schooled student being taught by [redacted].

25. Upon consideration of Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, testimony provided, and applicable policies, the undersigned concludes that Respondent has not proven by a preponderance of evidence that Respondent's denial of Petitioner's request for home health aide services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of home health aide services is **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**.

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

George L. Winslow, Jr.
24-FH1806
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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
Office: (850) 412-3649

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.com

AHCA Medicaid Hearing Unit
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