



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

**FILED**

Jul 23, 2020, 9:49 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 3, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Dr. Sloan Karver  
Long Term Care Director  
UnitedHealthcare of Florida Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny an additional twenty (20) hours of personal care services was incorrect.

**PRELIMINARY STATEMENT**

PRR000001

All parties appeared telephonically. Petitioner's Authorized Representative and daughter, [REDACTED] appeared on behalf of the Petitioner.

Dr. Sloan Karver, ("Dr. Karver") Long Term Care Director for UnitedHealthcare of Florida Inc. ("United") appeared on behalf of Respondent. Davida Jones, Grievance and Hearing Coordinator for United, attended as a witness for Respondent.

Teodoro De la Cruz from Propio Language Solutions (translator identification number 1427) appeared for the Fair Hearing to offer translation services on behalf of Petitioner's Authorized Representative.

Sheila Gonzalez, Medical/Healthcare Program Analyst for the Agency for Health Care Administration ("Agency"), appeared as an observer. Dillon Nicole, a Hearing Officer in the Agency's Office of Fair Hearings, also appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 276 page Statement of Matters packet The Statement of Matters packet included: a Notice of Adverse Benefit Decision ("NABD"), dated March 18, 2020; a CSP - General Request Form, dated March 23, 2020; Print HSC History; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated March 13, 2020; Appeal Review; a Notice of Plan Appeal Resolution ("NPAR"), dated April 22, 2020; a Corrected NPAR, dated May 1, 2020; Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1 in its entirety; the Florida Medicaid Statewide Medicaid Managed Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"); the Florida Medicaid Authorization Requirements Policy (June 2016); the Florida Medicaid Personal Care Services Coverage Policy (November 2016); the Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); the Home Health Visit Fee Schedule (January 1, 2017); the

Personal Care Services Fee Schedule (January 1, 2017); the Private Duty Nursing Services fee Schedule (January 1, 2017); the Participant Direction Option Manual; 42 C.F.R. § 441.480; the Florida Medicaid Hospice Services Coverage Policy (June 2016); 42 C.F.R. Part 418, Subpart C (Conditions of Participants: Patient Care); section 400.6105 of the Florida Statutes (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from the Petitioner Authorized Representative, the undersigned admitted the 276-page Statement Matters packet into evidence as Respondent's Composite Exhibit 1.

Petitioner submitted a 6-page packet prior to the hearing. Petitioner's packet included a copy of an email dated May 12, 2020; Petitioner's Designation of Authorized Representative for Medicaid Fair Hearing Participation, dated May 12, 2020; and a doctor's note on [REDACTED] letterhead, dated [REDACTED] 2020. Absent an objection from Respondent, Petitioner's packet was admitted as Petitioner's Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of United. Respondent's Composite Exhibit 1 at 1. United 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 a 71-year old adult suffering from hemiplegia affecting his right side, osteoarthritis, congestive heart failure, end stage renal disease, and incontinence. *Id.* at 39 and 45 through 46.
3. Petitioner needs total assistance with, and always receives assistance with heavy chores, light housekeeping, managing money, transportation, managing his medicine, preparing meals, and shopping. *Id.* at 44. Petitioner needs total assistance transferring and walking and has

assistance most of the time. *Id.* at 43. Additionally, Petitioner needs assistance and usually has assistance with bathing, dressing, eating, and using the bathroom. *Id.*

4. Petitioner lives with his daughter, who works a full-time job, and his 12-year old grandchild. Petitioner does not have any other family or friends who assist with Petitioner's care. Petitioner currently receives fourteen (14) hours of personal care services and six (6) hours of homemaker services. *Id.* at 4 through 5.

5. Petitioner's daughter provides the twenty (20) hours of care for Petitioner as a part of the Participant Direction Option ("PDO") offered through Petitioner's long-term care plan. Petitioner does not want to receive care from another provider.

6. Petitioner requested an additional twenty (20) hours of personal care services. Petitioner received an NABD denying Petitioner's request, dated March 18, 2020. The NABD explained the following rationale as to why the request was not medically necessary:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (*See Rule*)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. 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;
  2. 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; and
  3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or

2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...

The facts that we used to make our decision are:

Your assessment tells us you need help with your bathing and dressing. You have 14 hours a week of personal care and 6 hours a week of homemaker services. You live with family who are able to assist you. In my clinical opinion, your personal care needs can be met by current services and natural supports.

*Id.* at 4 through 5.

7. Petitioner requested a plan appeal and received an NPAR dated May 1, 2020, upholding the denial. The NPAR explained as follows:

You asked for personal care 34 hours a week. You need help with bathing, toileting, transfers, walking and dressings. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. We cannot approve 34 hours because it is not medically necessary. Based on my professional judgment, some of these hours are in excess of your need. Fourteen hours a week were approved. You also have homemaker services 6 hours/week. This is why we cannot approve what you asked for. Please talk about this with your doctor.

*Id.* at 89

8. ██████████ testified that she is concerned that Petitioner is unable to be left alone for significant periods of time. Petitioner is requesting more hours in order to allow ██████████ to leave her full-time job and solely act as Petitioner's caregiver.

9. During the hearing, Dr. Karver testified that Petitioner's needs may still be met through placing Petitioner in an adult daycare or allocating personal care hours to limit Petitioner's time alone.

### **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 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).

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 requesting a new service, 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.)

13. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care, homemaker, and respite care services:

**1.1 Description and Program Goal**

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

**1.3.1 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

...

**1.3.6 Natural Supports**

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports

...

### **1.3.9 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)

...

### **4.1 General Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

#### **4.2.2.6 Personal Care**

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and 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. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

14. The LTC Policy also addresses medical necessity:

#### **1.3.14 Medically Necessary or Medical Necessity**

For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- 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 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

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

15. The Florida Medicaid 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 evidence in the record reflects that Petitioner suffers from several ailments and medical conditions. [REDACTED] testified that she works a full-time job and cannot leave

Petitioner alone for long periods of time. *Supra* ¶ 2. [REDACTED] also testified that she acts as Petitioner's paid caretaker through the PDO program.

17. Dr. Karver testified that Petitioner's needs may be met through an adult daycare service provider or placement in a facility with constant care available. Dr. Karver also testified that the total of twenty hours of care services made available to Petitioner could in the alternative be used to reduce the time Petitioner spends alone. *Supra* ¶ 7.

18. As provided in section 4.1 of the LTC policy, personal care services must be medically necessary. 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." As established by the record, Petitioner has extensive medical needs. However, there is no evidence that Petitioner's care is not being met by his natural supports. Petitioner's daughter provides twenty (20) hours of care as Petitioner's PDO caregiver and provides care as a natural support. Petitioner has not shown that he requires twenty (20) hours per week of assistance with ADLs and IADLs in addition to his currently approved services and natural supports. As such, Petitioner did not show that his request was not in excess of his needs.

19. Petitioner's request for additional hours is intended to allow [REDACTED] to leave full-time employment to act as Petitioner's caregiver. *Supra* ¶ 8. An additional component of medical necessity is that of medical necessity is that services must "be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." Here, Petitioner's request for additional hours is to allow Petitioner to have his choice of caregiver and

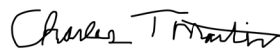
allow [REDACTED] the flexibility to act as a caregiver without the demands of an outside job. Petitioner's request is primarily for his convenience for the convenience of his caregiver.

20. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional twenty (20) hours of personal care services was incorrect.

**DECISION**

Respondent's denial is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE and ORDERED** this 23rd day of July, 2020, in Tallahassee, Leon County, Florida.



Charles Martin  
20-FH [REDACTED]  
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**CHARLES MARTIN, Hearing Officer**  
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**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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