



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

FILED

Jul 25, 2024, 11:40 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

vs.

AHCA Case No.: 24-FH1247

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 June 6, 2024, at 10:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette

Clinical Appeals Coordinator

Childrens Medical Services Health Plan

STATEMENT OF ISSUE

The issue is whether the Petitioner proved by a preponderance of the evidence that Respondent's decision to deny thirty-six (36)-hours per week of home health aide services was incorrect.

PRELIMINARY STATEMENT

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

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

Kimberly Bouchette, Clinical Appeals Coordinator (“Ms. Bouchette”) appeared on behalf of the Respondent Childrens Medical Services Health Plan (“Respondent” or “CMS”). Andrew Metinko, M.D. (“Dr. Metinko”), a Medical Director for the Respondent also testified on behalf of the Respondent. Nadine Macko, Supervisor for Case Management, Megan Buckner, Manager, and Dr. Mansooreh Salari, Medical Director also attended the Fair Hearing on behalf of CMS but did not testify. Aldrea White-Futtrel, Compliance Officer and Elyssa Luke, Esq., both from the Florida Department of Health attended the Fair Hearing for observation purposes. In addition, Sandra Durden, 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, Respondent sent to the Office of Fair Hearings and Petitioner a one-hundred and seventeen (117)-page proposed evidence packet that was admitted into evidence without objection, is identified herein as “Respondent’s Composite Exhibit 1” and appears in the Office of Fair Hearings document management system as file title “MFH Packet [Petitioner].pdf”.

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS since [REDACTED]. See Respondent’s Composite Exhibit 1, page 2. 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] [REDACTED] old [REDACTED] that has been diagnosed with [REDACTED] [REDACTED]. See Petitioner’s Composite Exhibit 1, page 11. The Petitioner lives in a home with [REDACTED] parents and two siblings, and [REDACTED] [REDACTED] has medical limitations and is “unable to work”. See Petitioner’s Composite Exhibit 1 page 18 and *Testimony of* [REDACTED]
3. On February 13, 2024, the Petitioner requested thirty-six (36) hours of home healthcare services per week, consisting of six (6) hours per day for six (6) days per week. See Respondent’s

Composite Exhibit 1, page 4. In a Notice of Adverse Benefit Determination (“NABD”), dated February 20, 2024, the Respondent denied the requested home health aide services. See Respondent’s Composite Exhibit 1, pages 4-9. 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. Florida Medicaid 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 a home health aide for your child is denied. It is denied due to lack of medical need. A home health aide is a trained worker who gives care in the home. The medical notes sent do not show the medical need for a home health aide. Your child appears to need adult guidance / childcare / babysitting services. Adult guidance does not need a home health aide. All young children need adult guidance. All young children need help with activities of daily living. These are tasks such as eating, bathing, dressing, and toileting. Please note that prior approvals for home health aide services were approved without medical need review.

...

Id.

4. The Petitioner requested a plan appeal on March 18, 2024, and received a Notice of Plan Appeal Resolution (“NPAR”), dated April 15, 2024, that affirmed the previous denial. See Respondent’s Composite Exhibit 1, pages 27-30. The NPAR explained as follows:

The facts that we used to make our decision are: the previous denial to authorize a home health aide for your child is upheld. Your child appears to need adult supervision. Adult supervision does not require a home health aide. All young children need constant supervision and assistance with activities of daily living. 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 April 15, 2024, the Petitioner requested a Fair Hearing to challenge the denial of a home health aide for thirty-six (37) hours per week. On May 18, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 6, 2024, at 10:00 a.m. EST.

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 51-61.

7. The Petitioner's [REDACTED] testified [REDACTED] is unable to work and lives in [REDACTED] home with three (3) children plus [REDACTED] [REDACTED] who works. See also Respondent's Composite Exhibit 1, page 16. [REDACTED] testified [REDACTED] [REDACTED], and [REDACTED] [REDACTED]. [REDACTED] testified [REDACTED] goes to public school Monday through Friday between 8:30 a.m. and 1:50 p.m., then has applied behavior analysis therapy at home between 3:30 p.m. and 6:30 p.m. Finally, [REDACTED] testified the Petitioner's home health aide is there when [REDACTED] is undergoing applied behavior analysis therapy, and that the home health aide "does things around the house", such as meal preparation, laundry, and cleaning, and that if the [REDACTED] needs to leave the house, the home health aide stays home and watches [REDACTED].

8. Dr. Metinko testified for the Respondent and stated that the Petitioner has had a home health aide since [REDACTED], and that there have been at least two (2) approvals for home health

aide services but the request which is the subject of this case is the first time a medical necessity review was performed. Dr. Metinko testified that there is no evidence in this matter of medical necessity demonstrated for the Petitioner to have a home health aide, and there is a lack of clinical notes, no clear evidence of the Petitioner's functional limitations, and it's unclear [REDACTED]. Dr. Metinko testified that the Respondent has requested the Petitioner's Individual Educational Plan prepared by the Petitioner's school, but have yet to get a copy, even though [REDACTED] confirmed such a plan exists. Dr. Metinko testified that the Respondent was unaware the Petitioner's [REDACTED] is in [REDACTED] life until after the denials in this case, and that the Respondent has been unable to verify the [REDACTED] work schedule. Dr. Metinko testified "it has not been easy" to get information about the Petitioner's household and the Petitioner's needs in this matter. Finally, Dr. Metinko testified that it is redundant and not medically necessary for the Petitioner to have 2 home health care providers at [REDACTED] home simultaneously (the home health aide and the applied behavior analysis therapist).

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, namely the five (5) months of home health aide services, 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 ■■■ 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 January 10, 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 seventy (70) hours per week for six (6) months was not reflected in the file. *Id.*

18. The Respondent's February 20, 2024, NABD denying the Petitioner's request for a home health aide for thirty-six (36) hours per week and stated in-part as follows:

The request to approve a home health aide for your child is denied. It is denied due to lack of medical need. A home health aide is a trained worker who gives care

in the home. The medical notes sent do not show the medical need for a home health aide. Your child appears to need adult guidance / childcare / babysitting services. Adult guidance does not need a home health aide. All young children need adult guidance. All young children need help with activities of daily living. These are tasks such as eating, bathing, dressing, and toileting. Please note that prior approvals for home health aide services were approved without medical need review.

See ¶ 3. In addition, the Respondent's April 14, 2024, NPAR upheld the denial of thirty-six (36) 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. All young children need constant supervision and assistance with activities of daily living.

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 ¶ 15. As shown by the record, the Petitioner is diagnosed with [REDACTED]. See ¶ 2. Further, the record shows that Petitioner's [REDACTED] does not work, that the Petitioner attends public school Monday through Friday and obtains applied behavior analysis services in the home. See ¶¶ 37, and 8. 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 eating, bathing, dressing, and toileting. 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 polices, 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 thirty-six (36) 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 thirty-six (36) 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 25th day of July, 2024, in Tallahassee, Leon County, Florida.

Alan J. Leifer
24-FH1247
2024.07.25
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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:



Children's Medical Services
CMSPlanContract@flhealth.gov

AHCA Medicaid Hearing Unit
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