



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

FILED

Aug 13, 2020, 11:52 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 16, 2020, at [REDACTED].

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kizzy Alleyne
Senior Paralegal
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny fifteen (15) hours per week of Personal Care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny three (3) hours per week of Homemaker services was incorrect.

PRELIMINARY STATEMENT

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

Kizzy Alleyne, Senior Paralegal for Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent. The following witnesses appeared for Respondent: Jessica McGlynn, LTC Coordinator for Sunshine; Louise Jeanty, Supervisor for Sunshine; Dr. Heather Lutz, Medical Director for Sunshine; Alshonica Williams, Case Manager Supervisor for Sunshine; and Tara Rodriguez, LTC Supervisor for Sunshine.

Noelle, translator identification number 349720, appeared for the Fair Hearing to offer translation services on behalf of Petitioner.

Dr. Veronica McGlocksy, Medical Director for Sunshine, and Tammy Swann, Director of Case Management for Sunshine, attended as observers.

Doris Rivera, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency"), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixteen (116)-page evidence packet. The evidence packet included a Medicaid Fair Hearing Table of Content[s]; Medicaid Fair Hearing Summary, dated June 30, 2020; the Notice of

Adverse Benefit Determination (“NABD”), dated March 30, 2020; a Long Term Care Person-Centered Care Plan, signed March 23, 2020, and October 3, 2019; a Long Term Care Person-Centered Care Plan, signed June 10, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated March 23, 2020; a second 701B, dated June 10, 2020; a copy of Petitioner’s Plan Appeal, dated April 19, 2020; a plan acknowledgement of Petitioner’s Plan Appeal, dated April 30, 2020; the Notice of Appeal Plan Resolution (“NPAR”), dated May 20, 2020; Sunshine Health Policy And Procedure LT.UM.09, effective May 1, 2014; and Fla. Admin Code R. 59G-1.010(166). Absent an objection from Petitioner’s Authorized Representative the undersigned admitted the one hundred and sixteen (116)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

Prior to the hearing Petitioner submitted a copy of a medical referral, signed [REDACTED] 2020, to the Office of Fair Hearings and Respondent. Absent an objection from Respondent the document was admitted as Petitioner’s Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine 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 hearing Petitioner is sixty-seven (67)-years old. Petitioner is diagnosed with diabetes, heart problems, bladder and bowel incontinence, and COPD. Respondent’s Composite Exhibit 1 at 55. Petitioner is currently receiving fourteen (14) hours per week of Personal Care services, nine (9) hours per week of Homemaker services, three (3) hours of Companion Care services, and five (5) home delivered meals per week. *Id.* at 2 through 3.

Petitioner lives with her daughter who works two twelve (12)-hour days and one (1) additional day per week with unset hours. *Id.* at 65.

3. Petitioner was assessed by a case manager on June 10, 2020. *See Id.* at 49. The case manager's assessment is reflected on the 701B dated the same. *Id.* Petitioner needs total assistance with heavy chores, light housekeeping, using the telephone, managing money, preparing meals, shopping, and using transportation. *Id.* at 54. Petitioner requires some assistance with managing medication. *Id.* Petitioner has assistance with those tasks most of the time. *Id.*

4. Petitioner needs assistance bathing and dressing but requires no assistance with eating. *Id.* at 53. Petitioner needs supervision or prompt while using the bathroom, transferring, and walking. Petitioner has assistance with those tasks most of the time except for eating. *Id.*

5. Petitioner requested an additional fifteen (15) hours of Personal Care services and an additional three (3) hours of Homemaker services. *See Id.* 4 through 5. On March 30, 2020, Respondent issued an NABD denying Petitioner's request. The NABD explained as follows:

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: The request for an extra 15 hours per week of Personal Care Services and an extra 3 hours per week of Homemaker Services is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes

- 14 hours per week of Personal Care Services
- 9 hours per week of Homemaker Service
- 3 hours per week of Companion Care Services
- 5 meals per week of Home Delivered Meals

This decision was made with Sunshine Health Policy L T.UM.09 Long Term Care Ancillary Service Criteria.

Id.

6. Petitioner requested a plan appeal and received an NPAR dated May 20, 2020 upholding the denial. The NPAR explained as follows:

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the denials for an extra 15 hours/week of Personal Care Services and extra 3 hours/week of Homemaker Services are upheld as not medically needed. The presently approved home services are enough to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 78.

7. In a referral signed [REDACTED] 2020, Petitioner's medical provider requested authorization for fifteen (15) hours of "personal care and companion." Petitioner's Exhibit 1.

8. During the hearing, [REDACTED] testified that Petitioner could not be left alone for long periods of time and requires constant supervision.

9. Dr. Lutz testified that Respondent reviewed Petitioner's most recent 701B and noted that Petitioner does not require total assistance with any Activity of Daily Living. Petitioner's needs

for Homemaker services and Personal Care services are met through the current services provided.

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 Fla. Stat. § 409.285(2) (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 new services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence". Black's Law Dictionary at 1201, 7th Ed.

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 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

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

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 (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 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.

Personal Care Services

16. Petitioner requested fifteen (15) hours of weekly personal care services in addition to the fourteen (14) hours of personal care services Petitioner is already receiving. *See supra* ¶ 5. On the NABD, Respondent indicated that the request did not meet the criteria for medical necessity but did not specify which medical criteria for the basis for its decision. *Id.* As provided in the LTC Policy, Personal Care services are to provide assistance with ADLs and IADLs. Petitioner's most recent 701B, dated June 10, 2020, shows that Petitioner needs assistance bathing and dressing but requires no assistance with eating. *See supra* ¶ 4. The 701B also shows that Petitioner requires supervision or prompt while using the bathroom, transferring, and walking. The 701B shows that Petitioner has assistance with her ADLs most of the time. *Id.* The 701B shows that Petitioner needs total assistance with heavy chores, light housekeeping, using the telephone, managing money, preparing meals, shopping, and using transportation. *See supra* ¶ 3. Petitioner requires some assistance with managing medication. *Id.* Petitioner has assistance with her IADLs most of the time. *Id.*

17. Respondent denied Petitioner's request for personal care services because Petitioner's personal care hours combined with Petitioner's natural supports are sufficient to meet Petitioner's needs with respect to ADLs and IADLs. *See supra* ¶ 9. Petitioner's daughter lives with Petitioner and provides assistance. *See supra* ¶ 2. Petitioner's daughter works two twelve (12)

hours days per week and one day per week with unset hours. *Id.* Respondent reviewed Petitioner's most recent 701B prior to the hearing. *See supra* ¶ 9. Dr. Lutz testified that Petitioner does not requires total assistance for any ADL. Based on the 701B, Dr. Lutz argued that Petitioner's current approved Personal Care services are adequate to meet Petitioner's needs. *Id.*

18. As Personal Care is to provide assistance with ADLs and IADLs, Petitioner has not shown that the request is "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" and that the request is not "intended for the convenience of the recipient, the recipient's caretaker, or the provider." [REDACTED] testified Petitioner cannot be left alone and needs constant supervision. *See supra* ¶ 8. [REDACTED]'s testimony did not address a justification for the number of hours requested or how Petitioner's assistance with IADLs or ADLs are not being met. Further, the LTC Policy does not include supervision within its description of personal care. *See supra* ¶ 13. While Petitioner submitted a medical referral seeking authorization of an additional fifteen (15) hours, a referral for services does not make services medically necessary. *See supra* ¶ 7. Accordingly, Petitioner has not shown that she has an unmet need of fifteen (15) hours per week for assistance with ADLs and IADLs. Therefore, 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 Respondent's denial of an additional fifteen (15) hours of personal care services was incorrect.

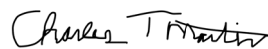
Homemaker Services

19. Petitioner requested three (3) hours weekly of homemaker services in addition to the in addition to the nine (9) hours weekly of personal care services Petitioner is already receiving. As provided in the LTC Policy, Homemaker services are to provide for general household activities, such as laundry or meal preparation. Here, Petitioner lives with a caregiver and already receives nine (9) hours of Homemaker services. No evidence was provided showing that Petitioner's homemaking needs are not being met or why the number of hours per week requested would satisfy any unmet homemaking needs. Therefore, 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 Respondent's denial of an additional three (3) hours of Homemaker services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of fifteen (15) hours weekly of Personal Care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of fifteen (15) hours weekly of Personal Care services is **DENIED**. Respondent's denial of three (3) hours weekly of Homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of three (3) hours weekly of Homemaker services is **DENIED**.

DONE and ORDERED this 13th day of August, 2020, in Tallahassee, Leon County, Florida.



Charles Martin
20-FH[REDACTED] & 20-FH[REDACTED]
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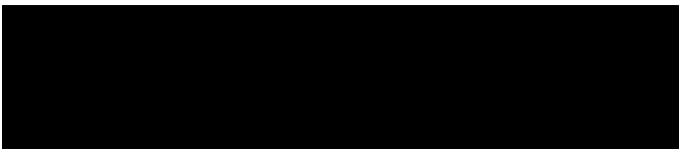
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.

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