



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

**FILED**

Sep 03, 2020, 2:09 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

MOLINA HEALTH CARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened telephonic Fair Hearings on the instant case on July 28, 2020, at [REDACTED], and on August 6, 2020, at [REDACTED]

[REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Caridad Bello  
Government Contracts Specialist  
Molina Health Care Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's request for adult companion care services was correct.

**PRELIMINARY STATEMENT**

All parties appeared telephonically and, unless otherwise indicated, appeared at both the July 28, 2020, and August 6, 2020, hearings. Petitioner's Authorized Representative and sister, [REDACTED] ("[REDACTED]") appeared on behalf of the Petitioner. Petitioner attended as witness on his own behalf.

Caridad Bello, Government Contract Specialist for Molina Health Care Plan, Inc. ("Molina") appeared on behalf of Respondent. The following attended as witnesses for Respondent: Kathia Matos, Director for Health Care Services for Molina; Erick Gonzalez, Case Manager for Molina; Jennifer Bellina, Manager of the LTC Program for Molina; Dr. Mark Bloom, Medical Director for Molina; and Yinetsy Brajdic, LTC Supervisor for Molina.

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

At the July 28, 2020, hearing Jack, interpreter number QQ812, appeared to offer translation services for the Petitioner. At the August 6, 2020, hearing David, interpreter number VJ862, appeared to offer translation services for Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a two (2)-page document. The document included a letter from [REDACTED], dated [REDACTED] 2019, and an Okay to Work Form, dated January 21, 2015. Absent an objection from Respondent, the undersigned admitted the two (2)-page document into evidence as Petitioner's Composite Exhibit 1.

Prior to the July 28, 2020, hearing, Respondent sent to the Office of Fair Hearings and Petitioner a seventy-six (76)-page evidence packet. The evidence packet included: a letter from Respondent, dated July 13, 2020; a letter from Respondent, dated July 13, 2020; Progress Notes;

2<sup>nd</sup> Level Review, dated March 3, 2020; a Notice of Adverse Benefit Determination (“NABD”), dated March 3, 2020; a letter from Respondent, dated March 12, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated April 10, 2020; a Service Request/Authorization Form, dated January 3, 2020; an NABD, dated April 13, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment, dated May 26, 2020; an LTC Supplemental Assessment, dated May 26, 2020; and a Functional Level Assessment, dated May 28, 2020. Absent an objection from the Petitioner, undersigned admitted the seventy-six (76)-page packet into evidence as Respondent’s Composite Exhibit 1.

Prior to the August 6, 2020, hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-two (42)-page evidence packet. The evidence packet included: an e-mail from Respondent, dated July 31, 2020; Services and Supports Delivery Arrangement Detail, dated May 28, 2020; Policy and Procedure MLTSS Functional Level and Service Review Policy; and the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”); Absent an objection from the Petitioner, undersigned admitted the forty-two (42)-page evidence packet into evidence as Respondent’s Composite Exhibit 2.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Molina. Molina is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is sixty-one (61)-years old. See page 41 of Respondent’s Composite Exhibit 1. Petitioner is diagnosed with GERD, high blood pressure, high cholesterol, diabetes, frequent dizziness, frequent bladder incontinence, occasional bowel incontinence, multiple sclerosis, partial paralysis, anxiety, and depression. *Id.* at 48.

3. Petitioner's sister, [REDACTED], provides all of his care through the PDO program. *Id.* at 45. Petitioner lives with his sister, [REDACTED]. *Id.* at 4.

4. Petitioner needs total assistance (cannot do at all) with the following activities of daily living ("ADLs"): bathing; dressing; using the bathroom; transferring; and walking/mobility. *Id.* at 45. Petitioner needs supervision or prompting in regards to eating. *Id.* Petitioner needs total assistance (cannot do at all) with the following instrumental activities of daily living ("IADLs"): heavy chores; light housekeeping; managing money; preparing meals; shopping; managing medication; and using transportation. *Id.* at 46. Petitioner needs assistance (but not total help) with using the telephone. *Id.*

5. Petitioner talks to friends, relatives, or others two (2) to six (6) times per week. *Id.* at 55. Petitioner spends time with someone who does not live with him several times per month. *Id.* Petitioner participates in activities outside the home that interest him several times per month. *Id.*

6. In the NABD, dated April 13, 2020, Respondent terminated Petitioner's adult companion care hours., which amounted to seven (7) hours weekly. *Id.* at 32 through 39 of Respondent's Composite Exhibit 1. The NABD explained the basis of the termination 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 7 hours of Companion will be terminated. You will continue to receive assistance with should meet your current needs. This determination by the Medical Director has been made based on medical necessity (as defined by Florida laws) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

The facts that we used to make our decision: Medical Necessaity [sic].

*Id.* at 32.

7. Petitioner requested a plan appeal and received an NPAR dated April 10, 2020, upholding the termination. *Id.* at 25 through 28. The NPAR explained as follows:

The reason for our decision was based on the Molina Healthcare of Florida Long Term Care (LTC) Policy, which indicates that our "Functional Level and Service Review Tools" is used in combination with an assessment (evaluation) to determine your needs. Evaluations are done during a member's initial assessment, annual re-assessment, and/or when there is a signification change in the member's care. A signification change may include, but is not limited to, changed in the member's condition or caregiver. Based on our records, you should be receiving 31 hours of assistance.

*Id.* at 25.

8. Erick Gonzalez, a Case Manager at Molina, completed a functional level assessment of Petitioner on May 28, 2020, which rates Petitioner on a scale of 0 through 6 for his ADLs and IADLs. A score of 0 indicates independence and a score of 6 indicates total dependence. *Id.* at 75. Erick Gonzalez, also completed the Services and Supports Delivery Arrangement Detail ("Support Detail") on May 28, 2020, which provides Respondent with an estimate of how much service a member may need. See page 2 of Respondent's Composite Exhibit 2. The Support Detail provides

the following estimates: for bathing, seven (7) hours per week; for hygiene, four (4) hours per week; for dressing, two (2) hours and twenty (20) minutes; for walking and mobility, two (2) hours and twenty (20) minutes; for toileting, two (2) hours and fifty-five (55) minutes; for transferring, three (3) hours and thirty (30) minutes; for eating, one (1) hours and forty-five (45) minutes; for meal preparation, five (5) hours and fifty (50) minutes; for cleaning, one (1) hours and forty-five (45) minutes; for laundry, one (1) hour per week; for managing medication, thirty-five (35) minutes; and for shopping (including travel), one (1) hour and thirty (30) minutes per week. This totals thirty-three (33) hours and fifty-five (55) minutes. *Id.* at 2 through 12. In regards to eating, the Support Detail also provides: "Member reported that he can eat by himself, but still requires supervision and sometimes assistance because his right hand has poor mobility and does not have enough strengths [sic]." *Id.* at 10.

9. Petitioner is currently approved to receive twenty-four (24) hour per week of personal care and eight (8) hours per week of homemaker care services. *See* page 30 of Respondent's Composite Exhibit 1.

10. Ms. Bellina testified that the Respondent used the 701B assessment in its determination.

#### **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 terminating a previously approved service, 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 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 adult companion 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

...

**1.3.15 Natural Support**

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

...

#### **4.2.1.1 Adult Companion Care**

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

#### **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.

15. 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.

16. 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.

17. In the NABD, dated April 13, 2020, Respondent terminated Petitioner's adult companion care services, which totaled seven (7) hours, weekly. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessary criteria was the basis for its decision. *Id.* at 32. In the NPAR, dated April 10, 2020, Respondent explained that its decision was based on a combination of its Functional Level Service Review Tool and an assessment of the Petitioner. *Id.* at 25.

18. As provided in the LTC Policy, adult companion care is to provide "non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee." Moreover, adult companion care may provide for "assistance with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee." As provided in the record, Petitioner lives with his sister. *Id.* at 3. Further, Petitioner talks to friends, relatives, or others two (2) to six (6) times per week, spends time with someone who does not live with him several times per month, and participates in activities outside the home that interest him several times per month. *Id.* at 55. Thus, the record shows that Petitioner has frequent opportunities to socialize.

19. However, Petitioner requires supervision for certain ADLs, such eating. *Id.* at 45. Further, as noted in the Support Detail, Petitioner "still requires supervision and sometimes assistances because his right hand has poor mobility and does not have enough strengths." See page 10 of Respondent's Composite Exhibit 2. As provided in the record, Petitioner needs total assistance (cannot do at all) with light housekeeping and meal preparation. *Id.* at 46. Based on Respondent's own estimates, Petitioner needs thirty-three (33) hours and fifty-five (55) minutes of care. See pages 2 through 12 of Respondent's Composite Exhibit 1. These estimates include tasks that may


be addressed by adult companion care, such as meal preparation, laundry, supervision for eating, and cleaning. *Id.* Despite Respondent's own calculations showing that Petitioner needs approximately thirty-four (34) hours of service, Respondent is only providing twenty-four (24) hours of personal care and eight (8) hours of homemaker services, which totals thirty-two (32) hours of services. Thus, based on Respondent's own calculations, Respondent is providing an insufficient amount of services. Moreover, although [REDACTED] lives with Petitioner, it was not established by Respondent that Petitioner's sister is available to provide care as a natural support.

20. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's termination of adult companion care was correct.

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

Respondent's termination of adult companion care services is **REVERSED**. Petitioner's appeal based on Respondent's termination is **GRANTED**.

**DONE** and **ORDERED** this 3rd day of September, 2020, in Tallahassee, Leon County, Florida.

Joseph Mabry  
 20-FH [REDACTED]  
2020.09.03  
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**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
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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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