



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

**FILED**

Aug 25, 2020, 10:41 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 July 27, 2020, at [REDACTED].

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

David Jones  
Grievance and Hearing Coordinator  
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 twenty hours (20) weekly of Adult Companion Care services was incorrect.

**PRELIMINARY STATEMENT**

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

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

Chrissie Simmons, Medical Health Care Program Analyst and Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-five (275)-page Statement of Matters packet. The Statement of Matters packet included: a Statement of Matters table of contents; a Notice of Adverse Benefit Decision ("NABD"), dated April 22, 2020; a copy of the plan appeal dated May 1, 2020; a physician order dated April 30, 2020; a portion of a Durable Power of Attorney; a plan appeal acknowledgment letter, dated May 8, 2020; Plan internal emails relating to review of Petitioner's plan appeal; Print HSC History; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated January 28, 2020; a Plan of Care Summary, signed November 6, 2019; Appeal Review; a Notice of Plan Appeal Resolution ("NPAR"), dated June 1, 2020; Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1 in its entirety; the Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy"); 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 Services 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); Fla. Stat. § 400.6105 (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from the Petitioner's Authorized Representative, the undersigned admitted the two hundred and seventy-five (275)-page Statement Matters packet into evidence as Respondent's Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of United. United is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is seventy-seven (77) years old and legally blind. Respondent's Composite Exhibit 1 at 42 and 46. Petitioner is diagnosed with bladder incontinence and Human Immunodeficiency Virus.
3. Petitioner currently receives ten (10) hours per week of Personal Care services, ten (10) hours per week of Homemaker services, twenty hours (20) hours of Companion Care services per week, and thirty-one (31) Home Delivered Meals per month. *Id.* at 89. Petitioner utilizes eyeglasses, a rolling walker, a shower bench, and commode provided by United. *Id.* Petitioner's caregiver assists Petitioner eight hours per day, Monday through Friday. *Id.* Petitioner's daughter lives close by and provides assistance on a daily basis. *Id.* at 60 and 88.

4. Petitioner needs total assistance with preparing meals and light housekeeping. *Id.* at 61. Petitioner always has assistance with light housekeeping and usually has assistance with preparing meals. *Id.* Petitioner requires some assistance with bathing and supervision with managing her medications. *Id.* at 60 through 61. Petitioner always has assistance and supervision with those tasks. *Id.*

5. Petitioner requested an additional twenty (20) hours per week of Adult Companion Care services. Petitioner received an NABD denying Petitioner's request, dated April 22, 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 can be left alone.

You are getting 10 hours a week of personal care to help you.

You are also getting homemaker services 10 hours a week and adult companion care 20 hours a week.

You can be social with the aides who visit you.

You live alone but your daughter lives close and visits you every day.  
You can voice your needs and wants.

In my clinical opinion, your needs for adult companion care are being met by your current services and support. You can split your current hours 40 hours a week, so you are not left alone for long periods of time.

*Id.* at 4 through 5.

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

You asked for adult companion care 40 hours a week. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. We cannot approve 40 hours. It is not medically necessary. Based on my professional judgment, these hours are in excess of your need. Your needs can be met with 20 hours a week. Therefore, we cannot approve what you asked for. Please talk about this with your doctor.

*Id.* at 95.

7. ██████ testified that ██████ provides socialization during the hours she provides caregiver services to Petitioner. ██████ further testified that she provides care for Petitioner on the weekends, but Petitioner is mostly alone in the evenings during the week. Both ██████ and ██████ testified that Petitioner is not safe to be left alone due to confusion.

8. During the hearing, Dr. Karver testified that Petitioner is receiving forty hours of care services which along with natural support from her daughter. Dr. Karver added that Petitioner's socialization needs are met by the hours spent with the caregiver and Petitioner's natural support.

#### **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 Fla. Stat. § 409.285(2) (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. 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.

12. 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

...

#### **4.2.1.1. 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.

13. 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.

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.

14. The 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.

15. Petitioner is requesting twenty hours of Adult Companion Care services in addition to the total forty hours of care services Petitioner is already receiving. *See supra* ¶ 5 and ¶ 8. Respondent denied Petitioner's request on the basis that the request was in excess of Petitioner's needs. *See supra* ¶ 6.

16. As provided in the LTC Policy, Adult Companion Care services are 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. The services requested must be medically necessary. A component of medical necessity is that services offered must be "[b]e 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 shown in the evidence Petitioner's caregiver is with Petitioner eight hours per day. *See supra* ¶ 3. As testified to by [REDACTED], Petitioner's caregiver provides socialization for Petitioner. *Supra* ¶ 7. [REDACTED] assists Petitioner as a natural support. *See supra* ¶ 3. Dr. Karver testified that Petitioner's care hours are sufficient to meet Petitioner's socialization needs. *See supra* ¶ 8. Petitioner did not offer any testimony or evidence as to why more hours were required to meet Petitioner's socialization needs. The 701B shows that Petitioner requires supervision when managing her medication and requires assistance with bathing. *See supra* ¶ 4. The 701B also shows that Petitioner always has assistance

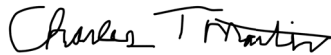
with those tasks. *Id.* While the 701B shows that Petitioner requires total assistance with meal preparation and only has assistance most of the time, the record is void as to why Petitioner does not have total assistance given Petitioner's forty hours of care provided per week and natural support from her daughter. Additionally, [REDACTED] and [REDACTED] stated that Petitioner is unsafe to be left alone, but neither witness testified as what additional risks were posed to Petitioner's safety that require more supervision than is currently provided through the caregiver hours or care provided by [REDACTED]. *See supra* ¶ 7. Petitioner has not demonstrated that the requested adult companion care hours are not in excess of Petitioner's needs. Accordingly, Petitioner's request is not medically necessary.

17. 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 twenty (20) hours per week of Adult Companion Care services was incorrect.

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

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

**DONE and ORDERED** this 25th day of August, 2020, in Tallahassee, Leon County, Florida.

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