



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

FILED

Aug 28, 2020, 10:37 am

OFFICE OF FAIR HEARINGS

[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 in this matter on July 20, 2020, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issues are whether Petitioner proved by a preponderance of the evidence that its decision to deny an additional 7 hours of personal care services per week was incorrect.

PRELIMINARY STATEMENT

[REDACTED] (" [REDACTED] ") appeared behalf of the Petitioner. Petitioner appeared and provided testimony.

Maria Mojica, Compliance Specialist, Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent. The following witnesses appeared for Respondent: Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director, Sunshine; Kla Iosamsky, Supervisor, Sunshine; Jacqueline Seaton, Case Manager Supervisor, Sunshine; Joyce Simmons ("Ms. Simmons"), Care Coordinator, Sunshine; Melissa Alleyne, Senior Manager – Quality Improvement, Sunshine; and Debra Oellrich, Case Manager Supervisor, Sunshine.

Lisa Sanchez, Program Analyst, attended as an observer from the Agency for Health Care Administration ("Agency" or "AHCA").

██████████ stated that she received a copy of Respondent's evidence packet prior to the Fair Hearing. Respondent introduced an evidence packet consisting of 119 pages, which was admitted into evidence as Respondent's Composite Exhibit 1 ("RCE 1"). RCE 1 included the following: a Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated July 8, 2020; a Notice of Adverse Benefit Determination ("NABD"), dated April 16, 2020; a Long Term Care ("LTC") Person-Centered Care Plan, signed March 3, 2020; an LTC Person-Centered Care Plan, signed May 21, 2020; a 701B Comprehensive Assessment ("701B"), dated March 3, 2020; a 701B, dated May 21, 2020; an Expedited Appeal Request Decision, dated April 29, 2020; a Standard Appeal Acknowledgement, dated April 29, 2020; a fax, dated May 15, 2020, including 1 page; a Notice of Plan Appeal Resolution ("NPAR"), dated May 22, 2020; a copy of Sunshine's LTC Ancillary Service Criteria, with an effective date of May 1, 2014; and Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010.

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. On May 21, 2020, a 701B was conducted in Petitioner's home, which provided the following information:
 - a. Petitioner is a 76-year-old woman. *Id.* at page 49.
 - b. Petitioner resides alone in a mobile home community with her dog. *Id.* at page 50.
 - c. Petitioner's health has been about the same compared to a year ago. *Id.* at page 52.
 - d. Petitioner needs total assistance with bathing, using the bathroom, transferring, and walking/mobility. *Id.* at page 53. Petitioner needs assistance, but not total help, with dressing. *Id.* Petitioner needs no assistance with eating. *Id.*
 - e. Petitioner has a scooter chair for mobility and a Hoyer lift due to Multiple Sclerosis. *Id.*
 - f. Petitioner experiences lower extremity weakness, chronic venous insufficiency, vertebrae compression, and has a catheter, which is changed every 3 weeks. *Id.* at page 56.
 - g. Petitioner does not need supervision. *Id.* at page 58.
3. According to the NABD dated April 16, 2020, Respondent denied Petitioner's request for an additional 7 hours of personal care services per week. See RCE 1, pages 4-12. The NABD determined that the requested services were not medically necessary because they did not:

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.

According to the NABD, the facts used to make their decision were as follows:

The request for an extra 7 hours/week of Personal Care Services is denied. 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

- 26 hours/week of Personal Care Services
- 10 hours/week of Homemaker Services
- 7 hours/week Companion Care Services
- 7 meals/week Home Delivered Meals.

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

Id. at page 5.

4. On May 22, 2020, Respondent issued an NPAR upholding the denial of personal care services stating that "...the member's currently approved services are adequate to meet the member's care needs." *Id.* at pages 81-87.

5. As Petitioner's paid caregiver, ██████████ testified that she works on Monday from 8:45 a.m. to 1:45 p.m., Tuesday through Friday from 8:45 a.m. to 2:15 p.m., Saturday from 9:00 a.m. to

noon, and Sunday from 9:00 a.m. to 5:00 p.m. Each morning she will dress Petitioner and assist her out of bed using the Hoyer lift. She will then clean the house, prepare meals, and shop. ■■■ testified that there are days when she does not get everything done with the hours that have been approved. ■■■ testified that she has to transfer Petitioner to the bed several times per day to change her brief due to bowel incontinence. ■■■ testified that she will also help with Petitioner's garden and dog.

6. According to ■■■, Petitioner had a private caregiver, but she quit on May 31, 2020. Petitioner cannot afford to employ another private caregiver

7. ■■■ testified that the hours are being requested to help Petitioner transition to bed at night, which takes about 90 minutes. According to ■■■, the private caregiver would arrive at the home between 3:00 and 3:30 p.m. each afternoon. She would feed Petitioner and her dog, then walk the dog. After dinner, Petitioner would be transferred from her wheelchair to her bed using the Hoyer lift. Petitioner will then be undressed, and her brief will be changed. Her foley would be emptied. An assortment of items (drinks and snacks) would be placed next to her bed before the caregiver left for the night.

8. ■■■ testified that Petitioner has two sons who will visit every 2 to 3 weeks to do yard work, or when something needs to be done that ■■■ cannot do.

9. Petitioner testified that she needs help in the afternoon because she cannot do anything for herself other than brush her teeth and feed herself. The caregiver that comes in the afternoon is with her for approximately 90 minutes. She will help transfer Petitioner to bed and prepare her for sleep. This caregiver is private and is paid out-of-pocket.

10. Dr. Carter testified that he one of the long-term care medical directors at Sunshine and practices internal medicine, geriatric, and hospice care medicine. Petitioner suffers from a neurological illness and receives 43 hours of combined services per week. According to Dr. Carter, the hours currently approved are sufficient to address her needs.

11. Dr. Carter testified that Petitioner is using some of the hours approved to care for her dog, which are not permitted under policy. The hours authorized are for the immediate care of the enrollee.

12. Dr. Carter testified that the Petitioner does not have to use her all of hours in a continuous manner. Her daily hours could be distributed into smaller amounts or two installments in the same calendar day.

13. Ms. Simmons testified that she is the care coordinator for Petitioner and spoke with Petitioner on the phone about splitting her hours but she refused to consider the option. Petitioner had told her that she could no longer afford a private caregiver in the afternoon and needs additional services.

CONCLUSIONS OF LAW

14. 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). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

15. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code Rule 59G-1.100(17)(b).

16. Because services were denied, Fla. Admin. Code Rule 59G-1.100(17)(g), assigns the burden of proof to the 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.).

17. The Florida Medicaid policy that applies to the provision of personal care services is the Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”). The Agency’s LTC Policy has been incorporated, by reference, into Fla. Admin. Code Rule 59G-4.192. According to section 4.1 of the LTC Policy, Florida Medicaid Long-term Care plans cover medically necessary services that do not duplicate another service and that meet the criteria specified in the LTC Policy.

18. In section 4.2.1.1 of the LTC Policy, adult companion care is defined as follows:

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.

19. In section 4.2.1.8 of the LTC Policy, home delivered meals is defined as follows:

The provision of nutritionally sound meals delivered to an enrollee’s home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum 33-1/3 percent of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

20. In section 4.2.1.9 of the LTC Policy, homemaker services are defined as:

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.

21. In section 4.2.2.6 of the LTC Policy, personal care provides:

[A]ssistance with ADLs (activities of daily living) and IADLs (independent activities of daily living), 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.

22. Section 1.3.1 and 1.3.9 of the LTC Policy defines ADLs and IADLs, respectively. Finally, according to section 6.2.2 of the LTC Policy, an enrollee's Person Centered Plan of Care considers the availability of natural supports to assist in the enrollee's care.

23. Section 1.3.14 of the LTC Policy defines 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.

24. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy") contains definitions of commonly used terms that are applicable to all sections of Fla. Admin. Code Rule Division 59G, unless specifically stated otherwise in a service-specific coverage policy or rule. The Definitions Policy has been incorporated, by reference, into Fla. Admin. Code Rule 59G-1.010.

25. Section 2.83 of 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 severe 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.

Medically necessary or medical necessity for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

26. Respondent's decision to deny an additional 7 hours of Personal Care Services was based on the fact that the member's currently approved services are adequate to meet her needs; therefore, the additional service hours are not individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment.

27. The record reflects that Petitioner lives alone with her dog. *Supra* ¶ 2.b. Petitioner uses a wheelchair for mobility and a Hoyer lift for transferring. *Supra* ¶ 2.e. Petitioner testified that she cannot do anything other than brush her teeth and feed herself. *Supra* ¶ 9. In Petitioner's case, ██████ testified that she cares for Petitioner 7 days per week, and is with her approximately 5 hours each day, except for Sunday. *Supra* ¶ 5. According to ██████, she arrives at Petitioner's

home around 8:45 a.m. each weekday, and at 9:00 a.m. on Saturday and Sunday. *Id.* Her first task is to help Petitioner dress and transfer out of bed. *Id.* [REDACTED] will then tend to other activities including preparing breakfast (and lunch), housekeeping chores, and shopping. *Id.* Sometimes there is not enough time to complete all the work that needs to be done. *Id.* In general, [REDACTED] will leave for the day around 2:15 p.m., leaving Petitioner alone until her paid caregiver arrives by mid-afternoon. *Id.* Once there, the paid caregiver will prepare Petitioner's dinner and prepare her for bed, which includes transferring her to bed, undressing her, changing her brief, emptying her foley, and leaving an assortment of snacks and drinks next to her bed for the evening. *Supra* ¶ 7.

28. In Respondent's case, Dr. Carter testified that the hours currently approved, 43 hours in total, are sufficient to meet Petitioner's personal care needs. *Supra* ¶ 10. He also pointed out that the authorized hours do not have to be used a continuous manner. *Supra* ¶ 12. Meaning, her daily hours could be used in smaller increments within the same calendar day to provide service in the morning and in the afternoon, which would break down to 3 hours in the morning and another 3 in the afternoon. *Id.* Ms. Simmons testified that this idea was proposed to Petitioner, but she rejected it. *Supra* ¶ 13.


29. Because Petitioner needs total assistance with most of her ADLs and cannot transfer to bed without the assistance of a caregiver, Petitioner has established that additional assistance is needed to help prepare her for bed in the late afternoon. For the fact that Petitioner can no longer afford a private caregiver to help her in the afternoon, Petitioner is without assistance in the late afternoon. Therefore, Petitioner proved by a preponderance the additional hours of personal care services were individualized, specific, and consistent with the symptoms of her

illnesses and not in excess of the Petitioner's needs. Despite testimony that the caregiver provides care for Petitioner's dog, the undersigned did not find that the requested services were intended primarily for the convenience of the Petitioner or Petitioner's caregiver because Petitioner demonstrated that she requires assistance with personal care services for the duration of the seven (7) hours.

DECISION

Respondent's decision to deny an additional 7 hours of personal care services per week is OVERTURNED. Petitioner's request for relief is GRANTED.

DONE AND ORDERED this 28th day of August, 2020, in Tallahassee, Leon County, Florida.

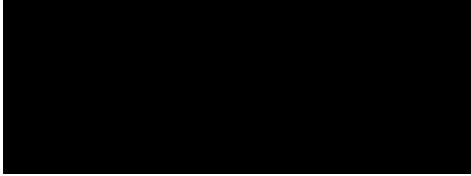
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THOMAS CONGDON, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649
Fax: (850) 487-1423
E-mail: OfficeOfFairHearings@ahca.myflorida.com

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:



**Sunshine State Health Plan, Inc.
SunshineHealth_MFH@centene.com**

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**