



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

FILED

Aug 21, 2020, 11:27 am

OFFICE OF FAIR HEARINGS

████████████████████,

PETITIONER,

AHCA Case No.: 20-FH-████████

Plan ID No.: ██████████

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 28, 2020, at ██████████

APPEARANCES

For the Petitioner: ██████████
Petitioner's Authorized Representative

For the Respondent: Markeshi Lee
Medicaid Fair Hearings Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny fourteen (14) hours per week of Adult Companion Care services was incorrect.

PRELIMINARY STATEMENT

Petitioner's Authorized Representative and daughter in-law, [REDACTED], ([REDACTED]) appeared on behalf of the Petitioner.

Markeshi Lee, Medicaid Fair Hearings Specialist for Humana Medical Plan, Inc ("Humana") appeared on behalf of Respondent. Dr. Clinton Jules ("Dr. Jules"), Medical Director - Long Term Care for Humana, attended as a witness for Respondent.

Lisa Sanchez, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency"), 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 eighty-seven (287)-page Statement of Matters packet. The Statement of Matters packet included a case summary page, a Case Details print out; the Notice of Adverse Benefit Determination ("NABD"), dated April 20, 2020; the Notice of Plan Appeal Resolution ("NPAR"), dated June 12, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated June 16, 2020; an authorization screenshot; a thirty-two (32) page facsimile transmission with Petitioner's medical records; a Plan of Care, dated April 7, 2020; Humana's Florida Medicaid Member Handbook; and the Florida Medicaid Statewide Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy");. Absent an objection from the Petitioner Authorized Representative the undersigned admitted the two hundred and eighty-seven (287)-page Statement Matters packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] years old and diagnosed with bladder and bowel incontinence, arthritis, and utilizes a pacemaker. Respondent's Composite Exhibit 1 at 33.

3. Petitioner is currently receiving the following care services: twenty-one (21) hours per week of Personal Care services; eight (8) hours per week of Homemaker services; and seven (7) hours per week of Adult Companion Care Services *See Id.* at 85, 88, and 93. Petitioner also receives seven (7) home delivered meals per week. *See Id.* at 87.

4. Petitioner lives in an efficiency attached to her daughter in-law's home. 7/28/20 Hearing Record (hereinafter "H.R.") at 18:00-18:13. Petitioner's daughter in-law provides care outside of the hours when Petitioner's caregiver is not present. *Id.* at 15:35-16:00. Petitioner's husband previously provided companionship but passed away April 13, 2020. Respondent's Composite Exhibit 1 at 32. Petitioner requires total assistance with light housekeeping and preparing meals. Petitioner has assistance with those tasks most of the time. *Id.*

5. Petitioner requested twenty-one (21) hours per week of Adult Companion Care services. Petitioner received an NABD denying Petitioner's request, dated April 20, 2020. Respondent partially denied the request. The NABD denied fourteen hours of Adult Companion Care services and explained the following rationale as to why that portion of 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:

...

You have asked for hours in the home 21 additional adult companion. The hours that you have asked for are not approved. We will approve 7 more hours of adult companion care for your. You are a ■ year old woman and you need help with your bathing, dressing, grooming and transferring. You have multiple medical problems and your husband recently died. You live near your family in an efficiency apartment. You have not had an acute change in condition in the past 30 days or recent hospitalization or emergency room visit. You are not total care. You do not need a tube to help you to breathe or eat. The hours we approve will provide you with more care. If you have increased anxiety you may need to see your doctor and discuss how you are feeling and can be helped .The additional hours/ supplies were denied by the Medical Director because service is not medically necessary. You are already receiving services and/or consumable medical supplies that should meet your needs. This decision was based on the Florida Medicaid Statewide Medicaid Managed Care Long Term Care Program Coverage Policy.

Id. at 8 through 9.

6. Petitioner requested a plan appeal and received an NPAR dated June 12, 2020, upholding the denial. The NPAR explained as follows:

The reason for the decision indicates that you appealed a denial for 14 additional Companion Care hours. We reviewed all the information provided to us and we have upheld the denial because the requested services are not medically necessary. The member has other services at home that should meet your current needs. She has 35 hours of total home assistance. She has not had any recent hospital stays or emergency room visits. She does not require total assistance. She lives next to her family in an efficiency.

Id. at 18.

7. ██████ testified that she is the only individual who provides assistance to Petitioner outside of the caregiver provided by Respondent. Petitioner regularly sleeps in ██████' living room and ██████ accompanies her by sleeping on the couch. Additionally, ██████ stated that efforts spent caring for Petitioner are weighing on her and that she needs additional assistance caring for Petitioner in the evenings.

8. During the hearing, Dr. Jules testified that he reviewed Petitioner's 701B and saw no changes justifying a change in Petitioner's Adult Companion Hours. Dr. Jules noted that Petitioner's needs with light housekeeping are met by the caregiver and Petitioner's daughter in-law. Also, Dr. Jules noted no reported change on the 701B as to Petitioner's incontinence that would cause Petitioner to require additional assistance with laundry.

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.

...

4.2.1.15 Respite Care

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee's natural supports on a planned or an emergency basis.

...

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. In the instant case, Petitioner requested an additional twenty-one (21) hours per week of Adult Companion Care services. The record and evidence reflect that Respondent partially denied

Petitioner's request by denying fourteen hours (14) per week because the Adult Companion Care Services were not medically necessary.

16. Adult Companion Care services are provided 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.

17. Here, Petitioner is receiving thirty-six hours of care services and lives with her daughter in-law in an attached efficiency. *See supra* ¶ 3 through ¶ 4. ██████ testified that she aids Petitioner when the caregiver is not present. *See supra* ¶ 7. A component of medical necessity is that services must 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. The 701B shows that Petitioner normally has assistance with light housekeeping tasks and preparing meals. As noted by Dr. Jules, the 701B does not show that Petitioner has no changes to her incontinence which requires additional laundry assistance. *See supra* ¶ 8. The record does not show any manner in which Petitioner's social enrichment needs are not being met. Petitioner's needs for Adult Companion Care appear to be met by the care provided by the caregiver and ██████. Petitioner has not met the burden of proof to demonstrate that the services requested are 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.

18. The record reflects that ██████ is the sole natural support providing assistance to Petitioner. *See supra* ¶ 7. ██████ testified that she needed additional hours approved for the evening to help care for Petitioner due to the personal strain on herself. *Id.* An additional

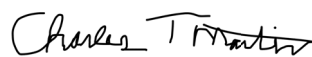
component of medical necessity is that services must not be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. Adult Companion Care services are not intended to relieve natural supports. Relief for natural supports is addressed through the provision of Respite Care services. Based on [REDACTED]'s testimony, the request was made in part to seek relief for the hardship associated with acting as a natural support for Petitioner. Accordingly, Petitioner has not met the burden of proof to demonstrate that the services requested are not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

19. 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 fourteen (14) 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 21st day of August, 2020, in Tallahassee, Leon County, Florida.



Charles Martin
20-FH [REDACTED]
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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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