



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

FILED

Oct 27, 2020, 11:02 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 September 28, 2020, at [REDACTED].

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

David Jones
State Fair Hearing Coordinator
UnitedHealthcare of Florida, Inc.

STATEMENT OF ISSUE

The first issue is whether the instant case should be dismissed for mootness.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of five (5) hours per week of adult companion care services for one (1) month was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and daughter, ("██████████"), represented and provided testimony on behalf of Petitioner at the hearing.

Ms. Davida Jones, State Fair Hearing Coordinator, for UnitedHealthcare of Florida, Inc. ("United"), appeared as a representative for Respondent. Dr. Sloan Karver ("Dr. Karver"), LTC Medical Director for United, appeared as a witness for Respondent.

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

Prior to hearing, Petitioner sent to the Office of Fair Hearings an eight (8) page evidence packet. The evidence packet included the following documents: an email from ██████████, dated August 24, 2020; and Respondent's Appeal Review. Absent an objection from Respondent, the undersigned admitted the eight (8)-page evidence packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and fifty-eight (258)-page evidence packet. The evidence packet included the following documents: Medicaid Fair Hearing Statement of Matters cover page; Petitioner's address; blank page; Notice of Adverse Benefit Determination ("NABD"), dated May 29, 2020; CSP – General Request Form, dated June 1, 2020; letter from Respondent, dated June 1, 2020 (in English and Spanish); Respondent's internal records on Petitioner; Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated May 26, 2020; Member Appeal Review; Notice of Plan Appeal Resolution ("NPAR"), dated June 9, 2020 (in English and Spanish); Interpreting Services International, Inc. Certification, dated June 12, 2020; Interpreting Services International, Inc. Certification, dated June 15, 2020; Exhibit 2 (References) Cover Page – Long Term Care;

Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1 in its entirety; Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”); Florida Statewide Medicaid Managed Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”); Florida Medicaid Authorization Requirements Policy (June 2016); Florida Medicaid Personal Care Services Coverage Policy (November 2016); Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); Home Health Visit Services Fee Schedule, dated January 1, 2017; Personal Care Services Fee Schedule, dated January 1, 2017; Private Duty Nursing Services Fee Schedule, dated January 1, 2017; Participant Direction Option Manual; 42 C.F.R. § 441.480; Florida Medicaid Hospice Services Coverage Policy (June 2016); 42 C.F.R. Part 418, Subpart C; sections 400.462, 400.609, 400.6105, and 409.910, Florida Statutes; and another copy of Fla. Admin. Code R. 59G-1 in its entirety. Absent an objection from the Petitioner, the undersigned admitted the two hundred and fifty-eight (258)-page packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of United’s Long-term Care (“LTC”) plan. *See* Respondent’s Composite Exhibit at page 19. United 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 Fair Hearing, Petitioner is eighty-five (85) years old as of the date of the hearing. *Id.* Petitioner has arthritis, high blood pressure, heart problems, incontinence, and gout, and she suffers from depression. *Id.* at 32 and 33. Petitioner is in need of supervision. *Id.* at 35. On a temporary basis, Petitioner is living with her daughter, [REDACTED], who does not work and is willing to assist Petitioner as needed. *Id.* at 21, 36, and 42. Petitioner experienced a mental

health crisis and attempted suicide in May 2020. *Id.* at 21 and 35. She was hospitalized under the Baker Act on ████████ 2020, and was discharged from the hospital on ████████ 2020. *Id.* at 21. Petitioner is expected to return to her own home where she lives with two other daughters. *Id.* at 21 and 42. One daughter is disabled. *Id.* The other daughter works full-time, and she does not assist with Petitioner's care. *Id.* at 27.

3. Regarding Petitioner's Activities of Daily Living ("ADLs"): Petitioner needs assistance (but not total help) with bathing and dressing. *Id.* at 30. Petitioner needs supervision or prompt for eating, using the bathroom, transferring, and walking/mobility. *Id.*

4. Regarding Instrumental Activities of Daily Living ("IADLs"): Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, and shopping. *Id.* at 31. Petitioner needs assistance (but not total help) with managing medication and using transportation. *Id.* Petitioner needs supervision or prompt with using the telephone. *Id.* Regarding Petitioner's mental condition, Petitioner is forgetful or easily confused several days per week. *Id.* at 35.

5. Petitioner receives sixteen (16) hours per week of personal care services and five (5) hours per week of homemaker services. *Id.* at 46. On May 26, 2020, Petitioner also requested five (5) hours of temporary adult companion care services for one month. *Id.* at 48. On May 29, 2020, Respondent issued an NABD denying the requested adult companion care services. *Id.* at 4-7. The NABD explained the basis of the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reason(s) 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 that you cannot be left home alone.

You are getting 16 hours a week of personal care to help you.

You get 5 hours a week of homemaker services to help you.

You live with your family who you can be social with.

In my clinical opinion, your needs are being met by your current services and support.

Id. at 5.

6. On June 1, 2020, Petitioner requested a plan appeal. *Id.* at 15. Petitioner received an NPAR dated June 9, 2020, upholding the denial of adult temporary companion care services. *Id.* at 64 -

66. The NPAR explained as follows:

You asked for adult companion care. You would like 5 hours a week for one month. Based on my clinical judgment, we cannot approve this because it is not medically needed. CC is to cue you and socialize with you. You have help you can socialize with. You have personal care services (16 hours a week) you can talk too. You have homemaker services (5 hours/week) you can talk to. You can also talk and spend time with your family. This is why we cannot approve what you asked for. Please talk about this with your doctor.

Id. at 64 - 65.

7. Dr. Karver asserted that Petitioner's request for temporary adult companion care services is moot because more than one month has passed since the request was submitted. She further argued that the services were intended to be temporary (lasting one month) while [REDACTED] made arrangements for Petitioner to have a live-in nurse. *Id.* at 60. Dr. Karver further argued that the requested services are not medically necessary because Petitioner currently lives with her adult daughter, [REDACTED], who does not work and is willing to assist Petitioner. She asserted that Petitioner is not at risk of social isolation because she is not left alone by [REDACTED] and she has opportunities to socialize with her family and paid caregivers. Dr. Karver reiterated that Petitioner will continue to receive 16 hours per week of personal care and 5 hours per week of homemaker services to meet her care needs.

8. [REDACTED] denied that she requested temporary services for one month. She argued that she is ultimately seeking 24-hour care for Petitioner, but she would "appreciate the most hours she [can] get." *Id.* at 52. [REDACTED] argued that Petitioner needs to be closely monitored so that she does not try to hurt herself again. *Id.* at 52.

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 section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 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 a new service, Fla. Admin Code R. 59-1.100(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 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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual’s medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

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)

...

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.

...

1.3.16 Natural Supports

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

4.0 Coverage Information

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 Specific Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

...

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 Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

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.

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

...

LTC Policy at pages 1-8.

13. The Florida Medicaid Definitions Policy (August 2019) (“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

Mootness

14. In this case, Petitioner requested 5 hours of temporary adult companion care services for one month. *See supra* ¶ 6. Petitioner’s request was submitted on May 26, 2020. *See supra* at ¶ 5. Respondent argues that the instant case is moot because, based on the information provided, there does not appear to be any relief that can be granted to the Petitioner since more than one month has passed since Petitioner’s request for temporary services.

15. Pursuant to Rule 59G-1.100(9)(b)(6), Florida Administrative Code, the Hearing Officer is authorized to dismiss a request for a Fair Hearing because it is moot. The Florida Supreme Court

explained in *Godwin v. State*, 593 So.2d 211 (1992) (citing *Dehoff v. Imeson*, 153 Fla. 553 (1943)) that “[a]n issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect. . . A case is ‘moot’ when it presents no actual controversy or when the issues have ceased to exist.”

16. The record demonstrates that Petitioner requested 5 hours of temporary adult companion care services for one month, *supra* ¶ 6, in addition to the 16 hours per week of personal care services and 5 hours per week of homemaker services Petitioner currently receives. See *supra* ¶ 5. The testimony and record evidence clarifies that ██████████ was attempting to get as many hours of services as possible after Petitioner’s mental health crisis. See *supra* ¶ 8. There is no documentation in the record indicating that Petitioner requested a specific start date for the temporary adult companion care services. Therefore, there is a lack of documentation to show that the requested month of temporary services has expired. Accordingly, Respondent did not show that the controversy is fully resolved, and Petitioner’s request for a Fair hearing is not be dismissed for mootness.

Adult Companion Care Services

17. Petitioner requested 5 hours per week of temporary adult companion care services for one month. See *supra* ¶ 5. In the NABD, dated May 29, 2020, Respondent denied Petitioner’s request for temporary hours. See *supra* ¶ 5. The NPAR dated June 9, 2020, explained that the temporary adult companion care services at issue in this case were denied because they are not medically necessary.

18. As provided in the LTC Policy, adult companion care service is intended 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.” See supra ¶ 12. Dr. Karver testified that Petitioner needs “hands-on” personal care and homemaker services that will be continued. See supra ¶ 7. However, she asserted that the requested adult companion care services are in excess of Petitioner’s needs because Petitioner lives with her family and has opportunities to socialize with her family and paid caregivers. See supra ¶ 7.

19. The 701B states that Petitioner requires supervision due to depression and a recent hospitalization following a suicide attempt. See supra ¶ 2. The box “[s]everal days” was checked for the following behavior: forgetful or easily confused; the box “[o]nce” was checked for the following behavior: intentionally injures or harms herself. See supra ¶ 4. With regard to Petitioner’s socialization needs, the testimony and evidence demonstrate that Petitioner does not have an unmet need for adult companion care services.

20. Petitioner may have some need for supervision based on the 701B. However, Petitioner currently lives with her daughter, [REDACTED], who does not work and is willing to assist Petitioner as needed. See supra at ¶ 2 and 8. Petitioner is expected to return to her own home where she lives with two other daughters who can also socialize with and supervise Petitioner. See supra at ¶ 2, 5 and 6. Petitioner already receives either some or total assistance with her ADLs and IADLs. See supra at ¶ 3 and 4. Petitioner does not need supervision with tasks such as meal preparation, laundry, and light housekeeping because all of those services are performed for her through paid homemaker services. See supra at ¶ 4 - 6. In light of Petitioner’s living situation, natural supports, and approved services, Petitioner did not demonstrate that the requested services are individualized, specific, and consistent with her symptoms and not in excess of her needs. Thus, Petitioner did not show that the requested services are medically necessary.

21. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of 5 hours per week of temporary adult companion care services for one month was in correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of adult companion care is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and ORDERED this 27th day of October, 2020, in Tallahassee, Leon County, Florida.



Laura Gallagher
20-FH [REDACTED]
2020.10.27 10:36:48
-04'00'

LAURA GALLAGHER, 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
Email: 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:



UnitedHealthcare of Florida, Inc.
UHC_Hearings@uhc.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com