



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

**FILED**

Sep 15, 2020, 9:03 am

OFFICE OF FAIR HEARINGS

██████████,

PETITIONER,

AHCA Case No.: 20-FH-██████████

Plan ID No.: ██████████

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

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██████████,

PETITIONER,

AHCA Case No.: 20-FH-██████████

Plan ID No.: ██████████

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 19, 2020, at ██████████.

**APPEARANCES**

For the Petitioner:

██████████

Petitioner's Authorized Representative

For the Respondent:

David Jones  
Grievance and Hearing Coordinator  
UnitedHealthcare Of Florida, Inc.

**STATEMENT OF ISSUE**

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate forty-one (41) hours per week of Personal Care services was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate thirteen (13) hours per week of Homemaker services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner Authorized Representative and mother, [REDACTED], (" [REDACTED]"), appeared on behalf of the Petitioner. [REDACTED] (" [REDACTED]"), Petitioner's father, attended 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 Director for United, attended as a witness for Respondent.

Doris Rivera, Medical/Healthcare Program Analyst for the Agency for Health Care Administration ("Agency"), appeared as an observer.

Prior to the hearing, Petitioner submitted a letter from [REDACTED], dated [REDACTED] 2020. Absent an objection from Respondent the letter was admitted as Petitioner's Exhibit 1. Petitioner also submitted additional documents, numbering seven (7) pages, prior to the hearing. These included an email with the attached documents: the first page of the Order to Show Cause, dated July 24, 2020; the Designation of Authorized Representative, signed July 29, 2020; a Designation of Health Care Surrogate, signed October 22, 2014, and a letter signed by [REDACTED]

██████████, dated ██████████ 2020. Absent an objection from Respondent, the documents were admitted as Petitioner's Composite Exhibit 2.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and twenty-one (321)-page statement of matters packet. The statement of matters packet included a summary page, the Notice of Adverse Benefit Determination ("NABD"), dated June 24, 2020; a CSP - General Request Form, dated June 25, 2020; a plan appeal acknowledgment, dated June 26, 2020; a plan request for Petitioner's medical records, dated June 26, 2020; an eighty-three (83) page facsimile transmission, beginning with a facsimile cover sheet for Petitioner's medical records, and including Petitioner's medical records; a Print HSC History; a Florida Department of Affairs 701B Comprehensive Assessment ("701B"), dated June 9, 2020; an Appeal Review; the Notice of Plan Appeal Resolution ("NPAR"), dated July 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 Fee Schedule (January 1, 2017); the Personal Care Services Fee Schedule, dated January 1, 2007; the Private Duty Nursing Services Fee Schedule, dated January 1, 2007; 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 (2018); Fla. Stat. § 409.910 (2018); and Fla. Stat. § 400.462 (2018). Absent an objection

from the Petitioner's Authorized Representative, the undersigned admitted the three hundred and twenty-one (321)-page statement of 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. As of the date of the hearing, Petitioner is twenty-five (25) years old. Respondent's Composite Exhibit 1 at 112. Petitioner is diagnosed with Chronic Obstructive Pulmonary Disease (COPD), [REDACTED], Osteoporosis, bowel and bladder incontinence, and Cardio Myopathy. *Id.* at 121. Petitioner is paralyzed from the waist down and utilizes a percutaneous endoscopic gastronomy (PEG) tube for feedings and a ventilator to assist with breathing. *Id.*

3. Petitioner requires total assistance and always has assistance with bathing, dressing, eating, using the bathroom, transferring, and mobility. *Id.* at 117.

4. Petitioner requires total assistance with heavy chores light housekeeping, managing medication, and using transportation. Petitioner requires some assistance with shopping, using the telephone, and managing money. *Id.* at 117 through 118. Petitioner always has assistance with these tasks. *Id.* at 119.

5. Petitioner currently receives sixteen hours (16) per day of Attendant Care services, from noon to 8:00 p.m. and midnight to 8:00 a.m. *Id.* at 41. Petitioner receives the following therapy services: daily respiratory therapy; occupational therapy two (2) times per week for one (1) hour per session; and physical therapy two (2) times per week for one (1) hour per session. Hearing

Record 8/19/20 Hearing Record (hereinafter "H.R.") at 14:00-15:27 and 19:24-20:00. Petitioner lives with his parents who provide care and assistance for Petitioner when a nurse is not present. Respondent's Composite Exhibit 1 at 134. [REDACTED] is diagnosed with left bundle-branch block, unilateral primary osteoarthritis in both knees, obstructive sleep apnea, and major depressive disorder. Petitioner's Composite Exhibit 2 at 7. [REDACTED] is not employed and stays home full-time with Petitioner. Respondent's Composite Exhibit at 134. [REDACTED] works outside of the home from 10:00 a.m. through 7:00 p.m. on weekdays. H.R. 25:38-25:50.

6. Petitioner was previously receiving forty-one (41) hours per week of personal care services and thirteen (13) thirteen hours per week of homemaker services. Respondent terminated both services, in an NABD dated June 24, 2020, and approved the Attendant Care services Petitioner is currently receiving. The NABD stated 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 facts that we used to make our decision are:

Your assessment tells us that your needs have changed.

You are bedbound. You are on a ventilator. You need help with suctioning.

You need a skilled nurse to help with the breathing tube, tube feeding, and suctioning.

The nurse can also help with your medications.

The aide cannot help you with this.

The nurse can also help you with bathing and cleaning your room.

I will approve the 16 hours a day of attendant care you asked for to help you.

I will approve daily respiratory therapy for 6 months.

You live with family who helps you every day.

Your personal care and homemaker services will stop on July 4, 2020.

In my clinical opinion, your needs can be met with 16 hours a day of attendant care and respiratory therapy one visit per day.

Respondent's Composite Exhibit 1 at 4 through 5.

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

Part 1 of 2: You asked that personal care services (PC) of 41 hours a week not be stopped. Based on my professional judgment, we are stopping your PC hours. They are no longer needed. Your condition changed when you returned from the hospital. You now receive Attendant Care (AC) of 16 hours daily to help with your skilled needs. The AC can also help with your bathing and cleaning your room, if needed. PC services are not medically needed and a duplication of services. This is why your PC 41 hours/week have been stopped. Please talk about this with your doctor.

Part 2 of 2: You asked not to stop homemaker (HMK) services of 13 hours/week. Based on my professional judgment, we are stopping your HMK hours. They are no longer needed. Your condition changed when you returned from the hospital. You now receive Attendant Care (AC) of 16 hours daily to help with your skilled needs. The AC can also help with your bathing and cleaning your room, if needed. HMK services are not medically needed and a duplication of services. This is why your HMK 13 hours/week have been stopped. Please talk about this with your doctor.

Respondent's Composite Exhibit 1 at 141 through 142.

8. ██████ testified that she suffers from health issues, including a heart condition, that affects her ability to care for Petitioner. ██████ also testified that Petitioner is large and that she struggles with turning him in bed and that he could suffer injury if moved incorrectly. ██████ testified that neither he nor ██████ has requested assistance, from the Attendant Care service providers, with cleaning Petitioner's room or doing Petitioner's laundry. ██████ only expects the providers to engage skilled nursing services.

9. During the hearing, Dr. Karver testified that Respondent considered ██████'s conditions when terminating Petitioner's Homemaker and Personal Care Services. The Attendant Care Services are intended to replace the Homemaker and Personal Care Services. Additionally, Dr. Karver testified that Petitioner can be turned in bed with the help of therapy providers who visit Petitioner in the home or by either of Petitioner's parents with an assistive device. Dr. Karver also testified that Petitioner can utilize Attendant Care services to meet homemaking needs.

#### **CONCLUSIONS OF LAW**

10. 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).

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

12. Because Respondent is terminating services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof in both issues to Respondent. 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.

13. 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

...

#### **4.2.1.9 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.

...

#### **4.2.2.2 Attendant Nursing Care**

In accordance with Rule 59G-4.261, F.A.C., for enrollees under the age of 21 years. To provide nursing care of both a supportive and health related nature, specific to the needs of a medically stable, physically handicapped enrollee age 21 and older who requires more individual and continuous care than an intermittent nursing visit. The scope and nature of these services do not otherwise differ from private duty nursing services furnished to persons under the age of 21 years.

...

#### **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.

14. 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.

15. The PDN Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.261, governs Attendant Care services available under Florida Medicaid. The PDNS Policy provides the following with respect to excluded services:

**1.1 Description**

Florida Medicaid private duty nursing (PDN) services provide medically necessary skilled nursing to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.

...

**1.3.5 Home Health Services**

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), PDN, and personal care services.

...

**5.1 General Non-Covered Criteria**

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0
- The recipient does not meet the eligibility requirements listed in section 2.0
- The service unnecessarily duplicates another provider’s service

**5.2 Specific Non-Covered Criteria**

Florida Medicaid does not reimburse for the following:

A skill level other than what is prescribed in the physician order and approved POC

- Babysitting
- Certification of the POC by a physician
- Nursing assessments related to the POC
- Professional develop Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient (except as described in section 4.2.1)
- Services provided in any of the following locations:

- Hospitals
- Intermediate care facilities for individuals with intellectual disabilities
- Nursing facilities – Prescribed pediatric extended care centers
- Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC

Travel time to or from the recipient's place of residence Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

### Personal Care Services

16. Respondent terminated Petitioner's forty-one (41) personal care hours per week which were replaced with sixteen (16) hours per day, of Attendant Care services. *See supra* ¶ 6 and 9. On the NABD, Respondent indicated that the request did not meet the criteria for medical necessity. *See supra* ¶ 6. At the hearing, Dr. Karver testified that Petitioner's IADLs and ADLs can be met with the provision of the Attendant Care services. *See supra* ¶ 9. As provided in the LTC Policy, services must be medically necessary. A component of medical necessity is that services must [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. *Supra* ¶ 14. As shown in the 701B Petitioner has assistance with all of his IADLs and ADLs. *See supra* ¶ 4 through ¶ 5 Attendant Care services includes home health services that provide for IADLs and ADLs. *See supra* ¶ 9 and ¶ 15. The PDN Policy does not exclude the provision of tasks associated with personal care services. *See supra* ¶ 15. The record shows that [REDACTED] is alone with Petitioner from when [REDACTED] leaves for work until noon. *See supra* ¶ 5. Dr. Karver suggested that Petitioner's Attendant Care services can be restructured to reduce or eliminate the time [REDACTED] is home alone with Petitioner. Additionally, Dr. Karver testified that the therapy providers can assist with turning Petitioner and be scheduled when Attendant Care providers are not present. *See supra*

¶ 9. In light of the 701B which shows that Petitioner always has assistance with ADLs and IADLs, the amount of Attendant Care services provided, the availability of natural supports, and therapy services provided to Petitioner, the undersigned concludes that Respondent has met burden of proof to show that termination of personal care services was correct due to being in excess of Petitioner's needs.

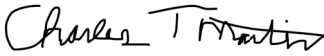
#### **Homemaker Services**

17. Respondent terminated thirteen (13) hours per week of Homemaker services that Petitioner received prior to the provision of Attendant Care Services. *See supra* ¶ 6. On the NABD, Respondent indicated that the request did not meet the criteria for medical necessity. *Id.* As provided in the LTC Policy, Homemaker services are to provide for general household activities, such as laundry or meal preparation. *Supra* ¶ 14. The 701B shows that Petitioner always has assistance with general household activities. *See supra* ¶ 4. ██████ testified that he and ██████ have never asked the staff providing Attendant Care services to Petitioner to assist with housekeeping tasks like cleaning Petitioner's room or doing Petitioner's laundry. *Supra* ¶ 8. Dr. Karver testified that they are available to assist with homemaker services as part of their duties. *Supra* ¶ 9. The PDN Policy does not exclude the provision of tasks associated with Homemaker services. *See supra* ¶ 15. Considering, the hours of Attendant Care services provided to Petitioner, the assistance Petitioner's parent's provide, and the 701B showing that Petitioner always has assistance with general household activities, the undersigned concludes that Respondent has proved by a preponderance of the evidence that Respondent's termination of thirteen (13) hours per week of Homemaker Services was correct due to being in excess of Petitioner's needs.

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

Respondent's termination of forty-one (41) hours per week of Personal Care services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of forty-one (41) hours per week of Personal Care services is **DENIED**. Respondent's termination of thirteen (13) hours per week of Homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of thirteen (13) hours of Homemaker services is **DENIED**.

**DONE and ORDERED** this 15th day of September, 2020, in Tallahassee, Leon County, Florida.

 Charles Martin  
20-FH[REDACTED] & 20-FH[REDACTED]  
2020.09.15 08:05:59 -04'00'

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**CHARLES MARTIN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
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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:**

[REDACTED]



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