

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

Davida Jones, State Fair Hearing Coordinator for UnitedHealthcare Plan, 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.

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

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a twenty-seven (27)-page evidence packet. The evidence packet included: an e-mail, dated September 23, 2020; Petitioner medical record, dated [REDACTED] 2020, including a letter from [REDACTED] dated August 24, 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2019; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; and Petitioner medical record, dated [REDACTED] 2020. Absent an objection from the Respondent, the undersigned admitted the twenty-seven (27)-page 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 (250)-page evidence packet. The evidence packet included: a summary of the instant case; a Notice of Adverse Benefit Determination ("NABD"), dated April 7, 2020; CSP – General Request Form, dated June 15, 2020; a letter from Respondent, dated June 15, 2020; an e-mail from Respondent, dated June 15, 2020; Print HSC History; a Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated January 6, 2020; an Appeal Review; a Notice

of Plan Appeal Resolution (“NPAR”), dated June 17, 2020; a letter from Respondent in Spanish, dated June 15, 2020; ISI Language Solutions Certification, dated June 19, 2020; a letter from Respondent in Spanish, dated June 17, 2020; ISI Language Solutions Certification, dated June 24, 2020; Exhibit 2 (References) Cover Page –Long Term Care; 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 (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); section 400.6105 of the Florida Statutes (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from the Petitioner, the undersigned admitted the two hundred and fifty (250)-page 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 [REDACTED] years old. See page 20 of Respondent’s Composite Exhibit 1. Petitioner is diagnosed with Diabetes Mellitus Type 2, Diabetes Neuropathy, Osteoarthritis Cervical, Senile Dementia with abnormal behavior, Advanced Atrophic non exudative age

related Macular Degeneration in both eyes, Pseudophakia in both eyes, Major Depression Disorder, and pulmonary hypertension. See page 3 of Petitioner's Composite Exhibit 1. Petitioner has blurred vision and is legally blind. *Id.* at 11 and 27. Petitioner has balance problems. See page 30 of Respondent's Composite Exhibit 1.

3. In an evaluation, dated [REDACTED] 2020, Petitioner's provider, [REDACTED] reported the following:

Patient is referred for evaluation of dementia with behavioral disturbances. Patient presents mood disturbance. Anxiety, irritability, mood lability, and elation noted. She has been paranoid with disorganized behavior. She has been paranoid with disorganized behavior. She attempts to leave her home impulsively. Appears to be hallucinating and responding to stimuli. Her daughter reports that patient appears to be hallucinating. This patient is unable to remember simple words or names of people. Not able to maintain complex goal directed conversation. Unable to perform simple ordinary tasks or follow simple directions. Adult supervision necessary in order to survive. She is unable to take medications on her own.

Page 4 of Petitioner's Composite Exhibit 1.

4. Petitioner's activities of daily living ("ADLs") are as follows: for bathing and dressing, Petitioner needs assistance (but not total help); for eating, using the bathroom, and transferring, Petitioner needs no assistance; and for walking/mobility Petitioner needs supervision or prompting. *Id.* at 30. Petitioner's instrumental activities of daily living ("IADLs") are as follows: for heavy chores, light housekeeping, managing money, preparing meals, and shopping, Petitioner needs total assistance (cannot do at all); for using the telephone, Petitioner needs supervision or prompting; and for managing medication and using transportation, Petitioner needs assistance (but not total help). *Id.* at 30 – 31.

5. Petitioner currently receives five (5) hours of personal care services, weekly, five (5) hours of adult companion care services, weekly, and five (5) hours of homemaker services, weekly. *Id.* at 5.

6. Petitioner formerly lived with [REDACTED] and her granddaughter. *Id.* at 22. As testified to by [REDACTED], Petitioner's granddaughter no longer resides with [REDACTED] and Petitioner.

7. Petitioner requested ten (10) additional hours per week of adult companion care services. Petitioner's request was denied in the NABD dated April 7, 2020. *Id.* at 4 – 10. 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 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 you are able to be home alone safely.

You live with family.

You are getting 5 hours a week of personal care, 5 hours a week of homemaker services, and 5 hours a week of companion care to help you.

You can be social with the aides who visit you and your natural supports.

In my clinical opinion, your needs for companionship are being met by your services and natural supports.

Pages 4 – 5 of Respondent’s Composite Exhibit 1.

8. Petitioner requested a plan appeal and received an NPAR dated June 17, 2020, upholding the denial. *Id.* at 56 – 61. The NPAR explained as follows:

You asked for Adult Companion Care. You would like 10 more hours a week. We cannot approve this because it is not medically needed. Based on my professional judgment, these hours are in excess of your need. You have fifteen hours a week of paid help that you can socialize with. You can also talk and spend time with family. This is why we cannot approve what you asked for. Please talk about this with your doctor.

Page 56 of Respondent’s Composite Exhibit 1.

9. On July 30, 2020, Petitioner requested a Fair Hearing to challenge the denial of adult companion care. On September 4, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 24, 2020, at [REDACTED]

10. As testified to by [REDACTED], [REDACTED] leaves for work at 9:30 a.m. and may work until 7:00 p.m. or 8:00 p.m. in the evening. [REDACTED] explained that she was concerned with Petitioner being left alone because she hallucinates and has dementia. As testified to by [REDACTED], [REDACTED], Petitioner’s aide usually arrives around 2:00 p.m. and cares for Petitioner until 5:00 p.m. As testified to by [REDACTED], there are no friends or family members that can provide care for Petitioner while [REDACTED] is at work.

11. Dr. Karver is the Long Term Care Medical Director for United. Dr. Karver testified that she did not feel that additional hours of adult companion care were necessary because of companionship she receives from [REDACTED].

CONCLUSIONS OF LAW

12. 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).

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

14. Because Petitioner is requesting a new service, 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.)

15. 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

...

1.3.9 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.

...

16. 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.

17. The 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

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.

18. Petitioner requested ten (10) hours of adult companion care. In an NABD, dated April 7, 2020, Respondent denied Petitioner’s request. See pages 4 through 10 of Respondent’s Composite Exhibit 1. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessary criteria was the basis for its decision. *Id.* at 4. The NABD explained that Petitioner’s request was not medically

necessary because the assessment “tells us that you are able to be home alone safely” and Petitioner lives with family. *Id.* at 5.


19. As provided in the LTC Policy, adult companion care is 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.” As provided in the record, Petitioner suffers from dementia, experiences hallucinations, and has blurred vision. *See* pages 3, 4, and 11. Further, Petitioner’s provider opined that “supervision [is] necessary in order to survive.” *Id.* at 4. Petitioner lives with [REDACTED], who works from approximately 9:30 a.m. until the evening, which can be as late as 7:00 p.m. or 8:00 p.m. *See supra* ¶ 10. Petitioner’s aide is present from 2:00 p.m. until 5:00 p.m., thus Petitioner is alone for a minimum of five (5) hours each day [REDACTED] is at work. Based on the record, Petitioner has shown that supervision is necessary to ensure her safety based on the opinion of her provider, her hallucinations, and dementia diagnosis.

20. As adult companion care is intended to provide supervision when necessary to protect an enrollee’s health or safety, Petitioner has shown that her request is “individualized specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment.” Moreover, as Petitioner is left alone for at least (5) hours each day, Petitioner has shown that her request is not “in excess of [her] needs” and is not “intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” Further, Petitioner’s request may enable her to “live . . . in the setting of her choice.” Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner proved by a preponderance of the evidence that Respondent’s denial of adult companion care was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of adult companion care is **REVERSED**. Petitioner's appeal based on Respondent's denial of adult companion care is **GRANTED**.

DONE AND ORDERED this 23rd day of October, 2020, in Tallahassee, Leon County, Florida.

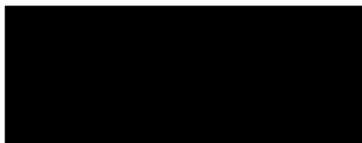
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.

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