



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

FILED

Nov 03, 2020, 11:03 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 October 9, 2020, at [REDACTED]

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner's Authorized Representative

For the Respondent: Davida Jones
Grievance and Hearing Coordinator
UnitedHealthcare of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny thirty-nine (39) hours of Adult Companion Care services per week was incorrect.

PRELIMINARY STATEMENT

Petitioner's Authorized Representative, and daughter, [REDACTED] (" [REDACTED] ") appeared on behalf of the 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 Medical Director for United, attended as a witness for Respondent.

Raul, from Language Line Solutions, Interpreter ID number 220462, provided interpreter services on behalf of Petitioner.

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 fifty-four (254)-page Statement of Matters packet. The Statement of Matters packet included: A Statement of Matters cover page; the Notice of Adverse Benefit Determination ("NABD"), dated July 7, 2020; a CSP - General Request Form - [REDACTED], dated July 10, 2020; a plan appeal acknowledgment, dated July 10, 2020; Respondent emails from July 10, 2020, through July 22, 2020, relating to the plan appeal review; a letter signed by [REDACTED], dated [REDACTED] 2020; a Print HSC History; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated September 24, 2019; an Appeal Review; the Notice of Plan Appeal Resolution ("NPAR"), dated July 22, 2020; a plan appeal acknowledgment, in Spanish, dated July 13, 2020; the NPAR, in Spanish, dated July 22, 2020; an "Exhibit 2 (References) Cover Page"; 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 Services 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); Fla. Stat. § 400.6105 (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from the Petitioner's Authorized Representative the undersigned admitted the two hundred and fifty-four (254)-page Statement 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. Petitioner is seventy-nine (79)-years old and diagnosed with bradycardia, dementia, bladder incontinence, and Parkinson's. Respondent's Composite Exhibit 1 at 34 and 42 Petitioner also has a history of stroke and experiences memory loss. *Id.* at 42.
3. Petitioner lives with his spouse and visits [REDACTED] home daily with his spouse. *Id.* at 53. Petitioner previously attended adult day care six days per week but has ceased attending adult daycare due to Covid-19. *Id.* Petitioner is currently receiving seven (7) hours of Personal Care services per week. Petitioner's daughter, [REDACTED] acts as Petitioner's direct service worker. *Id.*

4. Petitioner requested thirty-nine (39) hours per week of Adult Companion Care services.

Petitioner received an NABD denying Petitioner's request, dated July 7, 2020. The NABD explained the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet 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 you cannot be left home alone.

You live with your spouse. You spend the day with your daughter.

You are getting 7 hours a week of personal care.

You can be social with your daughter, spouse and the aide that comes to visit you.

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

Id. at. 4 through 5.

5. [REDACTED] through a letter dated [REDACTED] 2020, requested authorization for “long term assistance” on the basis that Petitioner is “unable to care for himself or maintain his Activities of Daily Living independently.” *Id.* at 25.

6. Petitioner requested a plan appeal for the denial of the thirty-nine (39) hours of Adult Companion Care services and received an NPAR dated July 22, 2020, upholding the denial. The NPAR explained as follows:

You asked for 39 hours a week of adult companion care. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. We cannot approve this because it is not medically needed. Based on my professional judgment, these hours are more than you need. You have other help you can socialize with. You have personal care help you can talk [sic] too. You can also talk and spend time with your family. This is why we cannot approve what you asked for. Please talk to your doctor.

Id. at 60.

7. [REDACTED] requested a Fair Hearing on behalf of Petitioner on August 7, 2020. On September 25, 2020, the undersigned issued an Order Rescheduling Fair Hearing by Telephone and Prehearing Instructions¹, setting the hearing for October 9, 2020, at [REDACTED]

8. During the hearing [REDACTED] testified that Petitioner’s dementia has worsened and that Petitioner no longer can speak. [REDACTED] also testified that Petitioner is no longer aware of when he has a bowel movement or urinates. [REDACTED] testified that Petitioner’s spouse, who Petitioner lives with, also suffers from dementia but is responsive to her prompts.

¹ The hearing was originally set for September 22, 2020 at [REDACTED] by Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, dated September 8, 2020. [REDACTED] did not appear at the hearing and later notified the Office of Fair Hearings of difficulties in connecting to the hearing conference line.

9. During the hearing Dr. Karver testified that Petitioner’s needs for social interaction are met with the visits to [REDACTED] home and the fact that Petitioner lives with his spouse.

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). 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 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.

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 Adult Companion Services, Homemaker Services, home delivered meals and medical supplies:

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.

...

1.3.16 Natural Supports

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

...

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.

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. Petitioner is requesting thirty-nine (39) hours per week of Adult Companion Care services.

Supra ¶ 4. Respondent denied Petitioner's request on the basis that it is not medically necessary.

Id.

16. The evidence shows that Petitioner lives with his spouse and visits at his daughter's home regularly. *Supra* ¶ 3. [REDACTED] testified that Petitioner's dementia is worsening and that Petitioner can no longer speak and is no longer aware of his bowel movements or when he urinates. *Supra* ¶ 7.

17. As provided in the LTC Policy, Adult Companion Care Services are 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. The component of medical necessity at issue is whether 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. Here, Petitioner has provided testimony that Petitioner's condition is worsening but has not provided testimony or evidence as to why the requested thirty-nine (39) hours per week of Adult Companion Care are medically necessary to supervise or provide social enrichment for Petitioner. Petitioner's needs for social enrichment appear to be met by living with his spouse and the visits with [REDACTED]. Additionally, Petitioner has not shown where thirty-nine hours (39) of Adult Companion Care are necessary to supervise Petitioner to ensure his wellbeing.

18. The undersigned considered the letter from Dr. Alvarez, dated [REDACTED] 2020, but the letter does not address the specific services requested. The letter addresses Activities of Daily Living which is outside of the services provided through Adult Companion Care. *Supra* ¶ 5 and 13. Petitioner has not shown that the requested services are individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess

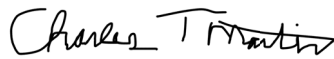
of the patient's needs. Thus, Petitioner has not met the burden of proof to show that the requested services are medically necessary.

19. Accordingly, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of thirty-nine (39) hours per week of Adult Companion services was incorrect.

DECISION

Respondent's denial of thirty-nine (39) hours per week of Adult Companion services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of thirty-nine (39) hours per week of Adult Companion services is **DENIED**.

DONE and ORDERED this 3rd day of November, 2020, in Tallahassee, Leon County, Florida.



Charles Martin

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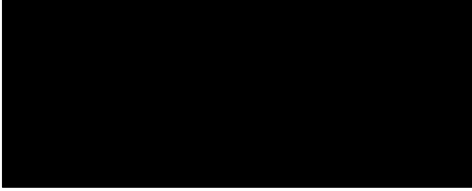
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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