



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

FILED

Nov 12, 2020, 8:17 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]  
Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

[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 2, 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 first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny fifteen (15) hours of Adult Companion Care services per week was incorrect.

The second issue is whether Petitioner provided by a preponderance of the evidence that Respondent's decision to deny fifteen (15) hours of Homemaker services 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.

Linda Latson, Registered Nurse Specialist 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-seven (257)- 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 May 22, 2020; a CSP – General Request Form - [REDACTED], dated July 9, 2020, a plan appeal acknowledgment, dated July 9, 2020; a plan letter, dated July 23, 2020, with an enclosed Appointment of Representative Form; a Print HSC History; Florida Department of Elder Affairs a 701B Comprehensive Assessment ("701B"), dated June 15, 2020; an Appeal Review, dated

August 6, 2020; the Notice of Plan Appeal Resolution (“NPAR”), dated August 7, 2020; a plan appeal acknowledgment, in Spanish, dated July 9, 2020 ; a plan letter, in Spanish, dated July 23, 2020, with an enclosed Appointment of Representative Form; the NPAR in Spanish, dated August 7, 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-seven (257)-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. Petitioner is eighty-three (83)-years old and diagnosed with Chronic Obstructive Pulmonary Disorder (“COPD”), high blood pressure, memory loss, depression, and dyspnea.

Respondent's Composite Exhibit 1 at 36 through 38. Petitioner utilizes continuous oxygen and a walker at home. *Id.* at 27 and 33. Petitioner is forgetful and easily confused on most days. *Id.* at 35 and 39. Petitioner always has assistance with heavy chores, light housekeeping, and preparing meals. *Id.* at 35.

3. Petitioner is currently receiving ten (10) hours per week of Personal Care services, ten hours (10) hours per week of Homemaker services, and five (5) hours per week of Companion Care services. *Id.* at 51.

4. Petitioner requested an additional fifteen (15) hours per week of Adult Companion Care services and an additional fifteen (15) hours per week of Homemaker services. Petitioner received an NABD denying Petitioner's request, dated May 22, 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 need help with cleaning, chores, meals, and laundry.

You live with family that can help you.

You are getting homemaker services 10 hours a week to help you.

You are also getting personal care 10 hours a week.

Your assessment tells us you can be left alone for short periods of time.

You are getting adult companion care 5 hours a week.

You live with family who do not leave you alone for long periods of time.

You have 25 hours of services provided by the health plan. You can split these hours during the day to meet your needs.

In my clinical opinion, your homemaker and adult companion care needs can be met by your current services and supports.

*Id.* at 4 through 5. Petitioner requested a plan appeal and received an NPAR dated August 7, 2020, upholding the denial. The NPAR explained as follows:

Part 1 of 2 You asked for homemaker services. You would like 15 more hours a week. You need help with bathing, dressing and toileting. We cannot approve 25 hours because it is not medically necessary. Based on my professional judgment, some of these hours are in excess of your need. Ten hours a week can meet your needs and is approved by the health plan. You also have approved personal care services 10 hours a week, companion care 5 hours a week. This is why we cannot approve what you asked for. Please talk about this with your doctor.

Part 2 of 2 You asked for adult companion care. You would like 15 more hours a week. You need help with bathing, dressing and toileting. We cannot approve 20 hours because it is not medically necessary. Based on my professional judgment, some of these hours are in excess of your need. Five hours a week can meet your needs and is approved by the health plan. You also have approved personal care services 10 hours a week and homemaker services 10 hours a week. This is why we cannot approve what you asked for. Please talk about this with your doctor.

*Id.* at 58 through 59.

5. [REDACTED] requested a Fair Hearing on behalf of Petitioner on August 18, 2020. On August 26, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and

Prehearing Instructions, setting the hearing for October 2, 2020, at [REDACTED]  
[REDACTED]

6. During the hearing, [REDACTED] testified that she fears Petitioner cannot be left alone safely because she forgets immediate occurrences and described an incident where Petitioner wandered from [REDACTED] home. [REDACTED] testified that Petitioner nearly caused a fire trying to cook for herself and is unable to handle cooking. [REDACTED] added that Petitioner's caregiver does not cook for her and that Petitioner does not receive a cooked meal in the afternoon until [REDACTED] sister, who Petitioner currently lives with, returns home from work. [REDACTED] also testified that she is one of Petitioner's three daughters who assist with Petitioner's care.

7. At the hearing Dr. Karver testified that Respondent considered Petitioner's current approved services and natural supports in denying Petitioner's request for additional Homemaker and Adult Companion services. Dr. Karver testified that the current approved services are sufficient to supervise Petitioner and provide for Petitioner's socialization needs.

#### **CONCLUSIONS OF LAW**

8. 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).

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

10. 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.

11. 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.

...

**1.3.1 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.

...

**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.

12. 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.

### Adult Companion Care Services

13. Petitioner is requesting an additional fifteen (15) hours per week of Adult Companion Care services in addition to the twenty-five hours of total services Petitioner is already receiving. *See supra* ¶ 3 through ¶ 4. Respondent denied Petitioner request on the basis that it is not medical necessary. *Supra* ¶ 4 and ¶ 5.

14. The record shows that Petitioner lives with one of her daughters and has two other daughters in the area who assist with her care. *Supra* ¶ 6. The evidence shows that Petitioner is receiving twenty-five hours per week of services through United. *See supra* ¶ 3. ██████████ offered testimony that Petitioner has previously wandered out of the home in one instance and is unsafe to cook for herself. *Supra* ¶ 6. Dr. Karver testified that Petitioner's needs can be met with the current approved services. *Supra* ¶ 7.

15. 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. *Supra* ¶ 11. The component of medical necessity at is 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. *Supra* ¶ 12. The incidents ██████████ testified to are serious, but this evidence alone is not sufficient to establish a need for constant supervision. As testified to by Dr. Karver, Petitioner's needs, in this case social enrichment and supervision, are met through the services already provided and Petitioner's daughters acting as natural supports. Petitioner has not met the burden of proof to show that the requested Adult Companion Services

are not in excess of Petitioner's needs to provide for Petitioner's social enrichment and supervision.

16. Accordingly, upon consideration of the evidence submitted, testimony provided, and applicable laws and policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of fifteen (15) hours per week of Adult Companion services was incorrect.

### **Homemaker Services**

17. Petitioner is requesting an additional fifteen (15) hours of Homemaker services. Respondent denied Petitioner's request on the basis that it is not medically necessary. *Supra* ¶ 4 and ¶ 5.

18. The 701B admitted into evidence shows that Petitioner always has assistance with heavy chores, light housekeeping, and preparing meals. *Supra* ¶ 2. ██████████ testified that Petitioner's caregiver does not cook and that in the afternoon Petitioner must wait for her daughter to return home to receive a cooked meal. *Supra* ¶ 6.

19. As provided in the LTC Policy, Homemaker Services are intended to provide 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. *Supra* ¶ 11. 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. *Supra* ¶ 12. As reflected in the 701B, the petitioner's needs for Homemaker services are being met. The 701B is not contradicted by ██████████ testimony

and the evidence does not demonstrate where any of Petitioner's needs are not met through her natural supports and the plan provided caregiver. Petitioner has not met the burden of proof to show that the requested Homemaker Services are not in excess of Petitioner's needs for general household activities and routine household care.

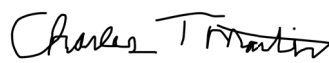
20. Accordingly, upon consideration of the evidence submitted, testimony provided, and applicable law and policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of fifteen (15) hours per week of Homemaker services was incorrect.

**DECISION**

Respondent's denial of fifteen (15) hours per week of Adult Companion services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of fifteen (15) hours per week of Adult Companion services is **DENIED**.

Respondent's denial of fifteen (15) hours per week of Homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of fifteen (15) hours per week of Homemaker services is **DENIED**.

**DONE and ORDERED** this 12th day of November, 2020, in Tallahassee, Leon County, Florida.

 Charles Martin  
20-FH[REDACTED] & 20-FH[REDACTED]  
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**CHARLES MARTIN, Hearing Officer**  
**Agency for Health Care Administration**  
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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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