



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

FILED

Nov 02, 2020, 11:53 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 8, 2020, at [REDACTED]

**APPEARANCES**

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

For the Respondent: Deborah L. Havey-Levy  
Program Integrity Manager  
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 fourteen (14) 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.

Deborah L. Havey-Levy, Program Integrity Manager 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.

Ayrton, from Language Line Solutions, Interpreter ID number 261039, provided interpreter services on behalf of Petitioner.

Suzanne Chillari, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency”), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and fifty-five (255)-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 10, 2020; an authorization request letter, dated July 31, 2020; a plan appeal acknowledgment, dated August 3, 2020; a Print HSC History; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated June 1, 2020; an Appeal Review; the Notice of Plan Appeal Resolution (“NPAR”), dated August 10, 2020; a plan appeal acknowledgment, in Spanish, dated August 3, 2020; the NPAR, in Spanish, dated August 10, 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-five (255)-page Statement Matters packet into evidence as Respondent's Composite Exhibit 1.

Prior to the hearing Petitioner submitted a marked copy of the authorization request letter, dated July 31, 2020. Absent an objection from Respondent, Petitioner's submission was admitted into evidence as Petitioner's 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-two (82)-years old and diagnosed with osteoarthritis, cardiac arrhythmia, interstitial lung disease, herniated disc disease, dementia, sleep apnea, bladder incontinence, and Parkinson's. Respondent's Composite Exhibit 1 at 12 and 42 through 43.
3. Petitioner lives with her daughter, [REDACTED], who works outside of the home. *See id.* at 56. Petitioner is currently receiving seven (7) hours of Personal Care services per week, seven (7) hours of Homemaker services per week, fourteen (14) hours of Companion Care services per week. *Id.* Petitioner's home health aide services total twenty-eight (28) hours per week.
4. Prior to July 9, 2020, Petitioner was receiving seven (7) hours of Personal Care services per week and seven (7) hours of Homemaker services per week. *Id.* at 4 through 5. Petitioner

requested an additional twenty-eight (28) hours per week of Adult Companion Care services.

Petitioner received an NABD denying Petitioner's request, dated July 10, 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 can be left home alone.

You are getting 7 hours a week of personal care to help you.

You get 7 hours a week of homemaker services to help you.

You can be social with the aides that visit your home.

You live with family who you can be social with.

You have a personal emergency response system to call for help when you are alone.

I will approve 14 hours a week of adult companion care.

In my clinical opinion, this will meet your needs for companion care. Your hours can be split to meet your needs and you have family support.

*Id.* at 4 through 5.

Petitioner requested a plan appeal for the denial of the fourteen (14) hours of Adult Companion Care services and received an NPAR dated August 10, 2020, upholding the denial. The NPAR explained as follows:

You asked for adult companion care. You would like 28 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 twenty-eight hours a week of paid help that you can socialize with. You can also talk and spend time with family. You live with family. You have a personal emergency response system. All these should meet your needs. This is why we cannot approve what you asked for. Please talk about this with your doctor.

*Id.* at 62.

5. ██████████ requested a Fair Hearing on behalf of Petitioner on August 26, 2020. On September 18, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 8, 2020, at ██████████

6. During the hearing, ██████████ testified that she is seeking additional companion care hours for Petitioner so that Petitioner will be supervised while she is working outside of the home. ██████████ testified that her husband also lives in the home but works from 4:30 a.m. to 8:00 a.m. and is unable to assist with caring for Petitioner.

7. At the hearing, Dr. Karver testified that current approved services are sufficient to supervise Petitioner given Petitioner's available natural supports. Dr. Karver also testified that Petitioner's diagnoses do not prevent Petitioner from being left alone for short periods of time and that Petitioner can be supervised using the current approved services in two blocks, in the morning and afternoon, per weekday.

**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.

...

**1.3.16 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.

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.

13. Petitioner is requesting an additional fourteen (14) hours per week of Adult Companion Care services in addition to the twenty-eight hours of total home health aide services Petitioner is already receiving. *See supra* ¶ 3 through ¶ 5. Respondent denied Petitioner's request on the basis that it is not medical necessary. *Supra* ¶ 4.

14. ██████████ testified that she is seeking additional Adult Companion services for Petitioner to ensure that Petitioner is completely supervised during her work week. *See supra* ¶

7. As testified to by ██████████, her husband returns from work at 8:00 a.m. *Id.* As noted in

the 701B and the authorization request from Petitioner's healthcare provider Petitioner is diagnosed with osteoarthritis, cardiac arrhythmia, interstitial lung disease, herniated disc disease, dementia, sleep apnea, bladder incontinence, and Parkinson's. *Supra* ¶ 2.

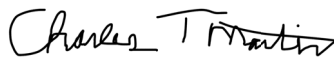
15. As provided in the LTC Policy, Adult Companion Care Services are intended to provide non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. The component of medical necessity at issue is 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 is already receiving twenty-eight hours per week of home health aide services in addition to the natural supports that are available to Petitioner. Petitioner has several health conditions but the testimony and evidence do not show that Petitioner needs to be supervised during gaps in supervision from the plan provided caregiver(s) and Petitioner's natural supports. Based on Petitioner's needs, authorized services, and natural support, Petitioner has not shown that the additional Adult Companion services would not be in excess of Petitioner's needs. Thus, Petitioner has not met the burden of proof show that the additional fourteen (14) hours of Adult Companion Care services are medically necessary.


16. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of fourteen (14) hours per week of Adult Companion services was incorrect.

### **DECISION**

Respondent's denial of fourteen (14) hours per week of Adult Companion services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of fourteen (14) hours per week of Adult Companion services is **DENIED**.

**DONE and ORDERED** this 2nd day of November, 2020, in Tallahassee, Leon County, Florida.



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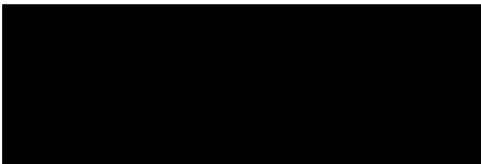
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**CHARLES MARTIN, Hearing Officer**  
**Agency for Health Care Administration**  
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**2727 Mahan Drive, Mail Stop # 11**  
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**NOTICE OF A RIGHT TO 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:**



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