



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

FILED

Nov 12, 2020, 8:20 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 6, 2020, at [REDACTED].

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kizzy Alleyne
Senior Paralegal
Sunshine State Health Plan Inc.

STATEMENT OF ISSUE

PRR0001094

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Homemaker services from ten (10) hours per week to eight (8) hours per week was correct. The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Personal Care services from fourteen (14) hours per week to twelve (12) hours per week was correct.

PRELIMINARY STATEMENT

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

Kizzy Alleyne, Senior Paralegal for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following appeared as witnesses for Respondent: Louise Jeunty Supervisor of Quality/Improvement for Sunshine; Ashley Michelle, Care Coordinator for Sunshine; Alicia Schwartz, Manager of Case Management for Sunshine; Melissa McKay, Case Manager Supervisor for Sunshine; and Dr. Bonnie Koreff-Wolf ("Dr. Koreff-Wolf"), Medical Director for Sunshine.

Stephanie Lang, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), 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 one hundred and two (102)-page evidence packet. The evidence packet included a table of contents; a Medicaid Fair Hearing Summary, dated September 18, 2020; the Notice of Adverse Benefit Determination ("NABD"), dated July 15, 2020; a Long Term Care Person-Centered Care Plan, reviewed July, 6, 2020; a second Long Term Care Person-Centered Care Plan, reviewed September 16, 2020; a Florida Department of

Elder Affairs 701B Comprehensive Assessment, dated July 6, 2020; Petitioner’s plan appeal, dated July 20, 2020; a letter denying Petitioner’s request for an expedited plan appeal, dated July 29, 2020; a plan appeal acknowledgment, dated September 18, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated August 28, 2020; Sunshine Health Policy and Procedure LT.UM.09, last revised November 2019; and Fla. Admin. Code R. 59G-1.010(166). Absent an objection from the Petitioner’s Authorized Representative, the undersigned admitted the one hundred and two (102)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED] years old and diagnosed with anemia, osteoarthritis, bladder incontinence, and has a history of lung cancer. Respondent’s Composite Exhibit 1 at 31 and 37.
3. Petitioner needs some assistance with bathing and dressing and has assistance for those tasks most of the time. *Id.* at 35. Petitioner uses a walker to ambulate and transfer independently. *Id.* Petitioner uses pull-ups for bladder incontinence but changes her own pull-ups. *Id.* Petitioner does not require any assistance with eating. *Id.*
4. Petitioner needs total assistance with heavy chores and light housekeeping and has assistance with those tasks most of the time. *Id.* at 36. Petitioner needs some assistance with managing money, preparing meals, shopping, and using transportation. Petitioner has assistance with preparing meals and shopping most of the time and always has assistance with managing money. *Id.* Petitioner always has assistance with using transportation and does not require assistance to use the telephone or manage her medication. *Id.*

5. Respondent reduced Petitioner's Homemaker services and Personal Care services effective July 27, 2020. Prior to the reduction Petitioner was receiving fourteen (14) hours per week of Personal Care services and ten (10) hours per week of Homemaker services. The NABD, dated July 15, 2020, explained as follows:

Sunshine Health has reviewed your request for 14 hours a week of personal care (the person who helps bathe and dress you) and 10 hours a week of homemaker service (the person who cleans for you), which we received on 07/08/2020. After our review, this service has been:
REDUCED as of 07/27/2020.

...

- 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: Sunshine Health looked at the member's present care needs and provided home services. The member's present care plan includes 14 hours/week of Personal Care Services + 10 hours/week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Personal Care Services from 14 hours/week to 12 hours/week, and will reduce the Homemaker

Services from 10 hours/week to 8 hours/week. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 4 through 5.

6. Petitioner requested a plan appeal and received an NPAR dated August 28, 2020, upholding the denial. The NPAR explained as follows:

On July 29,2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated July 15,2020, Notice of Adverse Benefit Determination Number [REDACTED], reducing the 14 hours a week of personal care (the person who helps bathe and dress you) and 10 hours a week of homemaker service (the person who cleans for you), provided to [REDACTED]

On August 28, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [REDACTED] will not receive an additional 2 hours in personal care services nor an additional 2 hours in home maker services, effective August 28, 2020.

The reason for our decision was:

The reconsideration request for restoring previous in home service hours is denied and the original denial is upheld. Sunshine Health looked at the member's present care needs and provided home services. (PLEASE CHECK OPTION FOR LACK OF MED NECESSITY: BE INDIVIDUALIZED.....). The member's previous care plan included 14 hours/week of Personal Care Services + 10 hours/week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health reduced the Personal Care Services from 14 hours/week to 12 hours/week, and reduced the Homemaker Services from 10 hours/week to 8 hours/week. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 64.

7. Petitioner requested an expedited Fair Hearing on September 10, 2020. On September 17, 2020, the undersigned issued an Order Denying Expedited Hearing Request and Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 6, 2020, at [REDACTED].

8. During the hearing, Dr. Koreff-Wolf testified that Respondent reviewed Petitioner's 701B and determined that Homemaker and Personal Care services were excessive. Dr. Koreff-Wolf noted that Petitioner had reported a recent fall but that additional Personal Care services would not prevent falls.

9. At the hearing [REDACTED] testified that he is Petitioner's only caregiver outside of care provided by Respondent. [REDACTED] testified that Petitioner's balance is worsening and that her pain associated with arthritis leaves her incapacitated at times.

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 Respondent is reducing services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof 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 Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("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 Homemaker services and 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

...

1.3.9 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.

...

4.2.2.6 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 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.

Homemaker Services

16. The NABD reduced Petitioner's Homemaker services on the basis that the requested hours are not medically necessary. *Supra* ¶ 5. As provided in the LTC Policy, Homemaker services are intended for 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. *Supra* ¶ 13.

17. Dr. Koreff-Wolf testified that Respondent reviewed Petitioner's 701B and determined that Petitioner's Homemaker services were excessive. *Supra* ¶ 8. Dr. Koreff-Wolf referred to the household activities in Petitioner's IADLs listed on the 701B showing that Petitioner has assistance most of the time. *See supra* ¶ 4.

18. The component of medical necessity at issue is whether Petitioner's request is 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. Respondent based the reduction of services on their review of the 701B which Respondent felt showed that the

current service level is excessive. However, testimony and evidence from Respondent only shows that Petitioner's needs are currently met but has not shown that Petitioner's needs are exceeded. Respondent has not shown that the Homemaker services prior to the reduction are in excess of Petitioner's needs. Accordingly, Respondent has not met the burden of proof to show that the ten (10) hours of Homemaker services per week are not medically necessary.

Personal Care

19. The NABD denied Petitioner's request for additional Personal Care services on the basis that the requested hours are not medically necessary. *Supra* ¶ 5. As provided in the LTC Policy, Personal Care services are intended 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. *Supra* ¶ 14.

20. Dr. Koreff-Wolf referred to the IADLs and ADLs in her testimony as the basis for Respondent's determination that Petitioner's Personal Care services are excessive.

21. The component of medical necessity at issue is whether Petitioner's request is 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* ¶ 15. As with the Homemaker services, Respondent's reduction of Personal Care services is based on review of the 701B but does not demonstrate that the current service level exceeds Petitioner's needs, only that it meets Petitioner's needs. Accordingly, Respondent has not met the burden to show that the twelve hours per week of Personal Care services are not medically necessary.

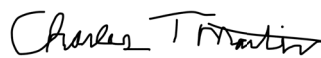
22. Therefore, upon consideration of the testimony, evidence, and applicable policies, the undersigned finds that Respondent has not proved by a preponderance of the evidence that

Respondent's reduction of Homemaker services from ten (10) hours per week to eight (8) hours per week was correct. Respondent has not proved by a preponderance of the evidence that Respondent's reduction of Personal Care services from fourteen (14) hours per week to twelve (12) hours per week was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's reduction of Homemaker services from ten (10) hours per week to eight (8) hours per week is **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**. Respondent's reduction of Personal Care services from twelve (12) hours per week to ten (10) hours per week is **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**.

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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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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