



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

FILED
Dec 14, 2020, 11:35 am
OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 20-FH █
Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

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PETITIONER,

AHCA Case No.: 20-FH █
Plan ID No.: █

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 26, 2020, at █.

APPEARANCES

For the Petitioner:

█
Petitioner

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for (10) hours per week of Personal Care services week was incorrect. The second issue is Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for (10) hours per week of Homemaker services week was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared on her own behalf

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following appeared as witnesses for Respondent: Myesha Thomas, Care Coordinator for Sunshine; Melissa Layne, Senior Manager for Member Appeals for Sunshine; Ronado Quyjada, Manager of Case Management for Sunshine; Jaqueline Alvarez, Supervisor for Sunshine; and Dr. Bonnie Koreff-Wolf ("Dr. Koreff-Wolf"), Medical Director for Sunshine.

Chrissie Simmons, Medical/Health Care Program Analyst 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 twenty (120)-page evidence packet. The evidence packet included a table of contents; a Medicaid Fair Hearing Summary, dated October 1, 2020; the Notice of Adverse Benefit Determination ("NABD"), dated July 2, 2020; a Long Term Care Person-Centered Care Plan, reviewed [REDACTED] 2020; a second Long Term Care Person-Centered Care Plan, reviewed September 15, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated [REDACTED] 2020; a second 701B, dated

August 14, 2020; Petitioner's plan appeal including Petitioner's medical records, dated [REDACTED], 2020; a plan appeal acknowledgment, dated August 10, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated September 3, 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, the undersigned admitted the one hundred and twenty (120)-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 seventy-nine (79) years old and diagnosed with osteoarthritis, high blood pressure, diabetes, atrial fibrillation, general muscle weakness, respiratory issues, and anxiety disorder. Respondent's Composite Exhibit 1 at 49 and 56.
3. Petitioner needs some assistance with bathing and dressing and has assistance for those tasks most of the time. *Id.* at 53. 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, light housekeeping, shopping, and preparing meals, and has assistance with those tasks most of the time. *Id.* at 54. Petitioner needs some assistance with managing money and using transportation and always has assistance with those tasks. *Id.* Petitioner always has assistance managing her medication and does not require assistance using the telephone. *Id.*

5. Petitioner needs some assistance with bathing and address and usually has assistance with those tasks. *Id.* at 53. Petitioner always has assistance with transferring and walking/mobility and makes use of a walker and wheelchairs. *Id.* Petitioner does not require assistance with using the bathroom or eating. *Id.*

6. Petitioner's normal plan of care includes fifteen (15) hours per week of Personal Care services and twelve (12) hours per week of Homemaker services. *See Id.* at 5. From May 19, 2020, through June 30, 2020, Respondent temporarily increased Petitioner's services to twenty-five (25) hours per week of Personal Care services and twenty-two (22) hours per week of Homemaker services. Petitioner requested ten (10) additional hours per week of Personal Care services and ten (10) additional hours per week of Homemaker services after the end dates of the services temporarily approved. Respondent partially denied the request in the NABD, dated July 15, 2020, which extended the authorization through August 31, 2020, and denied the remainder of the request. The NABD explained as follows:

Sunshine Health has reviewed your request for an additional 10 hours a week starting 07/01/2020 of homemaker service (the person who cleans for you) and an additional 10 hours a week starting 07/01/2020 of personal care (the person who helps bathe and dress you), which we received on 06/26/2020. After our review, this service has been:
PARTIALLY DENIED as of 07/02/2020.

...

- 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:

The request for an extra 10 hours/week of Personal Care Services starting on 07/01/2020 + an extra 10 hours/week of Homemaker Services starting on 07/01/2020 is partially approved.

The member's present care plan includes:

- 25 hours/week of Personal Care Services (ended on 06/30/2020)
- 15 hours/week of Personal Care Services (resumed on 07/01/2020)
- 22 hours/week of Homemaker Services (ended on 06/30/2020)
- 12 hours/week of Homemaker Services (resumed on 07/01/2020)

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will approve an extra 10 hours/week of Personal Care Services until 08/31/2020 (and will deny an ongoing extra 10 hours/week of Personal Care Services), and will approve an extra 10 hours/week of Homemaker Services until 08/31/2020 (and will deny an ongoing extra 10 hours/week of Homemaker Services). This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 4 through 5.

7. Petitioner requested a plan appeal and received an NPAR dated August 28, 2020,

upholding the denial. The NPAR explained as follows:

On September 3, 2020 4,2020, 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 extra 10 hours per week of Personal Care Services nor an extra 10 hours per week of Homemaker Services, effective September 3, 2020.

The reason for our decision was:

The appeal to overturn the denial of an extra 10 hours per week of Personal Care Services and an extra 10 hours per week of Homemaker Services is denied for lack

of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 15 hours per week of Personal Care Services and 12 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 82.

8. Petitioner requested a Fair Hearing on September 15, 2020. On September 28, 2020, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 26, 2020, at [REDACTED]

9. During the hearing, Petitioner testified that she is unable to make it to the bathroom without assistance and needs assistance all day because she is very sick.

10. During the hearing, Dr. Koreff-Wolf testified that Respondent's services were temporarily increased following Petitioner's hospitalization [REDACTED] 2020, through [REDACTED] 2020, and her subsequent discharge from rehabilitation services on [REDACTED] 2020. *See also Id.* at 53. Dr. Koreff-Wolf testified that after reviewing the 701B, Respondent determined that Petitioner's normal level of services was sufficient to meet Petitioner's needs.

CONCLUSIONS OF LAW

11. 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).

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

13. The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence. Fla. Admin Code R. 59G-1.100(17)(g). The Plan in this case approved twenty-five (25) hours of Personal Care services and twenty-two (22) hours of Homemaker services on a temporary basis with an expiration of June 30, 2020. As of July 1, 2020, Petitioner is receiving fifteen hours per week of Personal Care services and twelve (12) hours per week of Homemaker services. Petitioner's request is for an additional ten (10) hours of each service starting July 1, 2020, making the issue in this case a denial of services. Because Petitioner is requesting new services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" Black's Law Dictionary at 1201, 7th Ed.

14. 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.

15. 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.

16. 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.

Personal Care

17. The NABD denied Petitioner's request for additional Personal Care services on the basis that the requested hours are not medically necessary. *Supra* ¶ 6. 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.

18. Dr. Koreff-Wolf testified that Respondent reviewed Petitioner's level of services and determined that the current level of services is sufficient to meet Petitioner's needs. *Supra* ¶ 10. Petitioner testified that she struggles to make it to the bathroom and that she needs assistance all day because she is very sick. *Supra* ¶ 9. The 701B shows that Petitioner needs total assistance with bathing, dressing, and using the bathroom and has assistance most of the time. *Supra* ¶ 4. Additionally, the 701B shows that Petitioner needs total assistance with heavy chores, light housekeeping, and preparing meals and has assistance with those tasks most of the time. *Id.*

19. 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. Here, Petitioner argues that she needs assistance all day but has not offered any additional evidence other than stating that she is very sick. The testimony offered by Petitioner does not address whether the

Personal Care services requested are medically necessary in the amount requested. For instance, while Petitioner needs total assistance with bathing, dressing, and using the bathroom Petitioner has not shown in what manner having assistance most of the time is not meeting her needs. The same is true of Petitioner's IADLs relating to heavy chores, light housekeeping, and preparing meals. Even if Petitioner had demonstrated that the current service level is not meeting her needs for assistance with those tasks, Petitioner has not accounted for the time required to meet her needs for assistance. Aside from the record being void of testimony accounting for the amount of services requested the 701B contains no schedule of assistance, routines, or other information which could be used to arrive at a determined amount of Personal Care service Petitioner requires. Accordingly, Petitioner has not met the burden of proof to show that the Personal Care 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. Petitioner has not shown that the Personal Care services are medically necessary.

Homemaker Services

20. The NABD denied Petitioner's request for additional Homemaker services on the basis that the requested hours are not medically necessary. *Supra* ¶ 6. 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* ¶ 14.

21. Dr. Koreff-Wolf testified that Respondent reviewed Petitioner's 701B and determined that Petitioner's Homemaker services were sufficient to meet Petitioner's needs. *Supra* ¶ 10. Petitioner did not specifically address homemaker services in her testimony.

22. 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. Petitioner offered no evidence addressing her needs for homemaker services. Petitioner's testimony only addressed that she is very sick and needs assistance in general. As with the Personal Care services, the testimony offered by Petitioner does not address whether the Homemaker services requested are medically necessary in the amount requested. Petitioner has not accounted for the time required to meet her needs for tasks such as heavy chores, light housekeeping, and preparing meals where she requires total assistance. Also, as with the Personal Care services both the hearing record and evidence are void of any schedule of assistance, routines, or other information which could be used to arrive at a determined amount of Homemaker services Petitioner requires. Accordingly, Petitioner has not met the burden of proof to show that the Homemaker 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. Petitioner has not shown that the Homemaker services are medically necessary.

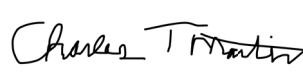
23. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of ten (10) hours per week of Personal Care services was incorrect.

Petitioner has not proved by a preponderance of the evidence that Respondent's denial of ten (10) hours per week of Homemaker services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of ten (10) hours per week of Personal Care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of ten (10) hours per week of Personal Care services is **DENIED**. Respondent's denial of ten (10) hours per week of Homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of ten (10) hours per week of Homemaker services is **DENIED**.

DONE and ORDERED this 14th day of December, 2020, in Tallahassee, Leon County, Florida.

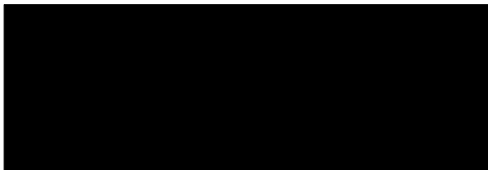
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.

Copies Furnished To:



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