



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

FILED

Aug 31, 2020, 11:26 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

FLORIDA COMMUNITY CARE, LLC,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on August 4, 2020, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Stuart Williams
General Counsel
Florida Community Care

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of personal care services from 21 hours per week to 7 hours per week was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and daughter, appeared at the Fair Hearing and provided testimony on Petitioner’s behalf. Petitioner did not appear at the Fair Hearing.

Stuart Williams, General Counsel for Florida Community Care (“Florida Community Care” or “Respondent”) represented Respondent at the Fair Hearing. Dr. Dennis Liotta (“Dr. Liotta”), Chief Medical Officer for Florida Community Care, provided testimony on behalf of Respondent.

Chrissie Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Prior to the hearing, Petitioner sent a 3-page evidence packet to the Office of Fair Hearings and Respondent. The packet included the following documents: an email from [REDACTED] to the Medicaid Hearing Unit, dated June 19, 2020; a letter from [REDACTED], dated June 19, 2020; and a letter from [REDACTED] (“[REDACTED]”), dated [REDACTED] 2020. Absent an objection from Respondent, the Hearing Officer admitted Petitioner’s 3-page evidence packet into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 127-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Checklist; the Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, dated June 13, 2020; a cover letter from Florida Community Care, dated July 16, 2020; the Case Summary; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of February 24, 2020; the Comprehensive Plan of Care with an effective date of February 24, 2020; a Notice of Adverse Benefit Determination (“NABD”), dated May 4, 2020; [REDACTED]’s Medicaid Fair Hearing request, sent April 20, 2020; a letter from [REDACTED]

██████████ dated April 16, 2020; the Oral Appeal Acknowledgement, dated April 11, 2020; the Notice of Plan Appeal Resolution, dated May 8, 2020; the Florida Community Care Appeal Summary Brief Referral to Independent Review Entity, dated April 29, 2020; the Florida Medicaid Personal Care Services Coverage Policy (November 2016); the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017); and the Florida Medicaid Definitions Policy (August 2017). Absent an objection from Petitioner, the Hearing Officer admitted Respondent's 127-page evidence packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Florida Community Care's LTC plan. *See* Respondent's Composite Exhibit 1, pages 12 and 14. Florida Community Care is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is a widowed, 80-year old female who resides in a private residence. *See* Respondent's Composite Exhibit 1, pages 19 and 20. The 701B, reflects that Petitioner has the following health conditions: acid reflux; arthritis (osteoarthritis); high blood pressure; high cholesterol; lupus; thyroid problems (hyper); tumors (meningeoma); and is legally blind. *See* Respondent's Composite Exhibit 1, pages 25 – 26.
3. The 701B reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner uses assistive devices for transferring and walking/mobility. *See* Respondent's Composite Exhibit 1, page 23. Petitioner needs assistance (but not total help) with bathing, dressing, eating and using the bathroom. *Id.*

4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the 701B the reflects that Petitioner needs assistance (but not total help) with using the phone, managing money, shopping, managing medication, and using transportation. See Respondent's Composite Exhibit 1, page 24. Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, and preparing meals. *Id.*

5. The letter from [REDACTED], dated [REDACTED] 2020, reflects that Petitioner "needs 24 hour assistance due to vision loss, hearing loss, and other medical problems." See Petitioner's Composite Exhibit 1, page 3.

6. The letter from [REDACTED], dated June 19, 2020, states in pertinent part as follows:

[Petitioner] is both visually and hearing impaired, therefore assistance is required.

She is provided daily care which consist of:

Preparing clothing (help is needed to ensure proper dress)
Bedmaking (assist for proper makeup)
Sorting & administering medications
Preparing and serving food (she's able to use microwave, when needed to heat food;
needs guidance to

find all items on plate)

Setup favorite television stations for entertainment

Assist with use of devices (remote control, phone, etc.)

Sorting and reading mail

Companionship

Assist with walking in unfamiliar spaces and occasional short walks

Bathing (assistance for safety and proper cleanliness)

Washing hair (mostly combs and dresses it herself)

Personal cleanliness (bathroom-uses facilities independently; follow-up cleaning is required occasionally)

Place personal items at arm's reach for easy accessibility (lotion, deodorant, etc.)

Be conscious of night awakenings (wakes occasionally thinking someone is knocking on the door)

Pick-up prescriptions

Purchase groceries and any personal items required and/or requested

Provide transportation

Interpret conversations

Wash clothing and linen
Clean all living facilities

Petitioner's Composite Exhibit 1, page 2. (Emphasis added.)

7. On May 5, 2020, Respondent issued an NABD reducing Petitioner's personal care services from 21 hours weekly to 7 hours weekly. See Respondent's Composite Exhibit 1, page 48. The NABD stated the reason for Respondent's determination as follows:

We determined that your requested services are **not medically necessary** because the services do not meet either of 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: We reviewed your request for 21 hours of personal care services (T1019) and found that it does not meet the Agency for Health Care Administration (AHCA) criteria for medical necessity. Your request was not substantiated by any clinical information nor was it cited as part of a change in your care plan due to your increasing needs. It appears that some of the Personal care is for the convenience of the caregiver and not required to deliver services to the member. Seven (7) hours of personal care services is approved and fourteen (14) hours of personal care services is terminated.

Respondent's Composite Exhibit 1, pages 48 – 49.

8. Petitioner requested an appeal of Respondent's reduction. See Respondent's Composite Exhibit 1, page 66. On May 8, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 66. The NPAR stated as follows:

On 04/09/2020 we received your timely plan appeal request regarding Florida Community Care's Notice of Adverse Benefit Determination dated 5/8/2020, NABD Number [REDACTED], REDUCING the (T1019) Personal Care for 0 weeks. provided to [Petitioner].

On 05/07/2020, after consideration of the information you provided to Florida Community Care in support of your plan appeal, Florida Community Care hereby **UPHELD** your plan appeal. As a result, [Petitioner] **will not** receive Personal Care

:

(T1019) Personal Care 21 hours/week effective 05/18/2019.

(T1019) Personal Care 7 hours/week approved.

Respondent's Composite Exhibit 1, page 66.

9. On June 19, 2020, [REDACTED] requested a Fair Hearing due to the reduction of personal care services. On July 13, 2020, the undersigned scheduled the Fair Hearing for August 4, 2020, at [REDACTED] and all parties were duly notified.

10. During the Fair Hearing, Dr. Liotta was admitted as an expert in medical necessity in this case. Dr. Liotta agreed with the reduction of personal care services. In addition to personal care services, Petitioner is currently authorized to receive 4 hours per week of homemaker services and 6 hours per week of adult companion care services. Addressing the list of services identified in the letter from [REDACTED], dated June 19, 2020, on page 2 of Petitioner's Composite Exhibit 1, Dr. Liotta explained that personal care services does not include any of the items on the list, except the bathing, washing hair and personal cleanliness.

11. Petitioner currently resides in the home with one of her daughters (not [REDACTED]). [REDACTED] assists with Petitioner's care, as well as another one of [REDACTED]'s sisters. In addition to being blind, Petitioner also does not hear well.

CONCLUSIONS OF LAW

12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Florida Statute § 409.285(2). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

14. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

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.

15. Because Respondent is reducing existing services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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.).

16. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017)

("SMMC LTC Policy"). The Agency's SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC LTC Policy provides as follows:

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 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

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
- Medication management

- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

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.

...

1.3.16 Natural Supports

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

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

4.0 Coverage Information

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 Specific Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

...

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.

...

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.

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

See SMMC LTC Policy, pages 1-8.

17. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “medical necessity” as follows:

2.83 Medically Necessary or Medical Necessity

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 severe 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.

Medically necessary or medical necessity for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

18. In the instant case, Respondent reduced Petitioner’s personal care services from 21 hours per week to 7 hours per week. *See supra* ¶ 7 and 8. As established on the record by the evidence and testimony, Respondent reduced personal care services, because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. *Id.*

19. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that:

are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 16. Section 4.2.2.6 of the LTC Policy reflects that personal care services are “[t]o 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.” *See supra* ¶ 16.

20. The evidence presented in this case reflects that Respondent’s reduction of personal care services is warranted under the circumstances of this case. Specifically, regarding ADLs, Petitioner uses assistive devices for transferring and walking/mobility, and needs assistance (but not total help) with bathing, dressing, eating and using the bathroom. *See supra* ¶ 3. Regarding IADLs, Petitioner needs assistance (but not total help) with using the phone, managing money, shopping, managing medication, and using transportation, and total assistance (cannot do at all) with heavy chores, light housekeeping, and preparing meals. *See supra* ¶ 4. Petitioner is legally blind, does not hear well, has lupus and other medical conditions. *See supra* ¶ 2 and 11. The record reflects that Petitioner needs 24-hour assistance. *See supra* ¶ 5. However, Petitioner resides in the home with one of her daughters. *See supra* ¶ 11. Also, [REDACTED] and another one of Petitioner’s daughters assist with Petitioner’s care. *Id.* With the exception of bathing, washing hair, and personal cleanliness, the services needed by Petitioner that are listed in the letter from [REDACTED], dated June 19, 2020, *supra* ¶ 6, fail to meet the SMMC LTC Policy’s definition of personal care services. *See supra* ¶ 16. Further, the record reflects that Petitioner’s “request was not substantiated by any clinical information nor was it cited as part of a change in [her] care plan due to [her] increasing needs.” *See supra* ¶ 7.

Based upon the evidence presented by both parties, Respondent established that the reduction of personal care services is warranted in this case.

21. Additionally, section 1.3.14 of the LTC Policy requires that “LTC supportive services must . . . [b]e 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.” See supra ¶ 16. In addition to personal care services, Petitioner is currently authorized to receive the following home and community-based supportive services: 4 hours per week of homemaker services and 6 hours per week of adult companion care services. See supra ¶ 10. Considering the LTC Policy’s definitions for adult companion services, homemaker services and personal care services, supra ¶ 16, Respondent demonstrated that Petitioner’s aforementioned needs, supra ¶ 2 – 6, 11, and 21, are sufficiently met by her currently authorized services. Given that Respondent established that the reduction of personal care services is warranted in this matter, supra ¶ 20, the requested 21 hours per week of personal care services is “in excess of [Petitioner’s] needs.” See supra ¶ 16.

22. Appurtenant to this matter, section 1.3.14 of the LTC Policy provides that natural supports are “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” See supra ¶ 16. The record reflects that Petitioner resides in the home with one of her daughters. See supra ¶ 11. Also, [REDACTED] and another one of Petitioner’s daughters assist with Petitioner’s care. *Id.* Therefore, Petitioner has natural supports available to assist with her care and needs.

23. In support of Petitioner’s position, [REDACTED] submitted a letter Petitioner’s physician. Specifically, the letter from [REDACTED] reflects that Petitioner “needs 24 hour assistance due to vision loss, hearing loss, and other medical problems.” See supra ¶ 5. The document offers no

insight into how [REDACTED] determined the severity of Petitioner's medical condition, nor does it prescribe the type, amount, or length of specific services warranted to address Petitioner's medical condition. Further, it should be noted that "[t]he 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." *See supra* ¶ 17. Therefore, the letter from [REDACTED] does not, in itself, make the requested services medically necessary or a medical necessity.

24. In light of the both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, the SMMC LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent demonstrated that Petitioner's previously authorized amount of personal care services is not medically necessary.


25. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent's reduction of personal care services was correct.

DECISION

Respondent's reduction of personal care services from 21 hours per week to 7 hours per week is **AFFIRMED**.

Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE AND ORDERED this 31st day of August, 2020, in Tallahassee, Leon County, Florida.

 Tracie Hardin
20-FH [REDACTED]
2020.08.31 11:14:33 -04'00'

TRACIE HARDIN, Hearing Officer
Agency for Health Care Administration

**Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649
Fax: (850) 487-1423
E-mail: OfficeOfFairHearings@ahca.myflorida.com**

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:



**Stuart F. Williams, Counsel for Respondent
Susy Cabrera Ayluardo, Counsel for Respondent
Florida Community Care, LLC
FairHearing@fcchealthplan.com**

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**