



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

FILED

Dec 16, 2020, 8:26 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 November 16, 2020, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's personal care services was correct. The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's adult companion care services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's home health aide, [REDACTED] (" [REDACTED]"), appeared on behalf of Petitioner.

Maria Mojica ("Ms. Mojica"), Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. Heather Lutz ("Dr. Lutz"), Medical Director for Sunshine; Jacklyn Alvarez ("Ms. Alvarez"), Supervisor for Sunshine; Alice Pace, Long Term Care Coordinator for Sunshine; and Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine.

Doris Rivera, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-two (122)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination ("NABD"), dated August 5, 2020; a Long Term Care Person-Centered Care Plan ("POC"), dated July 28, 2020; a POC, dated October 8, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated July 28, 2020; a 701B, dated September 29, 2020; a fax cover sheet from [REDACTED] (" [REDACTED]"), dated August 28, 2020, and two (2) pages of documents; an Expedited Appeal Acknowledgement, dated August 28, 2020; a

Revised Expedited Appeal Acknowledgment, dated October 28, 2020; a Notice of Plan Expedited Appeal Resolution (“NPAR”), dated August 30, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from Petitioner, the undersigned admitted the one hundred and twenty-two (122)-page evidence packet as Respondent’s Composite Exhibit 1.

At the Fair Hearing, ██████████ requested to submit copies of his timesheets. Respondent did not object. The undersigned held the record open until November 20, 2020, by 5:00 p.m. Eastern Standard Time, to allow ██████████ to submit the timesheets. The Respondent was given until November 30, 2020, by 5:00 p.m., Eastern Standard Time to provide any objections or comments to ██████████’s timesheet. On November 18, 2020, ██████████ timely submitted twelve (12) - pages of documents. The documents included an e-mail from ██████████, dated November 17, 2020, and timesheets for the dates August 16, 2020, through October 7, 2020. Respondent did not submit an objection or comment. Absent an objection from Respondent, the undersigned admits the twelve (12) page document into evidence as Petitioner’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 sixty-nine (69)-years old. *See* page 49 of Respondent’s Composite Exhibit 1. Petitioner is diagnosed with: acid reflux/GERD; moderate anemia; arthritis; low blood pressure; frequent dizziness; osteoporosis; hyperthyroid; depression; anxiety, and chronic back pain. *Id. at* 55 – 56. Petitioner does not need supervision. *Id. at* 58. Petitioner lived alone until September 24, 2020, but since then has resided with ██████████. *Id. at* 49.

3. Petitioner's former activities of daily living ("ADLs") are as follows: for bathing and dressing, Petitioner needs assistance. *Id.* at 35. Petitioner's former instrumental activities of daily living ("IADLs") are as follows: for heavy chores and light housekeeping, Petitioner needs total assistance (cannot do at all); for preparing meals, shopping, and using transportation, Petitioner needs assistance (but not total help). *Id.* at 36.

4. Petitioner's current ADLs are as follows: for bathing, dressing, and using the bathroom, Petitioner needs assistance (but not total help); and for transferring and walking/mobility, Petitioner uses an assistive device. *Id.* at 53. Petitioner's current IADLs are as follows: for heavy chores, light housekeeping, and managing money, Petitioner needs total assistance (cannot do at all); for preparing meals, shopping, managing medication, and using transportation, Petitioner needs assistance (but not total help); and for using the telephone, Petitioner needs no assistance. *Id.* at 54.

5. As of July 28, 2020, for more than half the days each week, Petitioner has "little interest or pleasure in doing things" and "feel[s] down, depressed, or hopeless." *Id.* at 39. For several days each week, Petitioner "feel[s] tired or [has] little energy." *Id.* Petitioner talks to friends, relatives or others on the phone two (2) – six (6) times per week. *Id.* at 45. Petitioner spends time with someone who does not live with her once per week. *Id.* Petitioner participates in activities outside the home that interest her every few months. *Id.*

6. Currently, for more than half the days each week, Petitioner has "little interest or pleasure in doing things" and "feel[s] down, depressed, or hopeless". For several days each week, Petitioner "feel[s] tired or [has] little energy." *Id.* at 57. Petitioner talks to friends, relatives or others on the phone two (2) – six (6) times per week. *Id.* at 63. Petitioner spends time with

someone who does not live with her once per week. *Id.* Petitioner participates in activities outside the home that interest her every few months. *Id.*

7. In an NABD, dated August 5, 2020, Respondent reduced Petitioner's personal care services from eighteen (18) hours, weekly, to fifteen (15) hours weekly; and reduced Petitioner's adult companion care hours from eight (8) hours weekly, to four (4) hours, weekly. *Id.* at 4 - 12.

The services were reduced as of August 19, 2020. *Id.* The NABD explained the basis of the reduction as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons 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 18 hours/week of Personal Care Services + 8 hours/week of Companion Care 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 18 hours/week to 15 hours/week, and will reduce the Companion Care Services from 8 hours/week to 4 hours/week. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Pages 4 – 5 of Respondent’s Composite Exhibit 1.

8. Petitioner requested a plan appeal. In support of her request, Petitioner’s provider, [REDACTED], submitted a letter, dated August 27, 2020, which stated as follows:

[Petitioner] has severe mental and functional decline. Patient is incontinent and requires assistance with hygiene, toileting, meal preparation, shopping. Due to multiple compression fractures, unsteady gait patient has to use incontinence wipes in order to avoid urinary tract infections and skin infections. Having incontinence wipes is medically necessary and vital for this patient. The patient who lives alone has been mostly wheelchair bound due to very high risk of falls and depends on HHA presence for most of her daily activities. Also she suffers from anxiety which in a [sic] last few months has been greatly exacerbated by COVID19 pandemic. Due to the above reasons it is medically necessary to continue to provide patient with her personal care and companionship services to prevent further deterioration, injuries, unnecessary hospitalization.

Page 69 of Respondent’s Composite Exhibit 1.

9. In an NPAR, dated August 30, 2020, Respondent reinstated Petitioner’s three (3) hours of personal care services and upheld its decision regarding the reduction of adult companion care services. *Id.* at 84 – 90. The NPAR explained as follows:

The reconsideration of the reduction of 4 hours of Companion Care Services is denied. Original reduction is upheld. Companion Care is provided to prevent social isolation (being alone). Companion Care is not hands on care. The member has regular contact with friends and family and there is a low risk of social isolation (being alone). This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Page 84 of Respondent’s Composite Exhibit 1.

10. On [REDACTED] 2020, Petitioner was hospitalized due to a fall, which resulted in broken bones in her lower back. *Id.* at 53. Petitioner underwent surgery on [REDACTED] 2020. *Id.*
11. On October 5, 2020, Petitioner requested a Fair Hearing to challenge the reduction of personal care and adult companion care services.

12. On October 21, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for November 16, 2020, at [REDACTED].

13. At the Fair Hearing, [REDACTED] requested that the Fair Hearing request regarding personal care services be withdrawn.

14. Ms. Mojica is a Compliance Specialist for Sunshine. Ms. Mojica testified that Petitioner's four (4) hours per week of adult companion care services were reinstated. Ms. Alvarez testified that Petitioner's adult companion care services were reinstated on October 7, 2020.

15. [REDACTED] provides care for Petitioner through the PDO program. [REDACTED] provided sixty-four (64) hours of adult companion care services between the date of the reduction, August 19, 2020, and the date the services were reinstated, October 7, 2020. See pages 2 – 12 of Petitioner's Composite Exhibit 1. [REDACTED] is seeking reimbursement for those services.

16. Dr. Lutz is a Medical Director for Sunshine. Dr. Lutz testified that the initial decision to reduce Petitioner's services was based on the information available at the time of the decision. Subsequent to Petitioner's fall, a new 701B was performed on September 29, 2020. Dr. Lutz testified that Sunshine reinstated the four (4) hours of adult companion care because Petitioner was hospitalized due to a fall in September.

CONCLUSIONS OF LAW

17. 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)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

19. Because Respondent is reducing a previously approved service, 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.)

20. Fla. Admin. Code R. 59G-1.100(3)(g) provides that the Office of Fair Hearings must provide a Fair Hearing for a “recipient who makes a hearing request regarding a denial or reduction to a medically necessary Florida Medicaid services and seeks corrective action.”

21. Fla. Admin. Code R. 59G-1.00(1)(f) defines corrective action as “corrective payments, or if appropriate, admission or readmission of a recipient or enrollee to a facility, in accordance with Title 42, Code of Federal Regulation (CFR), Section 431.246.

22. 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 and adult companion 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

...

4.2.1.1 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.

...

23. 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.

24. The Florida Medicaid 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.

25. LT.UM.09 provides as follows in regards to adult companion care:

2. Adult Companion Care

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental illness requiring supervision
- Parkinson's disease
- Multiple sclerosis
- ALS
- Congestive Heart Failure
- COPD
- Cancer
- End State Renal Disease
- TBI
- Other diagnosis as deemed medically necessary by Medical Director

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
 - See Section C.1.c for more details
- Informal supports
 - None
 - Few friends/family in area
 - Family nearby
- Living Situation
 - Lives alone
 - Lives with other but is alone for extended periods of time due to the necessary absence of a caregiver
 - Lives with caregiver and others
- Services in Place
 - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations Adult Companion Care include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.
5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

A. Personal Care Services

26. A Hearing Officer may deny or dismiss a Fair Hearing request if the Recipient files a written withdrawal of the request. A Hearing Officer may also deny or dismiss a Fair Hearing request if the Recipient testifies on the record that he or she wishes to withdraw the request. See Rule 59G-1.100(9)(b)(5)(a), Florida Administrative Code. At the Fair Hearing, [REDACTED] withdrew Petitioner's request for a Fair Hearing regarding personal care services.

B. Adult Companion Care Services

27. In the NABD, dated August 5, 2020, Respondent reduced Petitioner's adult companion care services from eight (8) hours, weekly, to four (4) hours, weekly. See pages 4 – 12 of Respondent's Composite Exhibit 1. The reduction went into effect on August 19, 2020. *Id.* In the NABD, Respondent explained that adult companion care services were not medically necessary,

and that the reduction was “[b]ased on the assessment of the member’s care needs and household and caregiver status” *Id.* at 4 through 5. Respondent reinstated Petitioner’s four (4) hours, weekly, of adult companion care services on October 7, 2020. *See* ¶ 12. Dr. Lutz testified, *supra* ¶ 14, that Petitioner’s adult companion care services were reinstated after Respondent learned of Petitioner’s fall and hospitalization. As Petitioner’s adult companion care services were reinstated, the issue is whether Respondent’s decision to reduce Petitioner’s adult companion care services between the period of August 19, 2020, and October 7, 2020, was correct.


28. As provided in Respondent’s policy, LT.UM.09, adult companion care services are to “provide non-medical care, supervision, and socialization to a functionally impaired adult.” As discussed in LT.UM.09, adult companion care services are determined, in part, based on: the recipient’s need for supervision; the recipient’s informal supports; the recipient’s living situation; and the services in place for the recipient. Moreover, as provided in the LTC Policy, adult companion care is 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.” As provided in the record, prior to her fall, Petitioner lived alone, but since then, has resided with [REDACTED]. *See* page 49 of Respondent’s Composite Exhibit 1. Petitioner receives eighteen hours, weekly, of personal care services. *Id.* at 84. Moreover, Petitioner talks on the phone between two (2) and six (6) hours per week, and spends time with someone who does not live with her at least once per week. *Id.* at 45. Lastly, Petitioner did not need supervision prior to her fall. *Id.* at 40. Thus, the record shows that Petitioner had frequent opportunities to socialize, and did not need supervision prior to her fall.

29. Respondent bears the burden of proof in showing that it was not medically necessary for Petitioner to have no more than (4) hours of adult companion care each week. Respondent did not state which prong of medical necessity it used to make its decision. Here, as discussed supra ¶ 28, it was shown that Petitioner had opportunities to socialize and did not need supervision. As adult companion care was not shown to be medically necessary, Petitioner did not show that corrective action was warranted. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent's reduction of four (4) hours of adult companion care, for the period of August 19, 2020, through October 7, 2020, was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Petitioner's Fair Hearing request regarding personal care services is hereby deemed withdrawn, and this matter is now closed. Respondent's reduction of Petitioner's adult companion care is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of adult companion care is **DENIED**.

DONE AND ORDERED this 16th day of December, 2020, in Tallahassee, Leon County, Florida.

 Joseph Mabry
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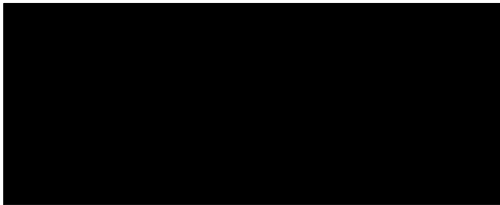
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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