



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

FILED

Dec 16, 2020, 11:04 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.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on November 17, 2020, at █.

APPEARANCES

For the Petitioner:

█.

Petitioner

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate the provision of six (6) hours of Adult Companion services to Petitioner was correct.

PRELIMINARY STATEMENT

PRR0001409

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. Teresa Barron-Gornto, Long-term Care Supervisor for Sunshine; Dr. John Carter (“Dr. Carter”), Long-term Care Medical Director for Sunshine; Alana Cohen, Long-term Care Coordinator for Sunshine; and Melissa Layne, Senior Manager for Member Appeals for Sunshine attended as witnesses for Respondent.

Marielisa Amador, Medical/Health 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 ninety-six (90)-page evidence packet. The evidence packet included a table of contents; a Medicaid Fair Hearing Summary, dated October 28, 2020; the Notice of Adverse Benefit Determination (“NABD”), dated August 26, 2020; a Long Term Care Person-Centered Care Plan, reviewed October, 16, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated August 7, 2020; an Expedited Appeal Request Decision, dated September 21, 2020; plan appeal acknowledgment, dated September 21, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated October 6, 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 Petitioner, the undersigned admitted the ninety (90)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

Prior to the hearing, Respondent also sent to the Office of Fair Hearings and Petitioner an updated 701B, dated November 4, 2020. Petitioner objected to information in the 701B

regarding her mental health on the basis that she disagrees with the veracity of the information. Over Petitioner's objection, the updated 701B was admitted as Respondent's Exhibit 2.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a letter of medical necessity, with notes, dated September 24, 2020. Absent an objection from Respondent the letter of medical necessity was admitted as Petitioner's 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 and diagnosed with rheumatoid arthritis, ocular migraines, cervical and spinal stenosis, and shingles. *See* Respondent's Exhibit 2 at 1 and 7 through 8. Petitioner displays no evidence of cognitive impairment and has no observed issues verbally communicating. *Id.* at 3 through 4. Petitioner has not fallen or visited the emergency room in the past year. *Id.* at 4. Petitioner is immune compromised and does not leave the home to shop or launder her clothes. *Id.* at 6. Petitioner talks to friends and relatives once per day, spends time with someone who does not live with her two to six times per week, and participates in activities outside of the home one per week. *Id.* at 15.

3. Petitioner is currently receiving the following services: twelve (12) hours per week of Personal Care services; sixteen (16) hours per week of Homemaker services; and has a Personal Emergency Response System. *Id.* at 5.

4. Respondent terminated Petitioner's Adult Companion services effective September 14, 2020. Prior to the reduction Petitioner was receiving six (6) hours per week of services. The NABD, dated August 26, 2020, explained as follows:

Sunshine Health has reviewed your request for 6 hours per week of companion care (the person who helps and watches over you), which we received on 8/25/2020. After our review, this service has been:

TERMINATED as of 9/14/2020.

...

- 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 6 hours/week of Companion Care Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 6 hours/week of Companion Care Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

See Respondent's Exhibit 1 at 4 through 5.

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

The reason for our decision was: The reconsideration of the termination of 6 hours per week of Companion Care Services is denied. Original denial is upheld. Sunshine Health looked at the member's present care needs and provided home services. The member's present care plan includes 6 hours/week of Companion Care Services. Based on the assessment of the member's care needs and household and caregiver status, the currently approved services are appropriate to meet the member's health care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 52.

6. [REDACTED] (“[REDACTED]”), provided Petitioner with a letter of medical necessity, dated September 23, 2020. In the letter, [REDACTED] states that Petitioner’s request is necessary to assist with her activities of daily living (“ADLs”). See Petitioner’s Exhibit 1 at 3.

7. Petitioner requested Fair Hearing on October 8, 2020. On October 28, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for November 17, 2020, at [REDACTED]

8. During the hearing, Dr. Carter testified the reduction in services was the result of a regular review of Petitioner’s services. Dr. Carter testified that Petitioner is cognitively intact, and the hours as originally approved were not medically necessary given Petitioner’s conditions and the Personal Emergency Response System (“PERS”) Respondent has provided Petitioner.

9. During the hearing, Petitioner testified that she feels she has spent too much time alone during the Covid-19 pandemic. Petitioner testified that without the Adult Companion services she will be alone on the weekends as there will be no home health aide service hours left for the weekend. She also testified that she is limiting her other contacts on the weekends due to the pandemic.

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 terminating 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:

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.

...

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.

16. The Respondent terminated Petitioner's Adult Companion services on the basis that the service provided is not medically necessary. *Supra* ¶ 4. As provided in the LTC Policy, Adult Companion Care Services are intended to provide non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. *Supra* ¶ 13.

17. The 701B, dated November 4, 2020, shows that Petitioner has no evidence of cognitive impairment and that Petitioner has a PERS. *Supra* ¶ 2 through ¶ 3. The 701B also shows that Petitioner has not fallen or visited the emergency room in the past year and that Petitioner speaks with friends or relatives once per day. The 701B shows that the Petitioner is receiving twelve (12) hours per week of Personal Care services and sixteen (16) hours per week of Homemaker services. Petitioner testified that if her Adult Companion services are terminated, she will only be visited by a home health aide five days per week instead of six days. *See supra* ¶ 9. Dr Carter testified that Respondent determined the Adult companion services as approved were excessive given Petitioner's level of cognitive function and that she has been provided with a Personal Emergency Response System. *Supra* ¶ 8.

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* ¶ 13. In this case Petitioner has no cognitive impairments that could cause her to require supervision and has not visited an emergency room in the past year. Additionally, Petitioner has a PERS she can use to

summon assistance in an emergency. Dr. Carter's testimony that the Petitioner's cognitive function and provision of a PERS is sufficient for Petitioner's needs is credible in light of the corresponding evidence.

19. As Petitioner's needs for social enrichment are concerned, Petitioner speaks to friends and relatives daily and will have a home health aide in the home five days per week with the termination of the Adult Companion services. Petitioner's caution and limitations on visitors in her home due to the Covid-19 pandemic is understandable but is ultimately her choice in how she manages that risk. Even assuming that total isolation, except for the home health aide, were necessary, Petitioner still has in-person interaction five days per week in addition to her other daily contacts. Dr. Carter's testimony that the services are not medically necessary is credible in light of the evidence.

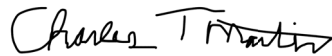
20. The undersigned gave consideration to the letter of medical necessity, dated September 24, 2020. The letter requests the Adult Companion services on behalf of Petitioner to assist with her ADLs. *Supra* ¶ 6. However, assistance with ADLs is a function of Personal Care services *See supra* ¶ 13. As noted in the Definitions Policy, 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. *Supra* ¶ 15. Respondent has shown that six (6) hours of Adult Companion services are not 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. Accordingly, Respondent has met the burden of proof to show that the six (6) hours of Adult Companion services are not medically necessary.

21. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence that Respondent's decision to terminate the provision of six (6) hours of Adult Companion services to Petitioner was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's decision to terminate the provision of six (6) hours of Adult Companion services **AFFIRMED**. Petitioner's appeal based on Respondent's decision to terminate the provision of six (6) hours of Adult Companion services is **DENIED**.

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

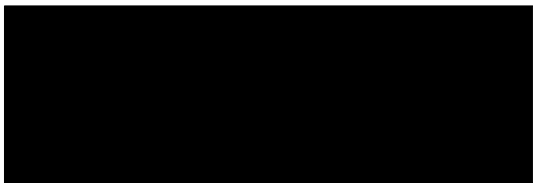
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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