

STATE OF RHODE ISLAND
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES APPEALS OFFICE

[REDACTED]

v.

DOCKET No. 24-1429

EXECUTIVE OFFICE OF HEALTH
AND HUMAN SERVICES

DECISION

I. INTRODUCTION

A telephonic hearing on the above-entitled matter was held on June 25, 2024. The Appellant's daughter and caregiver, [REDACTED], initiated this matter to appeal the reduction in home care hours resulting from an in-home Comprehensive Functional Needs Assessment ("CFNA") completed by a Neighborhood Health Plan of Rhode Island ("NHPRI") care manager on January 4, 2024. Because the Appellant filed an appeal, the Appellant's home care hours were not reduced and remained at fifty (50) hours weekly, pending the outcome of this appeal. The Appellant is appealing the pending reduction of weekly home care hours to thirty-two (32) hours. For the reasons discussed in more detail below, the Appellant's appeal is denied.

II. JURISDICTION

The Executive Office of Health and Human Services ("EOHHS") is authorized and designated by Rhode Island General Law ("R.I.G.L."), specifically R.I.G.L. §42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to human services. The administrative hearing was held in accordance with the

Administrative Procedures Act, R.I.G.L. §42-35-1 et. seq., and EOHHS regulation 210-RICR-10-05-2.

III. ISSUE

The issue is whether the Appellant’s weekly home care hours have been properly reduced based on medical necessity in accordance with State regulations as set forth below.

IV. STANDARD OF PROOF

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act unless otherwise specified, a preponderance of the evidence is generally required to prevail. 2 Richard J. Pierce, *Administrative Law Treaties* §10.7(2002) & *Lyons v. Rhode Island Pub. Employees Council* 94, 559 A.2d 130, 134 (R.I. 1989), a preponderance standard is the “normal” standard in civil cases. For each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. *Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006).

V. PARTIES AND EXHIBIT

Present for EOHHS was Nina Lennon, Administrator of Medical Services. Present for NHPRI were Mary Catala, Esq., Catherine Daignault, Clinical Manager of Grievance and Appeals, Kim Carty R.N., Manager of Care Management, and Dr. Michael Mitchel, Senior Associate Medical Director. NHPRI offered the following documents as evidence at hearing:

After both parties testified, there was not enough time for NHPRI to respond to the Appellant’s daughter’s testimony. The record was held open until close of business (4 p.m.) on July 3, 2024, for NHPRI to submit a response to the Appellant’s testimony.

- NHPRI Exhibit #A – NHPRI Clinical Medical Policy for Long-Term Services and Supports (“LTSS”), form CMP#20.
- NHPRI Exhibit #B – Notice of Denial dated January 17, 2024.
- NHPRI Exhibit #C – Notice of Level I Appeal Status dated February 20, 2024.
- NHPRI Exhibit #D – Appeal Form dated February 29, 2024.
- NHPRI Exhibit #E – Maximus External Appeal Determination dated March 11, 2024.
- NHPRI Exhibit #F – Assessment Plan of Care Chart dated January 4, 2024.
- NHPRI Exhibit #G – Service Calculator dated January 4, 2024.
- NHPRI Exhibit #H – Assessment Record dated January 4, 2024.
- NHPRI Exhibit #I – Assessment Plan of Care Chart dated February 9, 2024.
- NHPRI Exhibit #J – Service Calculator dated February 9, 2024.
- NHPRI Exhibit #K – Assessment Record dated February 9, 2024.
- NHPRI Exhibit #L – Service Calculator for June 2023.
- NHPRI Exhibit #M – Telephonic Assessment Notes for June 2023.
- NHPRI Exhibit #N – NHPRI Post-hearing submission received July 3, 2024 at 8:13 a.m.

The Appellant’s daughter, [REDACTED], appeared and testified on behalf of the Appellant. The Appellant offered the following documents as evidence at hearing:

The record was held open until close of business (4 p.m.) on July 10, 2024, for the Appellant to review and submit a response to NHPRI’s post-hearing submission.

- Appellant Exhibit #A – Hospice Medical Record
- Appellant Exhibit #B – What is Hospice Care from Medicare.gov
- Appellant Exhibit #C – Discharged from Hospice: Now What? Caregiving Tips dated September 26, 2018.
- Appellant Exhibit #D – [REDACTED] Letter dated April 17, 2024.
- Appellant Exhibit #E – Disagreement with Plan of Care dated January 26, 2024.
- Appellant Exhibit #F – [REDACTED] disagreement with Plan of Care dated January 25, 2024.
- Appellant Exhibit #G – [REDACTED] Appeal Letter dated January 24, 2024.

- Appellant Exhibit #H – emails from [REDACTED] to NHPRI dated January 29, 2024, and March 5, 2024.
- Appellant Exhibit #I – Symptoms and Causes of Parkinsons Disease, Mayo Clinic.
- Appellant Exhibit #J – State of Rhode Island Benefits Decision Notice for LTSS dated December 9, 2023.
- Appellant Exhibit #K – NHPRI Plan of Care dated June 30, 2023.
- Appellant Exhibit #L – NHPRI Plan of Care dated January 5, 2023.
- Appellant Exhibit #M – NHPRI Plan of Care dated November 17, 2021.
- Appellant Exhibit #N – [REDACTED], Primary Care Physician’s Summary of Today’s Visit dated September 5, 2018.
- Appellant Exhibit #O – [REDACTED] After Visit Summary dated December 29, 2022.
- Appellant Exhibit #P – Letter from [REDACTED] dated April 17, 2024.
- Appellant Exhibit #Q – Letter from [REDACTED] dated May 23, 2024.
- Appellant Exhibit #R – Letter from [REDACTED] dated June 23, 2024.
- Appellant Exhibit #S – Letter from [REDACTED] dated May 19, 2024.

VI. RELEVANT LAW/REGULATIONS

According to State regulation 210-RICR-40-10-1, Medicaid generally covers medically necessary services. This includes medical, surgical, and other services required for the prevention, diagnosis, cure, or treatment of a health-related condition, including any such services necessary to prevent or slow a decremental change in either medical or mental health status.

According to 210-RICR-50-00-1.3(A)(14), LTSS means a spectrum of services covered by the Medicaid program for persons with clinical and functional impairments and chronic illness or diseases that require the level of care typically provided in a healthcare institution. LTSS includes skilled or custodial nursing facility care, therapeutic day services, personal care, and various home and community-based services (“HCBS”). The scope of these services and

supports and the choice of settings are determined by a comprehensive assessment of each person's unique care needs.

According to 210-RICR-50-00-1, specifically section § 1.3(A)(20), "Needs-based criteria" means the basis for determining clinical/functional eligibility for Medicaid LTSS. The LTSS needs-based criteria encompass medical, social, functional, and behavioral factors and the availability of family support and financial resources. Per section § 1.6(A)(2), the State uses needs-based criteria to determine the scope of services a beneficiary is qualified to receive. Medicaid LTSS coverage varies with a beneficiary's functional capacity, acuity needs, social environment, access to family and other third (3rd) party support, and personal choices.

According to 210-RICR-40-10-1, specifically section § 1.7.3, for Medicare-Medicaid Plans ("MMP"), Medicaid provides coverage through a Managed Care Organization ("MCO") such as NHPRI Integrity. See 210-RICR-40-10-1.7.8, entitled "Medicaid Managed Care Service Delivery Arrangements" for MMP.

NHPRI established guidelines for what constitutes medically necessary for LTSS HCBS. According to NHPRI's CMP#20 form, the number of approved home care hours is based on medical necessity and is determined by an assessment done by NHPRI medical staff. Factors considered in the assessment are the member's height, age, weight, diagnosis, recent admission, continence of bowels, continence of bladder, mobility, level of assistance needed with Activities of Daily Living ("ADLs"), such as bathing, grooming, dressing and eating, level of assistance with Instrumental Activities of Daily Living ("IADLs"), such as housekeeping, and laundry, hours the primary caretaker is available, and the primary caretaker's ability to care for the member.

VII. FINDINGS OF FACT

1. Based on two (2) in-home CFNA completed by an NHPRI care manager on January 4, 2024, and February 9, 2024, NHPRI determined that the Appellant's LTSS HCBS weekly home care hours should be reduced from fifty (50) to thirty-two (32) hours.
2. The Appellant filed an initial appeal directly with NHPRI, as required by the plan, and NHPRI upheld its original decision to reduce the Appellant's weekly home care hours.
3. Next, the Appellant filed an external appeal with NHPRI, and Maximus Federal Services, Inc. ("Maximus"), a third party, completed a review. Maximus upheld the decision to reduce the Appellant's weekly home care hours.
4. Finally, the Appellant filed this appeal with the EOHHS Appeals Office on March 1, 2024.
5. An EOHHS administrative hearing commenced on June 25, 2024.
6. According to EOHHS:
 - EOHHS agrees with NHPRI to reduce the Appellant's weekly home care hours to thirty-two (32) hours.
7. According to the NHPRI:
 - The Appellant's weekly home care hours remained at fifty (50) and were not reduced pending the outcome of this Appeal.
 - According to Centers for Medicare & Medicaid Services ("CMS"), medically necessary services are those that "are proper and needed for the diagnosis or treatment of a medical condition" and "are provided for the diagnosis, direct care, and treatment of a medical condition" and "are not mainly for the convenience of a member or a member's doctor."

- NHPRI uses a service calculator, approved by the State of Rhode Island, to record and determine the number of hours appropriate for a person's care.
- For LTSS HCBS, CFNAs are performed every one hundred eighty (180) days to determine if there are any status changes or if any additional needs should be met for the person who receives those services.
- Due to COVID, the Appellant has not had an in-person CFNA since 2019.
- The CFNA that was done in June 2023 was done telephonically by a care manager from Child and Family Services, a company contracted by NHPRI to conduct assessments. These care managers are not licensed registered nurses or clinical social workers and have no medical background. At that time, an in-person CFNA was not performed on the Appellant to determine the Appellant's specific needs and the Appellant's ability to function and perform particular tasks. In addition, the June 2023 telephonic assessment relied solely upon information supplied by the Appellant's daughter.
- Prior to the June 2023 CFNA, the Appellant was approved for forty (40) weekly home care hours. During this June 2023 assessment, the Appellant's daughter reported that the morning home care aid was uncomfortable ambulating the Appellant alone. This resulted in an additional ten (10) weekly home care hours, adding a second home care aid for the Appellant's care. This June 2023 assessment was based on the Appellant needing care seven (7) days per week, requiring three (3) meal preparations per day, and needing ninety (90) minutes weekly for shopping. This assessment, however, was not thorough. The care manager from Child and Family Services did not account for the private home aid the Appellant had on the weekend,

did not account that the Appellant's caregiver was available to assist the Appellant with dinner, nor did the care manager account for the Appellant's caregiver expecting to help with IADLs such as shopping. These overlooked items would have reduced the home care hours if they had been considered.

- Two (2) in-home CFNAs were completed on the Appellant by NHPRI medical staff. The first was completed on January 4, 2024, and the second on February 9, 2024. Both assessments determined that only thirty-two (32) weekly home care hours were medically necessary. The criteria that NHPRI considered during these assessments are laid out in NHPRI's CMP#20 form, which complies with Rhode Island Medicaid regulations.
- During both NHPRI in-home CFNAs in January and February 2024, the NHPRI care manager watched the Appellant complete tasks, observed the Appellant ambulate, and recorded the level of assistance the Appellant needed to complete tasks. The NHPRI care manager accounted for external providers providing care to the Appellant and accounted for the Appellant's caregiver helping out with IADLs. The Appellant's medical diagnosis and the impact of such diagnoses were taken into account on the Appellant's ability to care for herself. Medical devices the Appellant had for assistance were also considered. Clearly, these most recent CFNAs were much more thorough.
- Both 2024 in-home CFNAs were based on the Appellant needing care only five (5) instead of seven (7) days per week, like in the June 2023 assessment. Five days was only warranted because the Appellant had a private agency caring for her on the weekends. The Appellant only needed assistance with breakfast and lunch feedings.

Assistance with feeding the Appellant in the evening was not required because the Appellant's caretaker was available to assist the Appellant in the evening. This assessment did not allocate time for shopping since the Appellant lived with her daughter and caregiver, who is expected to take on a portion of the Appellant's IADLs, such as shopping. The Appellant was found to need extensive assistance with ADLs, such as ambulation, dressing, functional transfers, bladder and bowel movements, bathing, and grooming. The Appellant was totally dependent with IADLs, such as meal preparation, laundry, shopping, and housework. The Appellant could functionally transfer with the help of a mobility device and one (1) certified nursing assistant. In January 2024, the Appellant had a limited need regarding self-feeding because the Appellant could participate in feeding herself. But in February, it was determined that the Appellant needed more extensive assistance with this same task.

- Dr. Mitchel testified that a particular diagnosis does not equal an additional lack of functional ability. The CFNA is not an arbitrary tool but a quantification of a person's functional ability, which is why an in-person CFNA is extremely important.
- [REDACTED] from [REDACTED] was listed as the Appellant's PCP during the November 2021, June 2023, and January/February 2024 assessments. The Appellant never updated their information with NHPRI to remove this primary care physician ("PCP").
- NHPRI relied on its 2024 assessments, rather than Maximus's assessment, to determine the Appellant's home care hours. NHPRI introduced the Maximus assessment as evidence of the appeal process.

- Both in-person CFNAs NHPRI completed in January and February 2024 were clinically objective, and these assessments were based on the Appellant's physical ability to perform certain functions at that time, taking into account all the Appellant's medical diagnosis as well.

VIII. DISCUSSION

The record of hearing was held open until 4:00 p.m. on July 3, 2024, for NHPRI to submit its post-hearing submission, which the EOHHS Appeals Office received at 8:13 a.m. on July 3, 2024. NHPRI's post-hearing submission was emailed to the Appellant's daughter for review at 8:42 a.m. on July 3, 2024. The Appellant's daughter had until close of business at 4:00 p.m. on July 10, 2024, to submit her response. The EOHHS Appeals Office did not receive her response until 6:02 p.m. on July 10, 2024, nor did she ask for an extension. Therefore, this additional evidence submitted by the Appellant's daughter was not considered.

The Appellant's daughter spent a significant amount of time addressing inaccuracies in the Maximus review and how NHPRI relied upon this review to uphold its decision to reduce the Appellant's weekly home care hours. However, since NHPRI made it clear it did not rely on this review to determine the Appellant's approved home health care hours, there is no need to address those arguments.

The Appellant's daughter argued that the Appellant has not recovered from any of her chronic and progressive medical conditions. Because of this, the reduction in the Appellant's home care hours is not warranted. The Appellant's daughter further argued that NHPRI did not consider the Appellant's medical conditions when NHPRI reduced the Appellant's home care hours. NHPRI showed that both in-home CFNAs completed in January and February 2024 were done by a care manager with a medical background who was able to observe the Appellant while

the Appellant was completing tasks. Because of this, both in-person 2024 assessments accurately depict the Appellant's needs at that time. NHPRI has also shown that both in-person assessments completed in 2024 were much more accurate than the telephonic assessment completed in June 2023.

The Appellant's daughter stated that NHPRI did not contact the Appellant's PCP at [REDACTED] and that another provider, [REDACTED], from [REDACTED], approved the Appellant's care plan. NHPRI showed that [REDACTED] was listed as the Appellant's PCP at the time of the Appellant's November 2021 assessment, June 2023 assessment, and both 2024 assessments. The Appellant's daughter also stated that the Appellant's PCP from [REDACTED] disagreed with the Appellant's care plan. NHPRI showed that CMS states that medically necessary services "are not mainly for the convenience of a member or a member's doctor."

The Appellant's daughter further stated that NHPRI did not consider the Appellant's medical conditions when NHPRI reduced the Appellant's home care hours. NHPRI showed that when NHPRI completed two (2) separate CFNAs in 2024, NHPRI accounted for the Appellant's medical conditions and diagnosis and how each affected the Appellant's ability to perform ADLs and IADLs. Dr. Mitchell testified that a particular diagnosis does not equal an additional lack of functional ability, which is why in-person CFNAs are extremely important.

Per NHPRI Exhibit #M, the June 2023 assessment notes show that the Appellant's short-term goal was to increase the Appellant's home care hours, which is precisely what happened. From June 2023 until the following assessment in January 2024, the weekly home care hours increased to fifty (50) hours. NHPRI completes CFNAs every one hundred eighty (180) days and both CFNAs completed in 2024 were done in-home by a trained care manager from NHPRI with a medical background. This did not happen during the June 2023 assessment. The June 2023

assessment was completed telephonically and is precisely the reason why the June 2023 assessment was far less accurate than the assessments completed in 2024.

The difference between the June 2023 assessment and the two (2) assessments completed in 2024 are as follows. The June 2023 assessment was based on care for seven (7) days per week, assistance with three (3) meals per day, and allowed for ninety (90) minutes of shopping per week. Both assessments in 2024 were accurately based on care five (5) days per week and assistance with two (2) meals per day. The Appellant's caregiver has always been available in the evenings to assist the Appellant with dinner preparation and feeding and was always available to help with shopping during the week. The June 2023 assessment did not take any of this into account but this was corrected during the in-home assessments in 2024.

In conclusion, as outlined in State regulations, Medicaid provides coverage for medically necessary services through an MCO such as NHPRI. As stated on page two (2) of NHPRI's complete CMP#20 form, for MMP Integrity members, the number of approved home care hours is based on medical necessity and is determined by an assessment completed by an NHPRI medical staff. As NHPRI stated, NHPRI is obligated by its contract with EOHHS to manage healthcare to avoid duplication of services. NHPRI accurately determined the number of weekly home care hours based on medically necessary when NHPRI reduced the Appellant's weekly in-home LTSS services from fifty (50) to thirty-two (32) hours during both NHPRI assessments in 2024.

IX. CONCLUSION OF LAW

After a careful review of the testimony and evidence present at the administrative hearing, it is clear that NHPRI:

1. Used its service calculator, approved by the State of Rhode Island, when NHPRI completed both CFNAs on the Appellant to determine the number of Medicaid LTSS weekly home care hours.
2. Completed two (2) in-person CFNAs on the Appellant in 2024 to determine precisely what the Appellant's needs were.
3. Has shown why a reduction of weekly home care hours resulted from the in-person assessments completed by NHPRI in January and February 2024 compared to the June 2023 assessment. Specifically, both in-home assessments were more accurate than the telephonic assessment, and the 2024 assessments accurately captured the Appellant's needs.
4. Provides Medicaid LTSS HCBS home care hours for medically necessary services as outlined in the State of Rhode Island Medicaid regulations.
5. Correctly applied "needs-based criteria," as outlined in Rhode Island State regulations, when NHPRI determined which LTSS services it needed to provide to the Appellant as a medical necessity.

X. DECISION

Based on the foregoing findings of facts, the conclusion of law, evidence, and testimony, a final order be entered that NHPRI has presented sufficient evidence that in January and February of 2024, NHPRI completed an in-person CFNA on the Appellant and the Appellant's medical needs were accurately captured at that time.

APPEAL DENIED

/s/ Robert Pelosi
EOHHS Appeals Officer

NOTICE OF APPELLANT RIGHTS

This Final Order constitutes a final order of the Executive Office of Health and Human Services pursuant to the RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court Sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The Agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

CERTIFICATION

I hereby certify that I mailed a true copy of the foregoing to [REDACTED] via regular mail, postage prepaid. Copies were sent via email to [REDACTED], NHPRI Representatives Mary Eldridge, Robert Fine, Esq., Amy Coleman, Esq., and EOHHS Representatives Nina Lennon and John Neubauer on this 19th day of July, 2024.

x Rebecca A. [Signature]