



Craig Smith, Counsel for Sunshine State Health Plan, Inc. (“Sunshine”), appeared on behalf of Respondent. The following appeared as witnesses for Respondent: Solange Luna, Supervisor for Sunshine; Louise Jeunty, Quality Improvement Supervisor for Sunshine; Ricardo Quijada, Manager of Case Management for Sunshine; Paula Delgado, Care Coordinator for Sunshine; and Dr. Sapnalaxmi Amin (“Dr. Amin”), Medical Director for Sunshine.

Gabriella, from Cyacom, Interpreter ID number 354366, provided translation services for Petitioner’s Authorized Representative.

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

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and eleven (111)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary, dated December 10, 2020; the Notice of Adverse Benefit Determination (“NABD”), dated August 3, 2020; a Long Term Care Person-Centered Care Plan, reviewed June 25, 2020; a second Long Term Care Person-Centered Care Plan, reviewed November 16, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated June 25, 2020; a second 701B, dated November 16, 2020; a standard plan appeal acknowledgment, dated November 16, 2020; a plan appeal acknowledgment, dated September 10, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated October 2, 2020; Sunshine Health Policy and Procedure LT.UM.09, last revised November 2019; and Fla. Admin. Code R. 59G-1.010(166). Absent an objection from the Petitioner, the undersigned admitted the one hundred and eleven (111)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

## FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is eighty-five (85) years old and diagnosed with moderate anemia, frequent bladder incontinence, osteoporosis, and dementia. Respondent's Composite Exhibit 1 at 49 and 55-56.
3. Petitioner's current plan of care includes ten (10) hours of Personal Care Services per week; fourteen (14) hours of Homemaker Services per week; and one case of pull-ups per month. *Id.* at 8 and 53.
4. Petitioner needs some assistance with bathing and dressing herself to mitigate her risk of falling. *Id.* 53. Petitioner does not require any assistance with eating. *Id.* Petitioner requires supervision with using the bathroom and walking/mobility. *Id.* Petitioner uses a cane for walking and transferring. *Id.* Petitioner always has assistance with these tasks. *Id.*
5. Petitioner needs total assistance with heavy chores, light housekeeping, managing money, preparing meals, and shopping. *Id.* at 54. Petitioner needs some assistance with using the telephone, managing medication, and using transportation. *Id.* Petitioner always has assistance with these tasks. Petitioner's son assists with chores, housekeeping finances, shopping, managing Petitioner's medications, and transportation. *Id.* Petitioner's home health aide assists with light housekeeping. *Id.* Petitioner's spouse assists Petitioner with using the telephone, meal preparation, and managing Petitioner's medications. *Id.*

6. Petitioner requested an additional eighteen (18) hours of Personal Care Services per week. Respondent denied the request in the NABD, dated August 3, 2020. The NABD explained as follows:

Sunshine Health has reviewed your request for an extra 18 hours per week of Personal Care Services (the person who helps bathe and dress you), which we received on 07/27/2020. After our review, this service has been:

DENIED as of 08/03/20.

- We determined that your requested services are not medically necessary because the services do not meet the reason(s) checked below: (See Rule)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services.

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;

2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and

3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider; and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or

2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...

The facts that we used to make our decision are: The request for an extra 18 hours per week of Personal Care Services is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 6 hours per week of Personal Care Services and 4 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 4-5.

7. The pertinent portion of Sunshine’s Long Term Care Ancillary Criteria (“LT.UM.09”) is as a follows:

**B. Medical Necessity Determination**

To assist in determining the medical necessity of any ancillary services, the clinical criteria established in this policy will be applied. Any decision to deny, reduce, suspend, or terminate services must be made by a Sunshine Health Medical Director as outlined in the policy Medical Necessity Review FL.UM.02.01 and Use of Clinical Criteria FL.UM.02 Sunshine Health will respond to requests within the timelines as outlined in the policy Timeliness of UM Decisions FL UM 05.

**C. Criteria for Type of Service:**

Criteria for each of the benefits noted in the Policy section will be used when reviewing the medical necessity of any ancillary services. In addition, the Medical Necessity Review policy FL.UM.02.01 is considered when determining medical necessity of ancillary services. The Florida Coverage Policies and Limitations Handbooks are used to determine benefits, any benefit limitations, and additional criteria. The ancillary services of this policy are intended to augment and support the existing informal care and community services being provided to allow the member to remain safely in their home.

**1. Determinants for Services**

When considering the level of support the member requires and which of the ancillary services may support the member’s cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member’s support needed due to ADL deficits, living situation, and supervision needs.

- a) Activities of Daily Living (ADL’s)/Instrumental Activities of Daily Living (IADL’s)
  - Independent where member is able to provide the task without support, with or without assistive devices
  - Minimal functional impairment where the ADL’s require one of the following:
    - Supervision
    - At least minimal assistance
    - Member ambulates with assistance of a person or a device
    - Member transfers require at least minimum assistance
  - Moderate functional impairment where two of the follow apply:
    - Member has ADLs requiring at least minimal assistance

- Member ambulates with assistance of a person or device
- Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
  - Member has ADLs requiring total assistance
  - Member is non-ambulatory
  - Member transfers require one (1) to two (2) person assist
  - Member's treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
- Lives with non-family (with consideration of the number of days and hours that nonfamily members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

...

## 7. Personal Care Services

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)

- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders  
The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

Personal Care workers must be supervised by a registered nurse, licensed to practice nursing in Florida and who conducts a supervisory home visit every 60 days to observe the personal care worker. The services may be provided in the member's home or other location.

#### Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

*Id.* at 84-86 and 97-98.

8. Petitioner requested a plan appeal and received an NPAR dated October 2, 2020, partially upholding the denial. In the NPAR, Respondent denied fourteen (14) of the eighteen (18) hours per week of Personal Care Services requested by Petitioner. The NPAR explained as follows:

On September 3, 2020 we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated August 3, 2020, Notice of Adverse Benefit Determination Number [REDACTED], DENYING, the 18 hours per week of Personal Care Services (the person who helps bathe and dress you), provided to [REDACTED]

On October 1, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby PARTIALLY APPROVES your plan appeal. As a result, [REDACTED] will receive an additional 4 hours per week of Personal Care Services for a total of 10 hours/ week (and deny

the remaining 14 hours), and an additional 10 hours of Homemaking Care for a total of 14 hours/ week, effective October 1, 2020.

The reason for our decision was: Reconsideration request for an additional 18 hours/ week of Personal Care is partially approved. Sunshine Health has looked at the member's present care needs and provided home services. Sunshine Health will approve an additional 4 hours of Personal Care for a total of 10 hours/ week (and deny the remaining 14 hours). As an alternative Sunshine Health will provide an additional 10 hours of Homemaking Care for a total of 14 hours/ week. The member's services are sufficient to meet the member's care needs. The member's new care plan will include: 10 hours/ week of Personal Care, 14 hours/ week of Homemaker Care for a total of 24 hours/ week of in home care and 1 case/ month of Pull-ups. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 73.

9. [REDACTED] requested a Fair Hearing on behalf of Petitioner October 26, 2020. On December 10, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for December 29, 2020, at [REDACTED]

10. During the hearing, [REDACTED] testified that Petitioner frequently calls him for assistance and that Petitioner needs additional Personal Care Services to provide supervision for Petitioner. [REDACTED] added that the Personal Care Services were necessary because Petitioner's dementia and incontinence are worsening.

11. Dr. Amin is a physician board certified in family medicine. Dr. Amin testified that Petitioner can allocate Personal Care Services and Homemaker Services as necessary to meet Petitioner's needs. Dr. Amin added that even considering [REDACTED]' testimony, her opinion remains the same that the additional services are not medically necessary.

## 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 Fla. Stat. § 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. Because Petitioner is requesting a new service, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. 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.

15. 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, establishes the provision and coverage of 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)

...

### **1.3.16 Natural Supports**

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

...

### **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.

16. 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.

17. 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.

18. Respondent denied Petitioner's request for fourteen (14) hours per week of Personal Care services on the basis that the requested hours are not medically necessary. *See Supra* ¶¶ 7-8. As provided in the LTC Policy, Personal Care services are intended to provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. *Supra* ¶ 16.

19. Dr. Amin testified that Respondent's level of services is adequate to meet Petitioner's needs even considering ██████████ testimony that Petitioner's dementia and incontinence are worsening. *Supra* ¶¶ 10-11. ██████████ testified that Petitioner needs additional supervision and that Petitioner frequently calls him for assistance. *Supra* ¶ 11. Petitioner's most recent plan of care shows that Petitioner is receiving ten (10) hours of Personal Care services per week, fourteen (14) hours of Homemaker services per week, and one case of pull-ups per month. *Supra* ¶ 2. The 701B, dated November 16, 2020, shows that Petitioner always has assistance with her IADLs and her ADLs. *See Supra* ¶ 2. The 701B shows that responses to the assessment were completed by ██████████ and Petitioner. Respondent's Composite Exhibit 1 at 50.

20. 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* ¶ 16. Here, the 701B assessment was performed after the NPAR that lead to the request for a Fair Hearing. The 701B was completed with assistance from [REDACTED] in which his responses with Petitioner reflect Petitioner always has assistance with her ADLs and IADLs. The 701B details which tasks are covered by Petitioner's spouse, the home health aide, and [REDACTED]. While [REDACTED] testified that Petitioner needs additional supervision, supervision, if medically necessary, is provided through other services, such as adult companion care rather than personal care. Even considering [REDACTED] testimony that Petitioner's dementia and incontinence are worsening, Dr. Amin's testimony that the services are sufficient given Petitioner's diagnoses is credible. Petitioner has not demonstrated that the personal care services requested are "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." Thus, Petitioner has not met the burden of proof to show that the Personal Care Services are medically necessary.

21. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of and additional fourteen (14) hours per week of Personal Care Services week was incorrect.

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

Respondent's denial of fourteen (14) hours per week of Personal Care Services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of fourteen (14) hours per week of Personal Care Services is **DENIED**.

**DONE and ORDERED** this 22nd day of January, 2021, in Tallahassee, Leon County, Florida.

*Charles T Martin*

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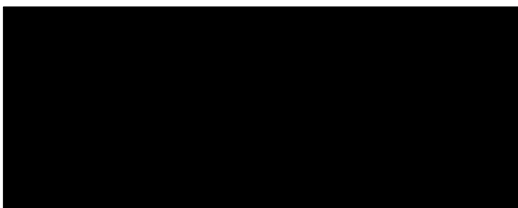
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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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