

All parties and witnesses appeared telephonically. Petitioner appeared for the Fair Hearing on 12/21/2020 and 1/25/2021, and provided testimony on his own behalf. [REDACTED] [REDACTED] also appeared for the Fair Hearing on 12/21/2020 and did not provide testimony.

Maria Mojica (“Ms. Mojica”), Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine” or “Respondent”) represented Respondent at the hearing on 12/21/20 and 1/25/21. The following individuals appeared on behalf of Respondent on 12/21/2020: Dr. John Carter (“Dr. Carter”), Long Term Care (“LTC”) Medical Director for Sunshine; Louise Jeanty, Supervisor of Quality Improvement; Paula Deldago, Care Coordinator for Sunshine; Jacqueline Alvarez, Supervisor of LTC for Sunshine; Maria Felton, Care Coordinator for Sunshine; and Mr. Renauto Quijaza, Manager of Case Management for Sunshine. The following individuals appeared on behalf of Respondent on 1/25/2021: Dr. Carter; Gretchen Curtis, Care Coordinator for Sunshine; Solange Luna, LTC Supervisor for Sunshine; Jacqueline Alvarez, Supervisor of LTC for Sunshine; and Christian Pacheco, Senior Director of Quality Improvement for Sunshine.

Doris Rivera (“Ms. Rivera”), Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes on 12/21/2020 and 1/25/2021.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a 34-page evidence packet. The packet included the following documents: a letter from [REDACTED] to [REDACTED], dated September 8, 2020; a facsimile transmission (“fax”) coversheet to Respondent from [REDACTED], dated September 14, 2020; Petitioner’s medical records, dated [REDACTED] 2020, [REDACTED] 2020, [REDACTED] 2020, [REDACTED] 2020, [REDACTED] 2020, [REDACTED]

objection from Petitioner, the undersigned admitted Respondent's 111-page evidence packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine's LTC plan. *See* Respondent's Composite Exhibit 1, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is a 71-year-old male who resides alone in a private residence. *See* Respondent's Composite Exhibit 1, pages 49 – 50. Petitioner "ambulates in wheelchair due to amputation on left leg below knee." *Id.* at 50. *See* Petitioner's Composite Exhibit 1, pages 5 and 18. Petitioner's medical record for ██████████ 2020, reflects that Petitioner has a diagnosis of "[e]xudative age-related macular degeneration of both eyes." *See* Petitioner's Composite Exhibit 1, page 24.

3. The 10/9/2020 701B, which is the most recent 701B, reflects that Petitioner has the following health conditions: acid reflux; allergies (shellfish and codeine); amputation (left leg above knee amputee (2009)); osteoarthritis; high blood pressure; high cholesterol; diabetes; occasional dizziness; chronic obstructive pulmonary disease (COPD); osteoporosis; past stroke; past tumor (right collar bone and right arm nonmalignant cyst (2018)); past ulcer (right calf stage 4 wound (2015)); stomach hernia; "LD, MDD, GAD, Insomnia, thrombosis on right leg (1994)." *See* Respondent's Composite Exhibit 1, pages 55 – 56.

4. The 10/9/20 701B reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner needs no assistance with eating. *See* Respondent's Composite Exhibit 1, page

53. Petitioner uses assistive devices for using the bathroom, transferring, and walking/mobility.

Id. Petitioner needs assistance (but not total help) with bathing and dressing. *Id.*

5. The 10/9/20 701B reflects the following regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"). Petitioner needs no assistance with using the telephone, managing money, managing medication, and using transportation. *See Respondent's Composite Exhibit 1, page 54.* Petitioner needs assistance (but not total help) with preparing meals and shopping. *Id.* Petitioner needs total assistance (cannot do at all) with heavy chores and light housekeeping. *Id.*

6. On July 28, 2020, Respondent issued an NABD reducing personal care services from 14 hours per week to 9 hours per week. *See Respondent's Composite Exhibit 1, pages 4 and 5.* The NABD stated the reason for Respondent's determination was that the "requested services are **not medically necessary.**" *Id.* at 4. (Emphasis added.)

7. Petitioner timely requested a plan appeal. *See Respondent's Composite Exhibit 1, page*

67. On September 10, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 73 – 75. The NPAR stated as follows:

On August 14, 2020 we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated July 28, 2020, Notice of Adverse Benefit Determination Number [REDACTED], REDUCING the Personal Care Services (the person who helps bathe and dress you) from 14 hours/week to 9 hours/week, and REDUCING the Home Delivered Meals (meals sent to your home) from 7 meals/week to 3 meals/week provided to [Petitioner].

On September 10, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby PARTIALLY DENIES your plan appeal. As a result, [Petitioner] will receive an extra 4 meals/week of Home Delivered Meals, and will not receive the extra 5 hours per week of Personal Care Services, effective September 10, 2020.

The reason for our decision was: The appeal to overturn the reduction of 5 hours per week of Personal Care Services (from 14 hours per week to 9 hours per week) and the reduction of 4 meals per week of Home Delivered Meals (from 7 meals

per week to 3 meals per week) is partially approved. Based on the assessment of the member's care needs and household [sic] and caregiver status, Sunshine Health will approve the addition of 4 meals per week of Home Delivered Meals but will deny the addition of 5 hours per week of Personal Care Services. The updated care plan approved by Sunshine Health will include 9 hours per week of Personal Care Services, 7 hours per week of Homemaker Services, 4 hours per week of Companion Care Services, and 7 meals per week of Home Delivered Meals. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

Respondent's Composite Exhibit 1, page 73.

8. The Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria states the following with regards to personal care services:

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.

...
Exclusions and Limitations for Personal Care services 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. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
 - a. Member requires frequent repositioning due to wounds
 - b. Severe incontinence requiring multiple overnight changes and cleaning
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort Services

Respondent's Composite Exhibit 1, pages 97, 98, and 103.

9. On November 13, 2020, Petitioner requested a Fair Hearing due to the reduction of personal care services from 14 hours per week to 9 hours per week. The undersigned scheduled the Fair Hearing for December 21, 2020, at [REDACTED] and January 25, 2021, at [REDACTED] and all parties were duly notified.

10. Petitioner is currently authorized to receive the following home and community based services: 14 hours per week of personal care services; 7 hours per week of homemaker services; 4 hours per week of adult companion care services; 7 home delivered meals per week; and 4 packs of wipes per month. See Respondent's Composite Exhibit 1, page 25.

11. Dr. Carter is an LTC Medical Director for Sunshine. Dr. Carter testified that Respondent reduced Petitioner's personal care services, because Petitioner requires partial assistance with bathing and dressing, but no assistance with other ADLs.

12. Petitioner testified that he has no family and lives alone. Petitioner testified that he is blind in one eye and uses a wheelchair.

CONCLUSIONS OF LAW

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

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

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

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

16. Because Respondent is reducing existing services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

17. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("SMMC LTC Policy"). The Agency's SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC LTC Policy provides as follows:

1.1 Description and Program Goal

Under the Statewide Medicaid Managed Care Long-term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

1.3 Definitions

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

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

1.3.5 701-B Comprehensive Assessment

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

- (a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
- (b) All other LTC supportive services must meet all of the following:
 - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
 - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
 - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

...

1.3.16 Natural Supports

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

...

1.3.18 Plan of Care

A description of the enrollee's goals for long-term care, the services and supports needed to meet those goals, and the specific service needs of each enrollee, showing the projected duration, desired frequency, and type of provider furnishing each service, and the scope of the services to be provided.

...

2.2 Who Can Receive

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

...

4.0 Coverage Information

4.1 General Criteria

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

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service

- Meet the criteria as specified in this policy

4.2 Specific Criteria

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

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

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

...

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.

...

4.2.2.5 Medical Equipment and Supplies

In accordance with Rule 59G-4.070, F.A.C. This service includes the provision of medical equipment and supplies specified in the plan of care, including: devices, controls, or appliances that enable the enrollee to increase the ability to perform activities of daily living; devices, controls, or appliances that enable the enrollee to perceive, control, or communicate with the environment in which he or she lives; items necessary for life support or to address an enrollee's physical conditions, along with ancillary supplies and equipment necessary to the proper functioning of such items; such other durable and non-durable medical equipment not available under the State Plan that is necessary to address enrollee needs, including consumable medical supplies, such as adult diapers; and repair of such items or replacement parts.

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of

these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

6.0 Documentation

...

6.2 Specific Criteria

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

SMMC LTC Policy, pages 1-8.

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

1.0 Introduction

This policy contains definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule.

...

2.18 Caregiver

Person(s) attending to the needs of another person, who is physically or mentally impaired, injured, incapacitated, or a child unable to care for him or herself.

...

2.2 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

...

2.32 Covered Services

Medical and allied care, goods, services, or procedures that are reimbursable by Florida Medicaid.

...

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

- Grocery shopping

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

...

2.83 Medically Necessary or Medical Necessity

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy, pages 1, 2, 3, 6 and 7.

19. The Agency’s Florida Medicaid Personal Care Services Coverage Policy (November 2016)

(“PC Policy”) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215. The PC

Policy provides as follows:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to

accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework

- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

7.0 Authorization

7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid’s General Policies on authorization requirements.

...

Personal Care Task

General Time Allowances

Bathing

Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient's needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
Grooming and Skin Care	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
Positioning	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
Transfers	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
Toileting and Maintaining Continence	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal

Delegated Medical Monitoring and Activities

Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.

15–30 minutes day for all monitoring tasks performed

PC Policy, pages 3 – 8, and 10.

20. In the instant case, Respondent reduced Petitioner’s personal care services from 14 hours per week to 9 hours per week. *See supra* ¶ 6. As established on the record by the evidence and testimony, Respondent reduced Petitioner’s personal care services, because Respondent’s position is that the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. *See supra* ¶ 6 and 7.

21. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 17.

22. Section 4.2.2.6 of the SMMC LTC Policy reflects that personal care services are “[t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” *See supra* ¶ 17.

23. The Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria states that personal care services provide “assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. . . . includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping. . . .” *See supra* ¶ 8.

24. The PC Policy provides that personal care services are to “provide medically necessary assistance, in the home or in the community, with [ADL] and age appropriate [IADL] to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.” *See supra* ¶ 19.

25. The evidence presented in this case reflects that Respondent’s reduction of personal care services is not warranted under the circumstances of this case. Specifically, regarding ADLs, Petitioner: needs no assistance with eating; uses assistive devices for using the bathroom, transferring, and walking/mobility; and needs assistance (but not total help) with bathing and dressing. *See supra* ¶ 4. Regarding IADLs, Petitioner needs: no assistance with using the telephone, managing money, managing medication, and using transportation; assistance (but not total help) with preparing meals and shopping; and total assistance (cannot do at all) with heavy chores and light housekeeping. *See supra* ¶ 5. Petitioner “ambulates in wheelchair due to amputation on left leg below knee.” *See supra* ¶ 2. The record reflects that Petitioner has multiple medical conditions, including a diagnosis of “[e]xudative age-related macular degeneration of both eyes.” *See supra* ¶ 2.

26. Dr. Carter testified that Respondent reduced Petitioner’s personal care services, because Petitioner requires partial assistance with bathing and dressing, but no assistance with other ADLs. *See supra* ¶ 11. However, Petitioner reported that he is blind in one eye, lives alone and has no family. *See supra* ¶ 12. The record reflects that Petitioner has “blurry [v]ision.” *See supra* ¶ 2. Additionally, Petitioner “ambulates in wheelchair due to amputation on left leg below knee.” *See supra* ¶ 2. Although Petitioner only needs assistance (but not total help) with bathing and dressing, *supra* ¶ 4, he still requires assistance (but not total help) with preparing meals and

shopping, and total assistance (cannot do at all) with heavy chores and light housekeeping. See *supra* ¶ 5. As such, the record appears to indicate that Petitioner needs more assistance than Respondent indicated, as it appears that Petitioner also needs assistance with preparing meals, shopping, heavy chores, and light housekeeping – all of which are covered under personal care services. Although the PC Policy provides guidance for general allowances for ADLs, *supra* ¶ 19, Respondent provided no calculations nor time estimates for each ADL to explain how Respondent arrived at the reduction of personal care services in this case. Based upon the evidence presented by both parties, Respondent failed to establish that a reduction of personal care services was warranted in this matter.

27. Section 1.3.14 of the SMMC LTC Policy requires that “LTC supportive services must [b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” See *supra* ¶ 17. Petitioner is currently authorized to receive the following home and community based services: 14 hours per week of personal care services; 7 hours per week of homemaker services; 4 hours per week of adult companion care services; 7 home delivered meals per week; and 4 packs of wipes per month. See *supra* ¶ 10. Considering Petitioner’s current needs and medical conditions, *supra* ¶ 2 – 5, 12, and 26, and that he has no family and lives alone, *supra* ¶ 12, Respondent failed to demonstrate that Petitioner’s aforementioned needs, *supra* ¶ 2 – 5, and 12, will be sufficiently met by the 9 hours per week of personal care services. Given that Respondent failed to establish that the reduction of personal care services is warranted in this matter, *supra* ¶ 26, the requested 14 hours per week of personal care services is not “in excess of [Petitioner’s] needs.” See *supra* ¶ 17.

28. In light of the both parties' testimony and evidence, the SMMC LTC Policy, the Authorization Requirements Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent failed to meet its burden of proving that the amount of hours reduced are no longer medically necessary.

29. Accordingly, the undersigned Hearing Officer finds that Respondent failed to prove by a preponderance of the evidence that Respondent's reduction of personal care services was correct.

DECISION

Respondent's reduction of personal care services from 14 hours per week to 9 hours per week is **REVERSED**. Petitioner's appeal based on Respondent's reduction in this matter is **GRANTED**.

DONE AND ORDERED this 10th day of February, 2021, in Tallahassee, Leon County, Florida.



Tracie Hardin
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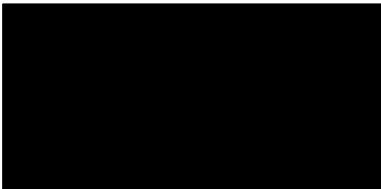
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.

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