



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

FILED
Jan 29, 2021, 11:36 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

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SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

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 December 30, 2020, at _____.

APPEARANCES

For the Petitioner:

Petitioner's Authorized Representative

For the Respondent:

Craig Smith, Esq.
Counsel for Respondent

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's home delivered meals was correct.

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

The third issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's barrier skin cream and incontinence wipes was correct.

The fourth issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's Personal Emergency Response System ("PERS") was correct.

The fifth issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's gloves and adult briefs was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and daughter, [REDACTED] ("[REDACTED]"), appeared on behalf of the Petitioner.

Craig Smith, Esq., appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine State Health Plan, Inc. ("Sunshine"); Gina Houston, Long Term Care Coordinator for Sunshine; Stephanie Gunning, Case Management Supervisor for Sunshine; Melissa Layne, Senior Manager for Member Appeals for Sunshine; and Alshanetha Williams, Care Coordinator Supervisor for Sunshine.

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

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a nine (9)-page evidence packet. The evidence packet included: a fax cover sheet, dated December 9, 2020; a Designation of Authorized Representative Form, dated December 2, 2020; a letter from

██████████, dated December 9, 2020; a letter from ██████████, dated October 4, 2020; a fax cover sheet from ██████████; a letter from ██████████, dated October 8, 2020; and a ██████████ document, generated on ██████████ 2020. Absent an objection from the Respondent, the undersigned admitted the nine (9)-page packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-seven (127)-page evidence packet and a one hundred and twenty (120)-page evidence packet. The one hundred and twenty-seven (127)-page evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination ("NABD"), dated August 31, 2020; a Long Term Care Person-Centered Care Plan ("POC"), dated ██████████ 2020; a POC, dated November 17, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated ██████████ 2020; a 701B, dated October 20, 2020; a Standard Appeal Acknowledgement, dated October 16, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated November 7, 2020; a Revised NPAR, dated November 14, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.10; and Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010. Absent an objection from the Petitioner undersigned admitted the one hundred and twenty-seven (127)-page packet into evidence as Respondent's Composite Exhibit 1.

The one hundred and twenty (120)-page evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; an NABD, dated August 31, 2020; a POC, dated ██████████ 2020; a POC, dated November 17, 2020; 701B, dated ██████████ 2020; a 701B, dated October 20, 2020;

a Standard Appeal Acknowledgement, dated October 16, 2020; an NPAR, dated November 7, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.10; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner undersigned admitted the one hundred and twenty (120)-page packet into evidence as Respondent’s Composite Exhibit 2.

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 thirty (30)-years old. *See* page 49 of Respondent’s Composite Exhibit 1. Petitioner lives with [REDACTED]. *Id.* at 50. [REDACTED] has a history of cancer. *See* page 9 of Petitioner’s Composite Exhibit 1.
3. Petitioner has cognitive issues due to brain injury, which includes bilateral benign brain tumor. *See* page 51 of Respondent’s Composite Exhibit 1. Petitioner is legally blind in his left eye and has uncorrectable vision in his right. *Id.* at 53. Petitioner receives radiation treatment “every few months” for his brain tumor. *Id.* at 56. Petitioner has occasional bowel and bladder incontinence. *Id.* at 55.
4. Petitioner was “Baked Acted” on [REDACTED] 2020, and discharged on [REDACTED] 2020. *Id.* at 53. Petitioner was “Baker Acted” on [REDACTED] 2020, and discharged on [REDACTED] 2020. *Id.*
5. Petitioner’s former plan of care included the following services: thirty-five (35) hours of personal care services, weekly; ten (10) hours of homemaker services, weekly; seven (7) home delivered meals, weekly; two (2) boxes of gloves, monthly; two (2) packs of wipes, monthly; one

(1) case of underpads, monthly; two cases of briefs, monthly; PERS; and two (2) tubes of personal care products, monthly. *Id.* at 29.

6. Petitioner’s activities of daily living (“ADLs”) are as follows: for bathing, dressing, transferring, and walking/mobility, Petitioner needs assistance (but not total help); for using the bathroom, Petitioner needs supervision or prompting. *Id.* at 53. Petitioner needs assistance with transferring and mobility after receiving radiation treatment. *Id.* Petitioner’s instrumental activities of daily living (“IADLs”) are as follows: for heavy chores, light housekeeping, managing money, preparing meals, and shopping, Petitioner needs total assistance (cannot do at all). *Id.* at 54. For using the telephone, Petitioner needs supervision or prompting. *Id.* For managing medication, Petitioner needs assistance (but not total help). *Id.* [REDACTED] prepares Petitioner’s breakfast and dinner before going to work. Petitioner “receives [home delivered meals] for lunch as members mother works outside of the home” *Id.* at 42.

7. In the NABD, dated August 31, 2020, Respondent terminated Petitioner’s home delivered meals. *Id.* at 4 – 12. The NABD explained the basis of the termination as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (*See Rule*)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

and one of the following:

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

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services and supplies.

...

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the monthly PERS, and will terminate the 7 meals/week of Home Delivered Meals, and will terminate the 2 packs/month of wipes, and will terminate the 1 tube/month of barrier cream, and will terminate the 1 case/month of disposable underpads. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Pages 4 – 6 of Respondent's Composite Exhibit 1.

8. In the NABD, dated August 31, 2020, Respondent reduced Petitioner's personal care services from thirty-five (35) hours, weekly, to twenty-eight (28) hours, weekly. See pages 4 – 12 of Respondent's Composite Exhibit 2. The NABD explained the basis of the reduction as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: *(See Rule)*

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

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

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services and supplies.

...

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Personal Care Services from 35 hours/week to 28 hours/week, and will reduce the Gloves from 2 boxes/month to 1 box/month, and will reduce the Diapers from 2 cases/month to 1 case/month. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Pages 4 – 6 of Respondent's Composite Exhibit 2.

9. In the NABD, dated August 31, 2020, Respondent terminated the following medical supplies: one (1) case of underpads/chux, monthly; one (1) tube of barrier skin cream, monthly; two (2) packs of incontinence wipes, monthly. See pages 4 – 12 of Respondent's Composite Exhibit 1. The NABD explained the basis of the termination as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: *(See Rule)*

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

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

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services and supplies.

...

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the monthly PERS, and will terminate the 7 meals/week of Home Delivered Meals, and will terminate the 2 packs/month of wipes, and will terminate the 1 tube/month of barrier cream, and will terminate the 1 case/month of disposable underpads. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Pages 4 – 6 of Respondent's Composite Exhibit 1.

10. In the NABD, dated August 31, 2020, Respondent terminated Petitioner's PERS. *Id.* at 4 –
12. The NABD explained the basis of the termination as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (*See Rule*)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services and supplies.

...

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the monthly PERS, and will terminate the 7 meals/week of Home Delivered Meals, and will terminate the 2 packs/month of wipes, and will terminate the 1 tube/month of barrier cream, and will terminate the 1 case/month of disposable underpads. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Pages 4 – 6 of Respondent's Composite Exhibit 1.

11. In the NABD, dated August 31, 2020, Respondent reduced Petitioner's allotment of gloves from two (2) boxes per month, to one (1) box and reduced Petitioner's adult briefs from two (2) cases per month to one (1) case. See pages 4 – 12 of Respondent's Composite Exhibit 2. The NABD explained the basis of the reduction as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: *(See Rule)*

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services and supplies.

...

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Personal Care Services from 35 hours/week to 28 hours/week, and will reduce the Gloves from 2 boxes/month to 1 box/month, and will reduce the Diapers from 2 cases/month to 1 case/month. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Pages 4 – 6 of Respondent's Composite Exhibit 1.

12. Petitioner requested a plan appeal and received an NPAR dated November 7, 2020, upholding: the termination of PERS; the termination of seven (7) home delivered meals; the termination of two (2) packs of wipes; and the termination of barrier skin cream. See pages 80 – 86 of Respondent's Composite Exhibit 1. The NPAR explained as follows:

The request for 7 Home Delivered Meals per week is denied. The member lives with his mother who prepares meals for him. In addition, the member has 10 hours per week of Homemaking services. The home health aide's duties include meal preparation. The request for personal emergency response services, (PERS) is denied. There is no mention in the appeal letter that the member wishes to appeal the termination of the PERS. The member has impaired decision making and judgment due to brain tumor. It is not clear whether the member understands how to use device. The request for 2 packages of wipes per month is denied. These can be purchased through your LTC over-the-counter benefit. The request for 1 tube per month of barrier cream is denied. The appeal letter does not mention that the member wished to appeal this item. There are no records that the member has a decubitus ulcer. The request for 1 case per month of underpads is partially approved for 1 case every other month. The member does not have constant urine and stool incontinence. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Pages 80 - 81 of Respondent's Composite Exhibit 1.

13. Petitioner requested a plan appeal and received an NPAR dated November 7, 2020, upholding: the reduction of personal care services; the reduction of the box of gloves; and the reduction of the case of briefs. See pages 73 – 79 of Respondent’s Composite Exhibit 2. The NPAR explained as follows:

The reconsideration request to resume the previous in home service hours is denied and the original determination is upheld. Based on the assessment of the member’s care needs and household and caregiver status, Sunshine Health will reduce the Personal Care Services from 35 hours/week to 28 hours/week, and will reduce the Gloves from 2 boxes/month to 1 box/month, and will reduce the Diapers from 2 cases/month to 1 case/month. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Pages 73 – 74 of Respondent’s Composite Exhibit 2.

14. On November 16, 2020, Petitioner requested a Fair Hearing to challenge the termination of home delivered meals, the reduction of personal care services, the termination of barrier skin cream and incontinence wipes, the termination of PERS, and the reduction of gloves and briefs. On December 10, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for December 30, 2020, at [REDACTED]

15. At the Fair Hearing, [REDACTED] withdrew the request for Fair Hearing regarding the following issues: the termination of barrier skin cream; the termination of PERS, and the reduction of gloves and briefs.

16. Dr. Carter is the Long Term Care Medical Director for Sunshine. Dr. Carter has Board certifications in internal medicine, palliative medicine, and geriatric medicine. Dr. Carter testified that, as Petitioner lives with his caregiver and receives ten (10) hours per week of homemaker

services, it was felt that home delivered meals were not a necessity. Dr. Carter testified that it was also felt that twenty-eight (28) hours of personal care services were sufficient to care for Petitioner. Dr. Carter testified that wipes were a convenience item, as soap and washcloths can be used for cleaning. Dr. Carter testified that approved services are meant to be “additive” to the support provided by the member’s family.

17. LT.UM.09 provides as follows in regards to personal care services:

5. Home Delivered Meals.

Nutritionally sound meals to be delivered to the residence of the member who has difficulty shopping for or preparing appropriate, nutritious meals without assistance. The member must be given a choice of meals from a menu provided in advance. Each meal is designed to meet the *USDA 2015-2020 Dietary Guidelines for Americans*. The service must be provided at the member’s residence. The Home Delivered Meals must be provided at the member’s residence. The Home Delivered Meals can be hot, cold, frozen, dried, canned, or a combination of these options. More than one meal can be delivered at a time if there is proper storage and heating facilities at a member’s residence. The member must be able to prepare and consume the meals him/herself with available assistance.

...

Approval Criteria

All home delivered meals will comply with any physician ordered and/or cultural special diets. The number of meals provided depend on caregiver availability and dietary need. To be eligible to receive home delivered meals, member must be:

- Ambulatory in the home and able to answer the door
- Able to obtain food from a refrigerator and able to microwave the food
- Homebound
- Live alone or spend extended periods of time alone
- Assistance is needed with IADL tasks for shopping and meal preparation
- Home delivered meals are not meant to cover the cost of meals

Exclusions and Limitations for Home Delivered Meals include but are not limited to:

1. Service must be provided at member’s residence.
2. Member resides alone or resides with others and is left alone for long periods.
3. The service is not provided when other family members and/or friends reside in the home.

4. Member must reside in a non-facility based setting.
5. Member needs assistance with meal preparation/and or shopping for food.
6. Member must be able to ambulate to door to receive meals
7. The member must be able to prepare and consume the meals with him/herself with available assistance.
8. Member must be able to obtain food from the refrigerator and be able to operate microwave to prepare meals.
9. This service is not intended to cover the cost of meals.

...

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 administer any medications, but may bring medications to the member and remind the member to take the medications 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.

...

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

...

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:
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort services

Pages 96 – 98 and 104 - 110 of Respondent’s Composite Exhibit 1.

18. LT.UM.10 provides as follows in regards to incontinence supplies:

2. Incontinence Supplies

Prior Authorization is required for diapers, gloves, perineal wipes, emollients and absorbent products used to manage incontinence in individuals covered by Sunshine Health LTC product. Coverage determinations are based on an assessment of the individual’s unique clinical needs as documented in the clinical information submitted by the requesting provider and/or the current 701B assessment completed by the LTC Care Coordinators. The 701B assessment is used to identify the member’s level of incontinence, functional status as measured through Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL), and level of caregiver support.

Sunshine Health does not require a physician’s prescription to review, approve or deny a request for standard incontinence supplies found on the Florida Medicaid Fee Schedule. Sunshine Health covers items for LTC members listed on the fee schedules for Medicaid Recipients “ Under the Age of 21 Years” and “All Medicaid Recipients”, even when the member is over the age of 21. Diapers, gloves, perineal wipes, emollients and absorbent products may be considered medically necessary in the management of incontinence associated with a broad range of medical conditions including, but not limited to neurological conditions, congenital anomalies, injuries to the pelvic region, injuries to the spinal cord, fistula, bowel prolapse and infections. Consideration is always given to the unique needs of a given individual.

Criteria to support need for incontinence products

Upon review of the 701B assessment, Sunshine Health will consider but is not limited to the following:

- Member must have current incontinence of the bladder and/or bowel; and/or
- Member must have one of the following limitations in their Activities of Daily living:

Using the bathroom (toileting, hygiene, cleaning) and/or Walking/Mobility and/or Transferring:

- Needs supervision or prompt
- Needs assistance without a caregiver
- Needs assistance with a caregiver
- Needs total assistance without a caregiver
- Needs total assistance with a caregiver

Sunshine Health may approve up to the amount allowed on the Medicaid fee schedule depending on the member's level of incontinence.

The clinical reviewer takes into consideration the individual needs of the member, which includes assessment and identification of the individual's specific medical, mobility and psychosocial needs. The assessment includes the frequency in which a member may need an incontinence diaper/brief changed and considers the health and lifestyle of the member wearing them. An independent individual with limited functional deficits may be able wear an incontinence diaper/brief longer than someone who is frail and bedridden. Most adults with incontinence need to change their diaper between 5-8 times a day.

Diapers/briefs should be changed as soon as they become soiled or wet. If a bedbound individual does not wet diapers or briefs often, or has small leakage, consideration may be given to alternating between pads and diapers. The frequency and volume of urinary and bowel incontinence should be identified in order to select the appropriate type and amount of incontinence supplies. The goal is promote skin integrity. The impact of a brief allowing good air circulation, must be considered as this can lead to skin irritation and rashes.

Pages 121 - 122 of Respondent's Composite Exhibit 1.

CONCLUSIONS OF LAW

19. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

21. Because Respondent is terminating and reducing previously approved services and supplies, Fla. Admin Code R. 59-1.100(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.)

22. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to home delivered meals, personal care services, and medical supplies:

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

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

...

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.

23. The LTC Policy also addresses medical necessity:

1.3.14 Medically Necessary or Medical Necessity

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

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

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

24. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

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

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

- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

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

A. Home Delivered Meals

25. In the NABD, dated August 31, 2020, Respondent terminated Petitioner's home delivered meals (7 meals per week). See pages 4 – 12 of Respondent's Composite Exhibit 1. In the NABD, Respondent explained that home delivered meals were not medically necessary, and that the termination was "[b]ased on the assessment of the member's care needs and household and caregiver status" *Id.* at 5.

26. As provided in Respondent's policy, LT.UM.09, home delivered meals are to provide "nutritionally sound meals to be delivered to the residence of the member who has difficulty shopping for or preparing appropriate, nutritious meals without assistance." Per the LTC Policy, home delivered meals are to provide "nutritionally sound meals delivered to an enrollee's home when the enrollee has difficulty shopping for, or preparing food, without assistance." As shown in the record, Petitioner is afforded twenty-eight (28) hours of personal care services, weekly, and ten (10) hours of homemaker care services, weekly. Additionally, [REDACTED] prepares Petitioner's breakfast and dinner each day before going to work. *Id.* at 42.

27. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive the seven (7) home delivered meals, weekly. Respondent asserted, *supra* ¶ 16, that Petitioner has home health aide services that can be used to prepare meals, however, it was not established how much time Petitioner needs with each of his ADLs,

IADLs, and homemaker tasks. Thus, Respondent did not show that Petitioner's home health aides had sufficient time to prepare an additional meal. Moreover, although Petitioner lives with his mother, it was not shown that she is available to prepare the meals – in fact, Petitioner's receives home delivered meals precisely because "member's mother works outside of the home." *Id.*

28. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent did not prove by a preponderance of the evidence that its termination of Petitioner's seven (7) home delivered meals, weekly, was correct.

B. Personal Care Services

29. In the NABD, dated August 31, 2020, Respondent reduced Petitioner's personal care services, from thirty-five (35) hours per week to twenty-eight (28) hours per week. *See* pages 4 – 12 of Respondent's Composite Exhibit 1. In the NABD, Respondent explained that Petitioner's thirty-five (35) of personal care services, weekly, were not medically necessary, and that the reduction was "[b]ased on the assessment of the member's care needs and household and caregiver status" *Id.* at 5.

30. As provided in Respondent's policy, LT.UM.09, personal care services are to "provide assistance with eating, bathing, dressing, and personal hygiene, and other activities of daily living." Further, the policy provides that personal care provides with "preparation of meals" and "housekeeping tasks". As discussed in LT.UM.09, personal care services are determined, in part, based on: the recipient's ADL limitations; the recipient's living situation; the recipient's supervision needs; and the available supports. Moreover, as provided in the LTC Policy, personal care is 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.” As provided in the record, in regards to his ADLs, for bathing, dressing, transferring, and walking/mobility, Petitioner needs assistance (but not total help); for using the bathroom, Petitioner needs supervision or prompting. *Id.* at 53. In regards to his IADLs, Petitioner requires assistance (cannot do at all) with heavy chores, light housekeeping, managing money, and preparing meals, and shopping and needs assistance (but not total help) with preparing meals, shopping, managing medication, and using transportation. *Id.* at 54.

31. Petitioner currently receives twenty-eight (28) hours of personal care services, weekly, and ten (10) hours of homemaker services, weekly. *Id.* at 5. Thus, Petitioner is allotted, each day, four (4) hours per day of personal care services and approximately one (1) hour and twenty-five (25) minutes of homemaker services. Appendix 9.1 of the PCS Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides the time allotted for personal care tasks. The times allotted for the tasks applicable to the Petitioner are as follows: a full body bath is allotted up to 30 minutes; dressing is allotted 15 minutes; toileting is allotted between 15 and 45 minutes; and transfers can take up to “15 minutes/every 2 hours when medically indicated. Assuming that Petitioner is bathed and dressed once per day, those two tasks combined total between 45 minutes to one hour and 15 minutes each day. Thus, when added with Petitioner’s ten (10) hours of homemaker services, weekly, Petitioner has between four (4) hours and forty (40) minutes and three (3) hours and ten (10) minutes each day to supervise toileting, to assist with transfers on days he has radiation treatment, and to provide for Petitioner’s IADLs.

32. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive more than the reduced amount of services. Respondent

indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessary criteria was the basis for its decision. *Id.* at 4. At the Fair Hearing, Dr. Carter testified, *supra* ¶ 16, that it was his medical opinion that the approved services are sufficient to meet Petitioner’s needs. One aspect of medical necessity is that the requested service must 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.” As discussed, *supra* ¶ 31, Petitioner has five (5) hours and twenty-five (25) minutes each day of combined services to assist him, as well as seven (7) home delivered meals. Further, Petitioner lives with his mother. Respondent did not provide evidence or estimates of how long it should take to assist Petitioner with his ADLs or IADLs. Dr. Carter is a medical doctor with Board Certifications in internal medicine, palliate medicine, and geriatric medicine, thus his opinion is credible on the needs of the Petitioner. However, as the Respondent’s decision was based partly on the “household status” of Petitioner, it was the Respondent’s intent for ██████████ to assist with the balance of any tasks remaining after Petitioner exhausted his approved services for the day. As shown by the record, ██████████ works outside of the home, and has her own medical issues with which to contend. Respondent provided no evidence of how much support Petitioner’s household could provide. Thus, Respondent did not show that the seven (7) hours of personal care services were not medically necessary.

33. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent did not prove by a preponderance of the evidence that Respondent’s reduction of seven (7) hours of personal care services was correct.

C. Medical Supplies: Incontinence Wipes

34. In the NABD, dated August 31, 2020, Respondent terminated Petitioner's previously approved allotment of two (2) packs of incontinence wipes per month. See pages 4 – 12 of Respondent's Composite Exhibit 1. In the NABD, Respondent explained that the previously approved incontinence wipes were not medically necessary and that its decision was "[b]ased on the assessment of the member's care needs and household and caregiver status" *Id.* at 5.

35. As provided in Respondent's policy, LT.UM.10, incontinence supplies may be provided when members "have current incontinence of the bladder/and or bowel; and/or" "one of the following limitations in their Activities of Daily Living: Using the bathroom. . . and/or Walking/Mobility/and/or Transferring." *Id.* at 100. In this case, Petitioner has occasional bladder and bowel incontinence. *Id.* at 55. Dr. Carter testified, *supra* ¶ 16, that wipes were a "convenience item" as soap and washcloths can be used for cleaning. However, as Respondent is reducing a previously approved service, Respondent bears the burden of proof. Here, the evidence shows that Petitioner's bladder and bowel incontinence is occasional, Petitioner has an over-the-counter benefit for the purchase of supplies, and Petitioner has personal care services. Dr. Carter's testimony was credible whether the wipes were a necessity, and his testimony that soap and washcloths could be used was evidence that the wipes were not a medical necessity. Thus, Respondent showed that the incontinence wipes were not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and [are] in excess of the patient's needs."

36. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that Respondent's termination of incontinence supplies was correct.

D. Medical Supplies: Barrier Skin Cream

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

E. PERS

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

F. Medical Supplies: Gloves and Briefs

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

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's termination of Petitioner's home delivered meals is **REVERSED**. Petitioner's appeal based on Respondent's termination of home delivered meals is **GRANTED**.

Respondent's reduction of Petitioner's personal care services is **REVERSED**. Petitioner's appeal based on Respondent's reduction of personal care services is **GRANTED**.


Respondent's termination of Petitioner's incontinence wipes is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of incontinence wipes is **DENIED**.

Petitioner's Fair Hearing request regarding barrier skin cream is hereby deemed withdrawn, and this matter is now closed.

Petitioner's Fair Hearing request regarding PERS is hereby deemed withdrawn, and this matter is now closed.

Petitioner's Fair Hearing request regarding gloves and briefs is hereby deemed withdrawn, and this matter is now closed.

DONE AND ORDERED this 29th day of January, 2021, in Tallahassee, Leon County, Florida.

 Joseph Mabry
20-FH [REDACTED], 20-FH [REDACTED], 20-
FH [REDACTED], 20-FH [REDACTED] & 20-
FH [REDACTED]
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JOSEPH MABRY, Hearing Officer
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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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