



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

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

Davida Jones, Grievance and Hearing Coordinator for UnitedHealthcare of Florida Inc. ("United") appeared on behalf of Respondent. Dr. Sloan Karver, ("Dr. Karver") Long Term Care Medical Director for United, attended as a witness for Respondent.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred thirty-nine (239)-page statement of matters packet. The statement of matters packet included: a Statement of Matters table of contents; a Notice of Adverse Benefit Decision ("NABD"), dated July 13, 2020; a CSP - General Request Form - [REDACTED] dated August 21, 2020; a Durable Power of Attorney, executed August 4, 2014; a plan appeal acknowledgment letter in Spanish, dated August 21, 2020; Print HSC History; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated March 27, 2020; Appeal Review; a Notice of Plan Appeal Resolution ("NPAR") in English and Spanish, dated September 5, 2020; Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1 in its entirety; Florida Medicaid Statewide Medicaid Managed Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"); the Florida Medicaid Authorization Requirements Policy (June 2016); the Florida Medicaid Personal Care Services Coverage Policy (November 2016); the Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); the Home Health Visit Services Fee Schedule (January 1, 2017); the Personal Care Services Fee Schedule (January 1, 2017); the Private Duty Nursing Services Fee Schedule (January 1, 2017);

the Participant Direction Option Manual; 42 C.F.R. § 441.480; the Florida Medicaid Hospice Services Coverage Policy (June 2016); 42 C.F.R. Part 418, Subpart C (Conditions of Participants: Patient Care); Fla. Stat. § 400.6105 (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from Petitioner the undersigned admitted the two hundred (239)-page state of matters packet as Respondent's Composite Exhibit 1.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of United. United is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is eighty-years (80) years old and diagnosed with arthritis, frequent dizziness, congestive heart failure, frequent bladder and bowel incontinence, Parkinson's Disease, and depression. Respondent's Composite Exhibit 1 at 31 and 42-43.
3. Petitioner lives alone in an apartment. *Id.* at 57. Petitioner's daughter acts as Petitioner's primary caregiver. *Id.* Petitioner's other family members are not allowed to visit Petitioner in her apartment due to visitor restrictions in effect relating to COVID-19. *Id.* at 58.
4. Petitioner needs some assistance with bathing, dressing, transferring, and walking/mobility. *Id.* at 40. Petitioner uses an assistive device for using the bathroom and utilizes a rolling walker and a bath chair. *Id.* Petitioner has assistance with all of these tasks or otherwise uses an assistive device. *Id.*
5. Petitioner needs total assistance with heavy chores and shopping. *Id.* at 41. Petitioner needs some assistance with light housekeeping, managing money, using the telephone, preparing meals, managing medication, and using transportation. *Id.* Petitioner always has assistance with those tasks. *Id.*

6. Petitioner requested an additional seven (7) hours of Personal Care services per week.

Respondent denied the request in the NABD, dated July 13, 2020. The NABD explained as follows:

UnitedHealthcare Community Plan has reviewed your request for 7 more hours a week of Personal Care, which we received on July 8, 2020. After our review, this service has been:

DENIED as of July 13, 2020

...

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

...

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

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

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

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

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

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

...

The facts that we used to make our decision are:

Your assessment tells us you need some help to bathe, dress, and go to the bathroom.

You are getting 23 hours a week of Personal Care to help you.

You get 5 hours a week of homemaker services to help you.

You have private paid in-home care.

In my clinical opinion, your current services are meeting your needs. Your current hours can also be split so you help with your personal needs during the day.

*Id.* at 4-5.

7. Petitioner requested a plan appeal and received an NPAR dated September 5, 2020, upholding the denial. The Plan denied the additional seven (7) hours of Personal Care services per week requested by Petitioner. The NPAR explained as follows:

On August 21, 2020 we received your timely plan appeal request regarding UnitedHealthcare Community Plan's Notice of Adverse Benefit Determination dated July 13, 2020, [REDACTED], denying the Personal Care (7 more hours/week) provided to [REDACTED]

On August 30, 2020, after consideration of the information you provided to UnitedHealthcare Community Plan in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal. As part of our review we look at information you or your provider gave us. We also look at your benefits. Based on our review of your appeal, we have determined that the service you requested will not be approved.

Ellen Dar MD, UnitedHealthcare Medical Director, who is a Medical Doctor, Board Certified in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Medicaid rules: Other, FL LTC Definition of Medical Necessity: F.A.C. 59G-1.010(166).

You asked for Personal Care. You would like 7 more hours a week. You had a nurse assessment on March 27. You need some help with all your activities of daily living. These are activities like bathing, dressing, grooming, toileting, and mobility. Based on my professional judgment, we are not approving the extra hours you asked for. They are more hours than you need. You have been approved for PC 23 hours/week. You also have recently been approved for homemaker services of 5 hours/week. In addition, you have a private paid aide who stays with you when needed. These hours should meet your needs.

*Id.* at 64.

8. Petitioner requested a Fair Hearing on November 18, 2020. On December 18, 2020, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for January 7, 2020, at [REDACTED]

9. During the hearing, [REDACTED] testified that Petitioner is almost entirely unable to communicate or move. [REDACTED] added that Petitioner cannot get out of a chair without

assistance. [REDACTED] testified that Petitioner lives in an independent senior living facility which is the reason for the restrictions on visiting Petitioner. Petitioner used to have other support from other family and friends but due to the restrictions only [REDACTED] is able to visit her at home and assist her on a consistent basis. On some occasions another resident in the community assists Petitioner. [REDACTED] also testified that Petitioner suffers from hallucinations and delusions that she lives in [REDACTED], where Petitioner has not lived in the past thirty (30) years. [REDACTED] argued that four (4) hours per day of home health services are not sufficient to meet Petitioner's needs and explained that it takes Petitioner's home health aide an hour to bathe Petitioner.

10. Dr. Karver testified that the services in place meets Petitioner's needs. If Petitioner needs 24/7 monitoring, then Respondent is willing address placing Petitioner in an assisted living facility.

#### **CONCLUSIONS OF LAW**

11. 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).

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

13. Because Petitioner is requesting new services, 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.

14. The 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

...

#### **4.2.1.9 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.

15. 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.

16. 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.

17. Respondent denied an additional seven (7) hours per week of Personal Care services requested by Petitioner on the basis that the requested service is not medically necessary. *Supra* ¶ 6. As provided in the LTC Policy, Personal Care services are intended to provide assistance with activities of daily living (“ADLs”) and instrumental activities of daily living (“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* ¶ 14.

18. The record reflects that Petitioner lives in an independent senior living facility with limitations on visitors due to the COVID-19 pandemic. *Supra* ¶ 3 and ¶ 9. The record shows that due to the limitation of visitors only [REDACTED] is available to care for Petitioner on a consistent

basis. The 701B dated March 27, 2020, shows that Petitioner always has assistance with her IADLs and ADLs. The record reflects that petitioner suffers from hallucination and delusions and that it takes one (1) hours to bathe Petitioner. Dr. Karver testified that upon reviewing Petitioner's 701B, Respondent decided that Petitioner's needs could be met with the approved homemaker services and Personal Care services, totaling twenty-eight (28) hours per week. *Supra* ¶ 10. Dr. Karver added that Petitioner could be placed in an assisted living facility if Petitioner needs 24/7 monitoring. *Id.*

19. 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* ¶ 15. While ██████████ provided some testimony as to the time it takes to bathe Petitioner, ██████████ did not offer any additional evidence as to justify the amount of the request. ██████████ concluded that the remaining hours for tasks other than bathing were not sufficient to meet Petitioner's needs without accounting for the time that she spends assisting Petitioner or the time the home health aide spends providing care for Petitioner. The 701B that Respondent relies on is significantly dated, over nine (9) months before the Fair Hearing, but the record is void as to any specific IADLs or ADLs that Petitioner is not receiving assistance with since that assessment was taken. Dr. Karver's testimony did not address the basis of the of the denial beyond broadly explaining that it was in response to a review of the 701B. Also, the fact that Respondent can offer placement in an assisted-living facility has no bearing on the medical necessity of the services requested as it is contrary to the LTC Policy which states that the service must "[e]nable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and

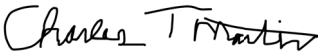

work in the setting of his or her choice.” *Supra* ¶ 15. While Respondent has offered only conclusory testimony that the requested service is not medically necessary, Petitioner’s request is not supported by sufficient evidence justifying the additional seven hours requested. Because Petitioner has not demonstrated that the service requested is “[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” Petitioner has not met the burden of proof to show that the additional seven (7) hours of Personal Care services are medically necessary.

20. 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 an additional (7) hours per week of Personal Care services week was incorrect.

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

Respondent’s denial of an additional seven (7) hours per week of Personal Care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial of an additional seven (7) hours per week of Personal Care services is **DENIED**.

**DONE and ORDERED** this 1st day of February, 2021, in Tallahassee, Leon County, Florida.

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**CHARLES MARTIN, 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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