



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

FILED
Jan 25, 2021, 10:03 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.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on December 23, 2020, at [REDACTED]

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner's Authorized Representative

For the Respondent: Kizzy Alleyne
Senior Manager of Compliance
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that its decision to reduce Petitioner's homemaker services was correct.

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

The third issue is whether Respondent proved by a preponderance of the evidence that its decision to terminate Petitioner's medical supplies was correct.

PRELIMINARY STATEMENT

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

Kizzy Alleyne, Senior Manager for Compliance for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine; Melissa Layne, Senior Manager for Member Appeals for Sunshine; Nanoucheke Chevelon, Case Coordinator for Sunshine; and Katherine Calonje, Long Term Care Supervisor for Sunshine.

Sheila Gonzalez, 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 letter from Petitioner's provider, [REDACTED] ("[REDACTED]"), dated December 15, 2020.

Absent an objection from the Respondent, the undersigned admitted the letter from [REDACTED] as Petitioner's Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and seventeen (117)-page evidence packet, a one hundred and sixteen (116)-page evidence packet; and a ninety-four (94)-page evidence packet. The one hundred and seventeen (117)-page evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination ("NABD"), dated October 16, 2020; a Plan of Care ("POC"), dated September 16, 2020; a POC, dated November 17, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated September 16, 2020; a 701B, dated November 17, 2020; a Standard Appeal Acknowledgment, dated October 26, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated November 14, 2020; a Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010. Absent an objection from the Petitioner, the undersigned admitted the one hundred and seventeen (117)-page packet into evidence as Respondent's Composite Exhibit 1.

The one hundred and sixteen (116)-page evidence packet included the following: a table of contents; a Medicaid Fair Hearing Summary; an NABD, dated October 8, 2020; a POC, dated September 16, 2020; a POC, dated November 17, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated September 16, 2020; a 701B, dated November 17, 2020; a Standard Appeal Acknowledgment, dated November 5, 2020; an NPAR, dated November 17, 2020; a Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; Fla. Admin. Code R. 59G-1.010. Absent an objection from the Petitioner, the

undersigned admitted the one hundred and sixteen (116)-page packet into evidence as Respondent's Composite Exhibit 2.

The ninety-four (94)-page evidence packet included the following: a table of contents; a Medicaid Fair Hearing Summary; an NABD dated October 30, 2020; a POC, dated September 16, 2020; a POC, dated November 17, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated September 16, 2020; a 701B, dated November 17, 2020; a Standard Appeal Acknowledgment, dated November 6, 2020; an NPAR, dated November 17, 2020; a 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, the undersigned admitted the ninety-four (94)-page packet into evidence as Respondent's Composite Exhibit 3.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is eighty-two (82)-years old. *See* page 13 of Respondent's Composite Exhibit 1. Petitioner lives alone. *Id.* at 55.
3. Petitioner is diagnosed with acid reflux; osteoarthritis; high blood pressure; high cholesterol; heart problems; frequent bladder incontinence; urinary tract infection; atherosclerotic heart; anxiety disorder; depressive disorder; chronic pancreatitis; bipolar disorder, current episode mixed, severe, with psychotic features; dementia, and mood disorder. *See* pages 60 – 61, and 70 of Respondent's Composite Exhibit 1 and page 2 of Petitioner's Exhibit 1.

4. Petitioner was “Baker Acted” from [REDACTED] 2020, to [REDACTED] 2020, due to concerns of self harm. *See* page 63 of Respondent’s Composite Exhibit 1. Petitioner was admitted to the Emergency Room on [REDACTED] 2020, due to shortness of breath. *Id.* at 58. Petitioner was admitted to the Emergency Room on [REDACTED] 2020, due to shortness of breath and anxiety. *Id.* Petitioner was admitted to the hospital on [REDACTED] 2020, due to Near Syncope. *Id.*

5. In regards to her activities of daily living (“ADLs”), Petitioner needs supervision or prompting for bathing, dressing, and using the bathroom. *Id.* at 58. However, Petitioner is “frequently incontinent to bladder and has intermittent accident on self.” *Id.*

6. In regards to her instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) with heavy chores and managing money. *Id.* at 59. Petitioner needs assistance (but not total help) with light housekeeping, preparing meals, shopping, and using transportation. *Id.* Petitioner is able to microwave meals. *Id.*

7. Petitioner’s former plan of care includes sixteen (16) hours of personal care services, weekly, eighteen (18) hours of homemaker care services, weekly, five (5) hours of adult companion care, weekly, and seven (7) home delivered meals, weekly. *Id.* at 30 - 31.

8. [REDACTED] provides weekly shopping and managing money for Petitioner, as well as transportation when needed. *Id.* at 28. [REDACTED] stress level is high and she is limited by a disability. *Id.*

9. In the NABD, dated October 16, 2020, Respondent reduced Petitioner’s homemaker services from eighteen (18) hours to ten (10) hours, weekly. *Id.* at 4 – 12. 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 has looked at the member's present care needs and provided home services.

...

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Homemaker Services from 18 hours per week to 10 hours per week, a reduction of 8 hours per week of Homemaker Services.

Pages 4 – 5 of Respondent's Composite Exhibit 1.

10. Petitioner requested an additional five (5) hours per week of personal care services, for a three (3) week period. In the NABD, dated October 8, 2020, Respondent denied Petitioner's request for the additional personal care services. See pages 4 – 12 of Respondent's Composite Exhibit 2. The NABD explained the basis of the denial 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: The request for the temporary addition of an extra 5 hours per week of Personal Care Services for 3 weeks beginning on 10/13/2020 is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs.

Pages 4 – 5 of Respondent's Composite Exhibit 2.

11. In the NABD, dated October 30, 2020, Respondent terminated Petitioner's allotment of one (1) pack of incontinence wipes, monthly. See pages 4 – 12 of Respondent's Composite Exhibit

3. 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 has looked at the member's present care needs and provided supplies. The member's present care plan includes 1 pack per month of Wipes. Based on the assessment, Sunshine Health will terminate the 1 pack per month of Wipes. The use of Wipes is intended to for incontinence of bowel, and is considered a convenience when used for incontinence of the bladder or general hygiene. The member is not reported to be incontinent of bowel.

Pages 4 – 5 of Respondent's Composite Exhibit 3.

12. Petitioner requested a plan appeal regarding the reduction of homemaker services and received an NPAR dated November 14, 2020, upholding the decision. *Id.* at 79 - 85. The NPAR explained as follows:

The reason for our decision was:

Based on the assessment of the member's care needs and household and caregiver status, the reduction of Homemaker Services from 18 hours/week to 10 hours/week is upheld. The presently approved services are enough to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Page 84 of Respondent's Composite Exhibit 1.

13. Petitioner requested a plan appeal regarding the denial of additional personal care service and received an NPAR dated November 17, 2020, upholding the decision. *Id.* at 78 - 84. The NPAR explained as follows:

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the denial of the temporary addition of an extra 5 hours per week of Personal Care Services for 3 weeks is upheld. The

presently approved services are enough to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Page 78 of Respondent's Composite Exhibit 2.

14. Petitioner requested a plan appeal regarding the termination of incontinence wipes and received an NPAR dated November 17, 2020, upholding the decision. See pages 78 – 84 of Respondent's Composite Exhibit 3. The NPAR explained as follows:

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the termination of the 1 pack per month of Wipes is upheld. The Wipes are not medically needed to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Page 78 of Respondent's Composite Exhibit 3.

15. LT.UM.09 provides as follows in regards to homemaker services:

6. Homemaker Services

Homemaker provides assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to member's who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activities of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available supports

Page 97 of Respondent's Composite Exhibit 1.

16. 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 88 - 89 of Respondent's Composite Exhibit 3.

17. On November 20, 2020, Petitioner's Authorized Representative requested a Fair Hearing due to the reduction of homemaker services, the denial of personal care services, and the termination of wipes. On December 4, 2020, the undersigned issued an Order Scheduling Hearing by Telephone and Preliminary Instructions, setting the hearing for December 23, 2020, at [REDACTED]

18. Petitioner submitted a letter from [REDACTED], dated December 15, 2020, which stated as follows:

[Petitioner] is severely mentally ill and needs regular assistance and supervision in order to be able to function and live independently. Her current service hours (39 hrs) barely provide the care that she needs, cutting these hours is a threat to patient's well being and will likely result in poor outcomes for [Petitioner]. She should continue with her current hours of care, 39 hrs, and if possible these hours should be increased.

Page 2 of Petitioner's Exhibit 1.

19. Dr. Carter is the Long Term Care Medical Director for Sunshine. Dr. Carter testified that it was felt that Petitioner did not require extensive assistance with her ADLs, and that the

previously provided eighteen (18) hours of homemaker services were deemed to be excessive, in light of the personal care, adult companion care services, and home delivered meals provided to Petitioner. Dr. Carter testified that the wipes are considered a convenience item when used for bladder incontinence rather than a medical necessity, as soap, water and a washcloth can be used.

20. At the Fair Hearing, Dr. Carter agreed to overturn the denial of five (5) hours of personal care services, weekly, for three (3) weeks, at the time [REDACTED] is to undergo surgery. [REDACTED] testified that the approval of the five (5) hours of personal care services, weekly, for three (3) weeks resolved the personal care issue.

CONCLUSIONS OF LAW

21. 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).

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

23. Because Respondent is reducing and terminating previously approved services, Fla. Admin Code R. 59G-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.)

24. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"), incorporated by reference in Fla. Admin. Code R.

59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to homemaker 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

...

4.2.1.1 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.

25. 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.

26. 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. Homemaker Services

27. In the NABD, dated October 16, 2020, Respondent reduced Petitioner's homemaker services from eighteen (18) hours per week to ten (10) hours per week. See page 4 – 12 of

Respondent's Composite Exhibit 1. In the NABD, Respondent explained that eighteen (18) hours per week of homemaker services were not medically necessary, and that the reduction in homemaker services was "[b]ased on the assessment of the member's care needs and household and caregiver status" *Id.* at 4-5.

28. As provided in Respondent's policy, LT.UM.09, homemaker services are to provide "assistance with essential shopping, light housework, laundry, and meal preparation." As discussed in LT.UM.09, homemaker services are determined, in part, based on: IADL limitations; the recipient's living situation; supervision needs; and available supports. Moreover, as provided in the LTC Policy, homemaker services is 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."

29. As provided in the record, Petitioner lives alone, and receives sixteen (16) hours of personal care services, weekly, ten (10) hours of homemaker services, weekly, five (5) hours of adult companion care services, weekly, and seven (7) home delivered meals. *Id.* at 30. In regards to the IADLs homemaker services were intended to address, Petitioner needs total assistance (cannot do at all) with heavy chores, and assistance (but not total help) with light housekeeping, preparing meals, and shopping. *Id.* at 59. Further, Petitioner is able to microwave meals. *Id.* at 64. Here, the Respondent argued that because Petitioner's did not require extensive assistance with her ADLs, eighteen (18) hours of homemaker services were excessive, as it was believed that the approved services are sufficient to meet her needs. *Supra* ¶ 16. However, Petitioner's provider, [REDACTED], provided a letter stating that "cutter these hours is a treat to Petitioner's

well being and will likely result in poor outcomes” for Petitioner. See page 2 of Petitioner’s Exhibit 1. Petitioner currently receives sixteen (16) hours of personal care services, weekly, which averages out to approximately 2.29 hours each day. 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. Thus, bathing and dressing total to approximately forty-five (45) minutes, which leaves 1.54 hours each day to assist with toileting and IADLs. However, as Petitioner is frequently incontinent, and may have to be changed and dressed often, it is not shown that there is a balance of personal care hours that can be applied to her homemaker tasks. Further, Petitioner is provided five (5) hours of adult companion care each week, which can be used to assist with light housekeeping and meal preparation. Thus, Petitioner has fifteen (15) hours each week (or approximately 2.14 hours each day) to provide assistance with meal preparation for two (2) meals each day, and to perform any light housekeeping and heavy chores. However, it was not shown that those hours are sufficient to provide for Petitioner’s homemaker needs, as no evidence of how long it takes to accomplish those tasks was provided. Thus, Respondent did not show that ten (10) hours of homemaker services, weekly, would be sufficient to provide for Petitioner’s needs, or that the previously approved homemaker services were not medically necessary for Petitioner.

30. 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 Petitioner's homemaker services was correct.

B. Personal Care Services

23. At the Fair Hearing, Dr. Carter testified, *supra* ¶ 20, that he would approve the requested five (5) hours of personal care services, weekly, for three (3) weeks. ██████ testified that the approval resolved the denial of personal care issue. *Id.* Pursuant to Rule 59G-1.100(9)(b)(6), Florida Administrative Code, the Hearing Officer is authorized to dismiss a request for a Fair Hearing because it is moot. The Florida Supreme Court explained in *Godwin v. State*, 593 So.2d 211 (1992) (*citing Dehoff v. Imeson*, 153 Fla. 553 (1943)) that “[a]n issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect. . . . A case is ‘moot’ when it presents no actual controversy or when the issues have ceased to exist.” Thus, the undersigned concludes that there is no further relief that can be granted in regards to the denial of personal care services issue.

C. Medical Supplies – Incontinence Wipes

24. In the NABD, dated October 30, 2020, Respondent terminated Petitioner's allotment of 1 pack per month of incontinence wipes. *See* page 4 – 12 of Respondent's Composite Exhibit 3. In the NABD, Respondent explained that the wipes were not medically necessary, as the “use of Wipes is intended for incontinence of bowel, and is considered a convenience when used for incontinence of the bladder or general hygiene.” *Id.* at 5. Further, Dr. Carter testified, *supra* ¶ 19, that soap, water and a washcloth can be used instead.

25. 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.” In this case, Petitioner has “frequent” bladder incontinence”, but it was not shown that she has bowel incontinence. See page 60 of Respondent’s Composite Exhibit 1. Here, Dr. Carter’s testimony, *supra* ¶ 19, was credible that incontinence wipes were a convenience when used for bladder incontinence, and that soap, water and a washcloth can be used in their place. Thus, the record shows that incontinence wipes are not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment,” and are “in excess of [her] needs.”

26. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent did proved by a preponderance of the evidence that Respondent’s termination of Petitioner’s incontinence wipes was correct.


IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of homemaker services is **REVERSED**. Petitioner’s appeal based on Respondent’s reduction is **GRANTED**.

In regards to the denial of personal care services, the issue is dismissed as moot, and is now closed.

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

DONE AND ORDERED this 25th day of January, 2021, in Tallahassee, Leon County, Florida.

 Joseph Mabry
20-FH [REDACTED], 20-FH [REDACTED] &
20-FH [REDACTED]
2021.01.25 09:29:54
-05'00'

JOSEPH MABRY, Hearing Officer
Agency for Health Care Administration

**Office of Fair Hearings
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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:



**Sunshine
SunshineHealth_MFH@centene.com**

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**