

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



FILED

Feb 23, 2021, 4:44 pm
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.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on January 21, 2021, at [REDACTED]

APPEARANCES

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

For the Respondent: Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional 7 hours per week of homemaker services was incorrect.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's denial of an additional 20 hours per week of personal care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED], Petitioner's Authorized Representative and daughter, appeared at the hearing and provided testimony on Petitioner's behalf.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine"), appeared for the hearing and represented Respondent. Dr. John Carter ("Dr. Carter"), Long Term Care ("LTC") Medical Director for Sunshine, provided testimony on behalf of the Respondent. The following individuals also appeared on behalf of Respondent but did not provide testimony: Melissa Layne ("Ms. Layne"), Senior Manager for Member Appeals for Sunshine; Solange Luna, LTC Supervisor for Sunshine; and Stephanie Piquion, LTC Coordinator for Sunshine.

Linda Latson, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Prior to the hearing, Petitioner did not send to the Office of Fair Hearings and Respondent an evidence packet. Petitioner did not offer any documents in evidence.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 118-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated December 8, 2020; a Notice of

Adverse Benefit Determination (“NABD”), dated September 18, 2020; Sunshine’s care plan, signed by the Care Manager on August 24, 2020; the care plan, signed by the Care Manager on November 23, 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of August 24, 2020 (the “8/24/20 701B”); the 701B with an assessment date of November 23, 2020 (the “11/23/20 701B”); Sunshine’s Standard Appeal Acknowledgment, dated September 24, 2020; Sunshine’s Expedited Appeal Request Decision, dated September 24, 2020; the Notice of Plan Appeal Resolution (“NPAR”), dated October 15, 2020; the Sunshine Health Policy and Procedure LT.UM.09; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent’s 118-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine’s LTC plan. *See* Respondent’s Composite Exhibit 1, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. As of the time of the hearing, Petitioner is an 85-year old female who lives in a private residence “with her elderly husband who has health issues of his own but he is not member [sic] caregiver.” *See* Respondent’s Composite Exhibit 1, page 50. Petitioner has the following health conditions: moderate anemia; high blood pressure; past broken right ankle; occasional dizziness; frequent bladder incontinence; kidney problems or renal disease; osteoporosis; past right breast tumor; past stomach ulcer; and depression. *See* Respondent’s Composite Exhibit 1, pages 55 – 56.

3. The 11/23/20 701B, which is the most recent 701B, reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner needs no assistance with eating. See Respondent's Composite Exhibit 1, page 53. Petitioner uses assistive devices for transferring and walking/mobility. *Id.* Petitioner needs supervision with using the bathroom. *Id.* Petitioner needs assistance (but not total help) with bathing and dressing. *Id.* Petitioner "gets dizzy often" and is "at risk for falls." *Id.*

4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the 11/23/20 701B reflects that Petitioner needs no assistance with using the telephone and managing medication. See Respondent's Composite Exhibit 1, page 54. Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and using transportation. *Id.* Further, the 701B reflects the following:

Heavy chores: Total assistance needed. Light housekeeping: Unable to do light housekeeping due to severe pain in legs & hip she can't stand for long periods of time and has constant pain in her knees. Member [sic] daughter reported if member is sitting down she can fold clean clothes only. Using the telephone: As long as the phone is next to member she is able to answer & dial out. Managing money: Member [sic] daughter manages her finances. Preparing meals: MBR now requires all her meals to be brought to her and prepared as she has a weak right side and gets dizzy when she stands up and has poor mobility. Shopping: member [sic] son usually goes shopping for her when he is in town will ask other family mbr to help out. Managing medication: MBR [sic] daughter calls member daily goes over each medication with member and member is able to take medication. Using transportation: member is no longer being transported outside the home by family to medical appointments all medical appointments are done in the home.

Respondent's Composite Exhibit 1, page 54.

5. Petitioner is currently authorized to receive the following home and community-based services: 3 hours weekly of adult companion care services; 28 hours weekly of personal care

services; 7 home delivered meals weekly; and 19 hours per week of homemaker services. See Respondent's Composite Exhibit 1, pages 25 and 26.

6. The 11/23/20 care plan states as follows:

Member lives with her elderly spouse who has health issues of his own. Member [sic] adult son [REDACTED] lives next door to member, when he is in town he will bring member food and take her to her medical appointments. [REDACTED] has just started managing members medications. Member [sic] adult daughter [REDACTED] lives out of state & visits member about every 3 months. She speaks to member several times a day & will coordinate appointments for member when needed and manages her money.

Respondent's Composite Exhibit 1, page 23.

7. On September 18, 2020, Respondent issued an NABD denying Petitioner's request for an additional 7 hours per week of homemaker services and an additional 20 hours per week of personal care services. See Respondent's Composite Exhibit 1, pages 4 – 8. The NABD stated the reason for Respondent's determination as follows:

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

...

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

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

And one of the following:

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

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

...

The facts that we used to make our decision are:

The request for an extra 20 hours/week of Personal Care Services starting on 10/01/2020 + an extra 7 hours/week of Homemaker Services starting on 10/01/2020 is denied. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs.

The member's present care plan includes:

- 48 hours/week of Personal Care Services ending on 09/30/2020, then
- 28 hours/week of Personal Care Services resuming on 10/01/2020
- 26 hours/week of Homemaker Services ending on 09/30/2020, then
- 19 hours/week of Homemaker Services resuming on 10/01/2020

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Respondent's Composite Exhibit 1, pages 4 – 5.

8. Petitioner requested an expedited appeal of Respondent's denial of Petitioner's request for an additional 7 hours per week of homemaker services and an additional 20 hours per week of personal care services. See Respondent's Composite Exhibit 1, page 73. Petitioner's expedited appeal request was denied. *Id.* On October 15, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 80. The NPAR stated as follows:

On September 23, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated September 18, 2020, Notice of Adverse Benefit Determination Number [REDACTED], DENYING an additional 20 hours a week starting 10/01/2020 of personal care (the person who helps bathe and dress you) and an additional 7 hours a week starting 10/01/2020 of homemaker service (the person who cleans for you) provided to [Petitioner].

On October 13, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby DENIES your plan appeal. As a result, [Petitioner] will not receive an additional 20 hours a week starting 10/01/2020 of personal care (the person who helps bathe and dress you) and an additional 7 hours a week starting 10/01/2020 of homemaker service (the person who cleans for you), effective October 13, 2020.

The reason for our decision was: The appeal to overturn the denial of an extra 20 hours per week of Personal Care Services and an extra 7 hours per week of Homemaker Services is denied for lack of medical necessity. Based on the assessment, **the member's currently approved services are adequate to meet the member's care needs**. The member's present care plan includes 28 hours per week of Personal Care Services and 19 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

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

Respondent's Composite Exhibit 1, page 80. [Emphasis added.]

9. Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09 to make its determination in this case, which states in pertinent part, as follows:

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 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 the member's residence. The member must be able to prepare and consume the meals him/herself with available assistance.

To be considered a home delivered meal, each meal must be designed to provide a minimum 33% of the current Dietary Reference Intake (DRI). The meals shall meet the Dietary Guidelines for Americans and the USDA My Food Pyramid Intake Pattern. The meals must reflect the predominant statewide demographic.

...

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

...

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:

- Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- Assisting the member in following through with physician orders
- The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- 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
- 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

Respondent's Composite Exhibit 1, pages 96 – 98 and 104 – 105.

10. Petitioner requested a Fair Hearing due to the denial of an additional 7 hours per week of homemaker services and the denial of an additional 20 hours per week of personal care services.

The undersigned scheduled the Fair Hearing for January 21, 2020, at 9:15 a.m., and all parties were duly notified.

11. [REDACTED] is Petitioner's daughter and appeared at the hearing to provide testimony. [REDACTED] believes that Petitioner requires 24/7 care, but is not asking for 24/7 care. Petitioner resides in the home with her husband who is [REDACTED]-years-old and has health issues of his own. [REDACTED] sister-in-law works during the day and provides assistance to Petitioner at night, while [REDACTED] brother works during the day and provides assistance to Petitioner when he is available. [REDACTED] has 2 other brothers who live ½ hour away from Petitioner, have traveling jobs, are gone months at a time, and assist Petitioner when they are available, but not on a daily basis. [REDACTED] pays a person to help Petitioner, and that person's schedule can vary. [REDACTED] believes that Petitioner cannot be left alone. Petitioner is not left alone, and someone is always with Petitioner.

12. [REDACTED] testified that Petitioner needs to go to the bathroom 12 times per day, and 1 trip to the bathroom can take 15-20 minutes. Petitioner eats small meals 4 times per day, and it takes 30 minutes to prepare Petitioner's food. Per [REDACTED], Petitioner sometimes needs several loads of laundry done per week, and requires: 45 minutes to shower everyday; and 10 minutes to apply lotion. [REDACTED] testified that Petitioner needs 21 hours per week for using the bathroom. Petitioner needs assistance with getting to and using the bathroom, getting to the sink to wash her hands, washing/drying her body, applying lotion to her body, dressing, ambulating, food preparation, cleaning, laundry, and keeping plants watered.

13. Dr. Carter is the Long-Term Care Medical Director for Sunshine. Dr. Carter personally reviewed all documentation submitted to Respondent for this case, including all documents

admitted in evidence. Dr. Carter explained that in making the determination to deny Petitioner's request, Respondent took the following into consideration: Petitioner's medical condition; Petitioner lives with her husband who has his own health problems; Petitioner lives next door to her son and daughter-in-law; and Petitioner has other family members available to assist her. Dr. Carter testified that the denials are medically appropriate at this time.

CONCLUSIONS OF LAW

14. 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).

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

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

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

17. Because Petitioner is requesting additional services, so in Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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.).

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

1.1 Description and Program Goal

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

...

1.3 Definitions

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

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.5 701-B Comprehensive Assessment

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry

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

...

1.3.14 Medically Necessary or Medical Necessity

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

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

And, one of the following:

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

...

2.2 Who Can Receive

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

...

4.0 Coverage Information

4.1 General Criteria

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

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

4.2 Specific Criteria

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

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

...

4.2.1 Home and Community-Based Supportive Services

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

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.8 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 Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

6.0 Documentation

...

6.2 Specific Criteria

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

SMMC LTC Policy, pages 1-8.

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

2.83 Medically Necessary or Medical Necessity

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

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

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

20. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“PC Policy”) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215. The PC Policy provides as follows:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

1.1.2 Statewide Medicaid Managed Care Plans

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

...

4.0 Coverage Information

4.1 General Criteria

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

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

4.2 Specific Criteria

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

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

...

5.1 General Non-Covered Criteria

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

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

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

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

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

...

7.0 Authorization

7.1 General Criteria

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

...

Personal Care Task	General Time Allowances
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient's needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
Grooming and Skin Care	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
Positioning	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
Transfers	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated

Toileting and Maintaining Continence	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy, pages 3 – 8, and 10.

21. In the instant case, Respondent denied Petitioner’s request for an additional 7 hours of homemaker services per week, and an additional 20 hours per week of personal care services. See supra ¶ 7 and 8. As established on the record by the evidence and testimony, Respondent denied Petitioner’s request, because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. See supra ¶ 7 and 8.

22. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 18.

Homemaker Services

23. Section 4.2.1.9 of the SMMC LTC Policy reflects that homemaker services are “[t]he 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.” See supra ¶ 18. The Sunshine Health Policy and Procedure LT.UM.09 reflects that homemaker services provide “assistance with essential shopping, light housework, laundry, and meal preparation.” See supra ¶ 9.

24. The evidence presented in this case does not reflect that Petitioner is in need of an additional 7 hours per week of homemaker services. Specifically, Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and using transportation. See supra ¶ 4. Petitioner needs no assistance with using the telephone and managing medication. *Id.* The record reflects that “MBR daughter calls member daily goes over each medication with member and member is able to take medication.” *Id.* Petitioner has multiple medical conditions, *supra* ¶ 2, “gets dizzy often” and is “at risk for falls.” See supra ¶ 3. Petitioner lives in a private residence “with her elderly husband who has health issues of his own.” See supra ¶ See supra ¶ 2.

25. Petitioner needs assistance with food preparation, cleaning, laundry, and keeping plants watered. See supra ¶ 12. ██████████ noted that Petitioner sometimes needs several loads of laundry done per week, and it takes 30 minutes to prepare Petitioner’s food. See supra ¶ 12. Based upon ██████████ testimony, it appears that Petitioner requires 14 hours weekly to prepare meals, offset by the 7 home delivered meals weekly, which is 10.5 hours weekly.

26. Furthermore, [REDACTED] sister-in-law provides assistance to Petitioner at night, while [REDACTED] brother works during the day and provides assistance to Petitioner when he is available. See supra ¶ 11. [REDACTED] has 2 other brothers who live ½ hour away from Petitioner, have traveling jobs, are gone months at a time, and assist Petitioner when they are available, but not on a daily basis. See supra ¶ 11. Not only does Petitioner have the natural supports of her 3 sons and daughter-in-law, [REDACTED] pays a person to help Petitioner, and that person's schedule can vary. See supra ¶ 11. Even though [REDACTED] believes that Petitioner cannot be left alone, Petitioner is not left alone, and someone is always with Petitioner. See supra ¶ 11.

27. Section 1.3.14 of the SMMC LTC Policy requires that the requested services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” See supra ¶ 18. Petitioner is currently authorized to receive the following home and community-based services: 3 hours weekly of adult companion care services; 28 hours weekly of personal care services; 7 home delivered meals weekly; and 19 hours per week of homemaker services. See supra ¶ 5. The NPAR explains that Petitioner’s “currently approved services are adequate” to meet Petitioner’s care needs. See supra ¶ 8. Considering that [REDACTED] testimony reflects that Petitioner requires at least 10.5 hours per week of homemaker services (not counting laundry or cleaning), supra ¶ 25, while she is already authorized to receive 19 hours per week of homemaker services, Petitioner did not demonstrate that the total new amount of homemaker services requested is medically necessary. Further, given that Petitioner failed to establish that the requested

homemaker services are warranted in this matter, *supra* ¶ 24 – 26, the requested adult homemaker services are “in excess of [Petitioner’s] needs.” *See supra* ¶ 18.

Personal Care Services

28. Section 4.2.2.6 of the SMMC LTC Policy reflects that personal care services are [t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” *See supra* ¶ 18. Further, the PC Policy provides that personal care services are to “provide medically necessary assistance, in the home or in the community, with [ADL] and age appropriate [IADL] to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.” *See supra* ¶ 20. The Sunshine Health Policy and Procedure LT.UM.09 reflects that personal care services provide “assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living.” *See supra* ¶ 9.

29. The evidence presented in this case does not reflect that Petitioner is in need of 20 additional hours per week of personal care services. Specifically, regarding ADLs, Petitioner needs no assistance with eating, and he uses assistive devices for transferring and walking/mobility. *See supra* ¶ 3. Petitioner needs: supervision with using the bathroom; assistance (but not total help) with bathing and dressing. *Id.* Regarding IADLs, Petitioner needs: needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and using transportation. *See supra* ¶ 4. Petitioner needs no assistance with using the telephone and managing medication. *Id.* The record reflects that “MBR daughter calls member daily goes over each medication with member and member is able to take medication.” *Id.* Petitioner

has multiple medical conditions, *supra* ¶ 2, “gets dizzy often” and is “at risk for falls.” *See supra* ¶ 3. Petitioner lives in a private residence “with her elderly husband who has health issues of his own.” *See supra* ¶ 2. Petitioner needs assistance with getting to and using the bathroom, getting to the sink to wash her hands, washing/drying her body, applying lotion to her body, dressing, and ambulating. *See supra* ¶ 12.

30. However, [REDACTED] sister-in-law provides assistance to Petitioner at night, while [REDACTED] brother works during the day and provides assistance to Petitioner when he is available. *See supra* ¶ 11. [REDACTED] has 2 other brothers who live ½ hour away from Petitioner, have traveling jobs, are gone months at a time, and assist Petitioner when they are available, but not on a daily basis. *See supra* ¶ 11. Not only does Petitioner have the natural supports of her 3 sons and daughter-in-law, [REDACTED] pays a person to help Petitioner, and that person’s schedule can vary. *See supra* ¶ 11. Even though [REDACTED] believes that Petitioner cannot be left alone, Petitioner is not left alone, and someone is always with Petitioner. *See supra* ¶ 11.

31. The PC Policy sets forth general time allowances for the performance of personal care tasks. *See supra* ¶ 20. [REDACTED] believes that Petitioner requires 24/7 care but is not asking for 24/7 care. *See supra* ¶ 11. [REDACTED] contends that: Petitioner needs to go to the bathroom 12 times per day, and 1 trip to the bathroom can take 15-20 minutes; and Petitioner eats small meals 4 times per day. *See supra* ¶ 12. [REDACTED] noted that Petitioner requires: 45 minutes to shower everyday; and 10 minutes to apply lotion. *See supra* ¶ 12. [REDACTED] testified that Petitioner needs 21 hours per week for using the bathroom. *See supra* ¶ 12. Based upon [REDACTED] testimony, it appears that Petitioner requires 21 hours weekly just for going to the

bathroom, 5.25 hours weekly to shower, 1.17 hours weekly to apply lotion, and 3.5 hours for dressing if she gets dressed twice per day (15 minutes for dressing allowed by the PC policy is 1.75 hours per week to get dressed once per day, and 3.5 hours per week to get dressed twice per day). As such, [REDACTED] testimony reflects that Petitioner may require 29.17 hours to 30.92 hours per week of ADL assistance. However, it is still unclear as to how [REDACTED] calculated that Petitioner requires a total of 20 *additional* hours of personal care services weekly.

32. Section 1.3.14 of the SMMC LTC Policy requires that the requested services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” *See supra* ¶ 18. Petitioner is currently authorized to receive the following home and community-based services: 3 hours weekly of adult companion care services; 28 hours weekly of personal care services; 7 home delivered meals weekly; and 19 hours per week of homemaker services. *See supra* ¶ 5. The NPAR explains that Petitioner’s “currently approved services are adequate” to meet Petitioner’s care needs. *See supra* ¶ 8. Considering that [REDACTED] testimony reflects that Petitioner may require 29.17 hours to 30.92 hours per week of ADL assistance, *supra* ¶ 31, while she is already authorized to receive 28 hours weekly of personal care services, Petitioner did not demonstrate that the total new amount of personal care services requested is medically necessary. Further, given that Petitioner failed to establish that the requested personal care services are warranted in this matter, *supra* ¶ 29 – 31, the requested personal care services are “in excess of [Petitioner’s] needs.” *See supra* ¶ 18.

Conclusion

33. In light of the both parties' testimony and evidence, the SMMC LTC Policy, the Authorization Requirements Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet his burden of proving that the additional 7 hours per week of homemaker services and the additional 20 hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional homemaker services and personal care services was incorrect.

DECISION

Respondent's denial of an additional 7 hour per week of homemaker services is


AFFIRMED.

Respondent's denial of an additional 20 hours per week of personal care services is

AFFIRMED.

Petitioner's appeal based on Respondent's denial in this matter is **DENIED.**

DONE AND ORDERED this 23rd day of February, 2021, in Tallahassee, Leon County, Florida.

 Tracie Hardin
20-FH [REDACTED] & 20-FH [REDACTED]
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

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