



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

**FILED**

Feb 03, 2021, 11:32 am

OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Medicaid Fair Hearing in the above-styled case on January 4, 2020, at █

**APPEARANCES**

For the Petitioner:

█

Petitioner

For the Respondent:

Maria Mojica  
Compliance Specialist  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional 15 hours per week of personal care services was incorrect.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. Petitioner appeared for the hearing and provided testimony on his own behalf.

PRR0001867

Maria Mojica (“Ms. Mojica”), Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”), appeared as a representative for Respondent. Dr. John Carter (“Dr. Carter”), Long Term Care Medical Director for Sunshine, appeared as a witness for Respondent. Darby Grisanti, Case Manager for Sunshine; Stacia Hammond, Supervisor for Sunshine, and Melissa Layne, Senior Manager of Member Appeals for Sunshine appeared on behalf of Respondent but did not testify.

Sheila Gonzalez, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Petitioner did not submit an evidence package prior to or during the Fair Hearing. Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and eleven (111)-page hearing packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; Medicaid Fair Hearing Summary, dated December 3, 2020; Notice of Adverse Benefit Determination (“NABD”), dated September 28, 2020; Long Term Care Person-Centered Care Plan, signed August 27, 2020; Long Term Care Person-Centered Care Plan, signed by care manager October 14, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment, dated August 7, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment” or “most recent 701B Assessment”), dated October 14 2020; Standard Appeal Acknowledgement, dated October 22, 2020; Notice of Plan Appeal Resolution (“NPAR”), dated November 11, 2020; Sunshine Health Policy and Procedure, LTC (Long Term Care) Ancillary Service Criteria, LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection, the undersigned admitted Respondent’s one hundred and eleven (11)-page hearing packet into evidence as Respondent’s Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine's Florida Long Term Care plan. See Respondent's Composite Exhibit 1 at page 13. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is a 25-year-old male who lives alone in a private residence. *Id.* at 14 and 49 - 50. Petitioner is a quadriplegic, incontinent of bowel and bladder, and has osteoporosis and heart problems. *Id.* at 53, 55 - 56. Petitioner receives skilled nursing services 3 times per week for a bowel program and catheter changes. *Id.* at 53. Petitioner utilizes a permanent catheter. *Id.* Petitioner uses therapy compression boots to increase circulation for 1 – 1.5 hours nightly, and Petitioner is unable to use them by himself. *Id.* at 56.

3. Regarding Activities of Daily Living ("ADLs"), Petitioner needs assistance (but not total help) with bathing, dressing, and using the bathroom. *Id.* at 53. He needs supervision or prompt help with eating. *Id.* He uses assistive devices for transferring and walking/mobility. *Id.* Regarding the amount of assistance Petitioner has with ADLs, the 701B reflects that Petitioner always has assistance with bathing, dressing, using the bathroom, transferring, and walking/mobility. *Id.* Petitioner uses the following assistive devices: hospital bed, trapeze bar, wheelchair, specialized shower chair, lift and compression boots. *Id.*

4. Regarding Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, and preparing meals. *Id.* at 54. Petitioner needs assistance (but not total help) with shopping, managing medication, and using transportation. *Id.* Regarding the amount of assistance Petitioner has with IADLs, Petitioner always has assistance with heavy chores, light housekeeping, preparing meals, shopping, and

using transportation. Petitioner needs no assistance with using the telephone and managing money. *Id.*

5. On September 28, 2020, Respondent issued an NABD denying Petitioner's request for an additional 15 hours per week of personal care services, explaining that the requested services are not medically necessary. *Id.* at 4 - 8. The NABD stated:

Sunshine Health has reviewed your request for an extra 15 hours/week of Personal Care Services (the person who helps bathe and dress you), which we received on 09/21/2020. After our review, this service has been: DENIED as of 09/28/2020.

We made our decision because:

*(Check all boxes that apply)*

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: The request for an extra 15 hours/week of Personal Care Services 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 28 hours/week of Personal Care Services and 10 hours/week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term, Care Ancillary Service Criteria.

*Id.*

6. Petitioner requested a plan appeal. *Id.* at 67. On November 11, 2020, Respondent sent Petitioner an NPAR denying 15 hours per week of personal care services. *Id.* at 73 – 75. The NPAR stated as follows:

On November 10, 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 the extra 15 hours per week of personal care services, effective November 10, 2020.

The reason for our decision was the appeal to overturn the denial of an extra 15 hours per week of Personal Care Services (the person who helps bathe and dress you) is denied. Based on the assessment, the member's currently approved services are adequate (enough) to meet the member's care needs. The member's present care plan includes 28 hours per week of Personal Care Services and 10 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 73 - 74

7. Sunshine's Policy and Procedure LT.UM.09 Long Term Ancillary Service Criteria provide the following with regard to personal care services:

#### **7. Personal Care Services**

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders

The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times

d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member

e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

Personal Care workers must be supervised by a registered nurse, licensed to practice nursing in Florida and who conducts a supervisory home visit every 60 days to observe the personal care worker. The services may be provided in the member's home or other location.

#### 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

See Section C.1 for more details

Covered Personal Care services may include:

#### a) Bathing

Assistance with bathing, including washing, rinsing, and drying the body or body parts.

- Member's ability to transfer in and out of the tub or shower
- Amount of time it takes the member to transfer in and out of the tub or shower
- Ability of member to prepare the shower or run the bath water
- Ability of member to use any assistive devices, such as a grab-bar or shower chair
- Ability of member to use a sponge or wash cloth to clean himself/herself
- How many times per week does the member bathe, consider that:
  - o Incontinence episodes resulting in the need for a bath
  - o Daily bathing of the elderly is not recommended due to damage that occurs to the skin from the water and the soap
  - o Bathing more than once per day is a personal preference and not a necessity.
- Full bath (bathtub, shower, or bed bath) or partial sponge bath (washing of face, underarms, and private areas).

- A bed bath for members who are bed bound and cannot get out of the bed to be bathed in a shower or tub

#### b) Dressing and Grooming

Dressing assistance includes the laying out, taking off, putting on, and fastening of clothing and footwear, and includes:

- Member's ability to choose their own clothes, put them on, and put on socks and shoes
- Ability to put clothes, socks and shoes on if someone lays out the clothes
- Ability to button, zipper, tie, or buckle clothes or shoes
- Ability to successfully use assistive devices in dressing, such as reachers, sock pullers, or shoehorns
- Ability to dress self in the morning or evening to get ready for bed

Grooming includes assessment of member's ability to:

- Comb or brush hair
- Shave
- Complete oral hygiene, including brushing teeth, remove dentures/partial, clean dentures/partial, and replace dentures/partial
- Trim and clean fingernails and toenails

#### c) Eating and Feeding Considerations

Eating/Feeding is the process of a member getting oral nourishment from a receptacle (dish, plate, cup, glass, bottle, etc.) into their body after it is cooked or prepared for eating. (This does not include tube feeding as that is considered a skilled task.)

Includes an assessment of the member's ability to:

- Cut foods into appropriate size pieces
- Move food or drink from the serving receptacle to their mouth

Support for eating considers the number of meals per day that the member eats.

Note: Assistance with the preparation of meals is considered as part of Meal Preparation

#### d) Toileting Considerations

- Taking off and putting on of clothing and/or diapers,
- Post-toilet hygiene
- Use of equipment, such as a urinal or bedpan
- Emptying of urinal or bedpan
- Cleaning of a catheter or ostomy bag
- Reminders or a toileting schedule

e) Transferring Considerations

Transferring is the member's ability to move horizontally and/or vertically between the bed, chair, wheelchair, commode, etc. It includes an assessment of the member's:

- Ability to use any mechanical devices such as a walker, cane, handrails, or wheelchair to assist with transfers
- Ability to safely transfer without the assistance of another person
- Ability to physically participate in the transfer by pivoting, holding on, or bracing themselves to assist the caregiver

f) Mobility Considerations

Mobility is the extent of the member's purposeful movement within their residence.

It includes an assessment of the member's:

- Ability to purposely move about his/her residence independently with or without the use of assistive devices, this includes the ability of a member to move around in a wheelchair
- Movements being unsafe without the assistance of another person in ambulating
- Muscle weakness, unstable gait or unstable balance

*Id.* at 97 – 100.

8. Petitioner is currently authorized to receive 28 hours per week of personal care services and 10 hours per week of homemaker services. *Id.* at 2. Petitioner also receives skilled nursing services 3 times per week related to Petitioner's catheter and bowl program. *Id.* at 18 and 27.

9. On November 23, 2020, Petitioner requested a Fair Hearing due to the denial of additional personal care services. On December 3, 2020, the undersigned scheduled the Fair Hearing for January 4, 2021, at [REDACTED] and all parties were duly notified.

10. At the Fair Hearing Petitioner asserted that he is a quadriplegic with limited upper body movement. Petitioner asserted that he has no ability to grip objects. Petitioner maintained that he uses approximately 1.5 hours of personal care services in the morning to assist with getting out of bed, using the bathroom, transferring, getting dressed, and transferring to his wheelchair.

Petitioner argued that he needs 1.5 hours of additional services at night to put on, use, and remove compression boots, which help to prevent swelling in the legs. *Id.* at 56. Petitioner testified that he uses a catheter and has bowel incontinence. Petitioner asserted that he needs more than 2 hours of services on Tuesday and Thursday and that he has no assistance with shopping anymore.

11. Dr. John Carter is a long term care Medical Director at Sunshine. Dr. Carter explained that Sunshine reviewed Petitioner's documentation and determined that the additional 15 hours per week of personal care services are not medically necessary. Dr. Carter asserted that Petitioner has significant deficits and needs partial assistance with his ADLs. Dr. Carter asserted that, even if Petitioner required more services, most agencies would consider assistance with therapy compression boots to be a skilled nursing duty rather than personal care services. He argued that Petitioner has a total of 38 hours per week of non-skilled services, which include 28 hours of personal care and 10 hours of homemaking. Dr. Carter asserted that 15 more hours of personal care is not medically needed.

#### **CONCLUSIONS OF LAW**

12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

14. 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.

15. Because Petitioner is requesting additional services, 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.).

16. 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”) (“LTC Policy”). The Agency’s LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The LTC Policy provides as follows:

### **1.1 Description and Program Goal**

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

...

### **1.3 Definitions**

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

#### **1.3.1 Activities of Daily Living (ADLs)**

ADLs include:

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

- Toileting
- Transferring

...

### **1.3.5 701-B Comprehensive Assessment**

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

...

### **1.3.9 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

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

...

### **1.3.14 Medically Necessary or Medical Necessity**

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

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

And, one of the following:

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

...

#### **1.3.16 Natural Supports**

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

...

#### **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:

...

###### **4.2.1.8 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:

...

#### **4.2.2.5 Medical Equipment and Supplies**

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

...

#### **4.2.2.6 Personal Care**

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

...

### **6.0 Documentation**

...

#### **6.2 Specific Criteria**

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

LTC Policy at pages 1-8.

17. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, states 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.

...

**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.

...

**1.3.6 Home Health Services**

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

...

**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

PC Policy at pages 3 - 5.

18. In the instant case, Petitioner requested an additional 15 hours of personal care services per week. *See supra* ¶ 5 and 6. 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. *Id.*

19. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 16.

20. Section 4.2.2.6 of the LTC Policy indicates 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* ¶ 16.

21. The evidence presented in this case does not reflect that Petitioner is in need of an additional 15 hours per week of personal care services. Specifically, Fla. Admin. Code R. 59G-1.100 requires that a service “[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 also supra* ¶ 16. In this case, Petitioner requires assistance (but not total help) with bathing, dressing, and using the bathroom. *See supra* ¶ 3. Further, Petitioner needs supervision or prompt with eating, and uses assistive devices for transferring and walking/mobility. *See supra* ¶ 3. Petitioner always has assistance with his ADLs. *See supra* ¶ 3. With regard to IADLs, Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, and preparing meals. *See supra* ¶ 4. He needs assistance, but not total help, with shopping, managing medication, and using transportation. *See supra* ¶ 4. Petitioner always has assistance with his

IADLs. *See supra* ¶ 4. Petitioner is incontinent of bowel and bladder, but he has skilled nursing assistance 3 times per week to assist with these needs. *See supra* ¶ 2. The record also indicates that Petitioner lives alone and has no natural support to assist him. *See supra* ¶ 2. Petitioner is currently authorized to receive the following services: 28 hours per week of personal care services; and 10 hours per week of homemaker services. *See supra* ¶ 5, 6 and 11. Other than Petitioner's testimony asserting that he needs 1.5 hours of additional personal care services for assistance putting on and removing therapy compression boots each night (or 10.5 hours weekly), *supra* ¶ 10, Petitioner estimated that he uses approximately 1.5 hours of personal care services each morning (or 10.5 hours of personal care services weekly) to assist with getting out of bed, using the bathroom, transferring, getting dressed, and transferring to his wheelchair, and he asserted that he no longer has help shopping on two days per week. *See supra* ¶ 10. Petitioner provided no documentary evidence (i.e., a daily schedule, or a schedule of ADLs and IADLs, showing the amount of time needed for each ADL and IADL) to justify the approval of an additional 15 hours of personal care services weekly in addition to the 28 hours of personal care services weekly already approved.

22. Dr. Carter argued that Petitioner's currently approved services are adequate for Petitioner's needs and that, even if Petitioner required more services for his compression boots, assistance with compression boot therapy is considered a skilled nursing service rather than a personal care service. *See supra* ¶ 11. Petitioner contends that he requires the additional personal care services because he is unable to use the therapy compression boots without assistance. *See supra* ¶ 10. Further, the record reflects that the therapy compression boots take 1 – 1.5 hours per night to put on, use and take off. *See supra* ¶ 2 and 10. Petitioner's most recent

701B Assessment takes the therapy compression boots into account, and it indicates that Petitioner has always has assistance with his ADLs and IADLs. See supra ¶ 3 and 4. As Dr. Carter testified, the currently approved 28 hours weekly of personal care services are sufficient to meet Petitioner's needs. See supra ¶ 11. The records supports Dr. Carter's testimony because Sunshine Policy and Procedure LT.UM.09 Long Term Ancillary Service Criteria do not include assistance with therapy compression boots as a personal care services. See supra ¶ 7.

23. Therefore, considering Petitioner's currently authorized services, along with the LTC Policy definition for personal care services and homemaker services, Petitioner did not demonstrate that his aforementioned needs, *supra* ¶ 2 – 4, and 10, are not sufficiently met by his currently authorized services. Given that Petitioner failed to establish that the requested personal care services are warranted in this matter, *supra* ¶ 21 - 22, the requested personal care services are "in excess of [Petitioner's] needs." See supra ¶ 16.

24. In light of the both parties' testimony, Respondent's Composite Exhibit 1, the LTC Policy, and the PC Policy, the undersigned Hearing Officer finds that Petitioner failed to meet his burden of proving that the additional 15 hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional personal care services was incorrect.

### **DECISION**

Respondent's denial of an additional 15 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 3rd day of February 2021, in Tallahassee, Leon County, Florida.



Laura Gallagher

20-FH [REDACTED]

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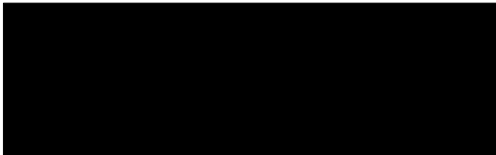
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**LAURA GALLAGHER, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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**



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