



All parties and witnesses appeared for the Fair Hearing telephonically. [REDACTED] (“Petitioner’s Authorized Representative”), Petitioner’s daughter, appeared for the Fair Hearing to provide testimony on behalf of Petitioner. [REDACTED] (“[REDACTED]”), Advanced Practice Registered Nurse (“APRN”) for [REDACTED], appeared for the Fair Hearing as a witness for Petitioner.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine Health”), appeared for the Fair Hearing as a representative for Respondent. The following persons appeared for the Fair Hearing as witnesses for Respondent: Melissa Layne, Senior Manager for Member Appeals for Sunshine Health; Yana Langford, Supervisor of Care Coordination for Sunshine Health; Alshenetha Williams, Care Coordinator Supervisor for Sunshine Health; and Dr. John Carter (“Dr. Carter”), Medical Director for Sunshine Health. Doris Rivera, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as an observer.

Petitioner’s Authorized Representative introduced an evidence packet containing fifteen (15) pages, which was admitted into evidence as Petitioner’s Composite Exhibit 1. Petitioner’s Composite Exhibit 1 includes the following: a fax cover sheet (dated December 1, 2020); a letter from Petitioner’s Authorized Representative (undated); a letter from [REDACTED] (“[REDACTED]”) of [REDACTED] (dated November 23, 2020); a letter from [REDACTED] (“[REDACTED]”) of [REDACTED] (dated October 31, 2020); a letter from Sunshine Health (dated October 1, 2020); and Sunshine Health’s Long Term Care Person-Centered Plan (“Current Plan of Care”) (signed by Care Manager on September 21, 2020).

Respondent introduced an evidence packet containing one hundred and twenty-five (125) pages, which was admitted into evidence as Respondent's Composite Exhibit 1. Respondent's Composite Exhibit 1 includes the following: a Table of Contents; a Medicaid Fair Hearing Summary (dated December 11, 2020); a Notice of Adverse Benefit Determination ("NABD") (dated July 29, 2020); Long Term Care Person-Centered Plan ("Plan of Care") (signed by Case Manager on June 23, 2020); the Current Plan of Care (signed by Care Manager on September 21, 2020); the Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B Assessment") (dated June 23, 2020); the 701B Assessment (dated September 21, 2020); a Standard Appeal Acknowledgment letter (dated September 11, 2020); an Expedited Appeal Request Decision (dated September 11, 2020); a Notice of Plan Appeal Resolution ("NPAR") (dated October 8, 2020); Sunshine Health Policy and Procedure: Long Term Care ("LTC") Ancillary Service Criteria (LT.UM.09) ("LTC Ancillary Service Criteria"); and Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010 (166).

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine Health's Long Term Care Program. *See* Respondent's Composite Exhibit 1, page 2. Sunshine Health is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.
2. Petitioner is 71 year old and resides in the community alone. *Id.* at 49-50, 64. Petitioner's Authorized Representative and Petitioner's Authorized Representative's husband live next door to the Petitioner. *Id.* at 49-50. Petitioner experiences the following health conditions: acid reflux; osteoarthritis; high blood pressure; high cholesterol; diabetes; gallbladder removal; Congestive

Heart Failure (CHF); frequent bladder incontinence; rare bowel incontinence; Emphysema; and Neuropathy. *Id.* at 55-56. Petitioner uses an insulin pump and an oxygen tank. *Id.* Petitioner eats a special low carbohydrate diet. *Id.* Petitioner is diagnosed with Dementia. *Id.* at 57. Petitioner is prescribed medication to be taken daily. *Id.* at 61.

3. Petitioner needs assistance (but not total help) with activities of daily living (“ADLs”) such as bathing. *Id.* at 53. Petitioner needs supervision or prompt with dressing. *Id.* Petitioner uses an assistive device (walker, wheelchair, and lift chair) for transferring and walking/mobility. *Id.* Petitioner needs no assistance with eating and using the bathroom. *Id.* Petitioner needs total assistance with instrumental activities of daily living (“IADLs”) such as heavy chores, light housekeeping, managing money, and preparing meals, preparing meals, and using transportation. *Id.* at 54. Petitioner uses an assistive device for using the telephone. *Id.* Petitioner needs assistance (but not total help) with managing medication. *Id.*

4. Petitioner’s primary caregiver is Petitioner’s Authorized Representative. *Id.* at 63. Petitioner’s Authorized Representative does not work outside of the home. *Id.* Petitioner’s Authorized Representative does not have anyone to assist with providing care. *Id.*

5. In a letter dated November 23, 3030, ██████████ stated, “[i]t is my medical opinion that [Petitioner] requires a caregiver for 24-hour supervision and assistance with all aspects of daily living.” See Petitioner’s Composite Exhibit 1, page 5. ██████████ determined that Petitioner requires constant monitoring for position changes and ambulation. *Id.* ██████████ stated that Petitioner requires care assistance as well as transportation to visits with doctors. *Id.* ██████████ letter, dated October 31, 2020, confirmed that Petitioner lives with her daughter and her

daughter cares for her 24 hours per day. *Id.* at 6. [REDACTED] determined that there is “an obvious medical need for a 24 hour caretaker and live in for [Petitioner].” *Id.*

6. Prior to the instant action, Petitioner received the following LTC services:

- Personal Care – 16 hour(s) Weekly;
- Homemaker – 24 hour(s) Weekly;
- Pull-ups – 1 Case(s) Monthly;
- Underpads – 1 Case(s) Monthly; and
- Personal Emergency Response System (PERS) – 1 Month(s) Monthly.

Respondent’s Composite Exhibit 1, page 25.

7. On July 29, 2020, Sunshine Health issued an NABD reducing Petitioner’s Personal Care services from 24 hours per week to 12 hours per week. *Id.* at 4-8. The NABD stated as follows:

Sunshine Health has reviewed your request for 24 hours per week of homemaker service (the person who cleans for you), which we received on 07/29/2020. After our review, this service has been:

**REDUCED** as of 08/11/2020.

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: **Sunshine Health looked at the member's present care needs and provided home supplies. The member's present care plan includes 24 hours/week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Homemaker Services from 24 hours/week to 12 hours/week.**

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.

...

Sincerely,  
Dr. Carter  
Medical Director

Respondent's Composite Exhibit 1, pages 4-8. (Emphasis added).

8. On October 8, 2020, Sunshine Health issued an NPAR denying Petitioner's plan appeal. *Id.* at 78-80. The NPAR stated as follows:

On September 11, 2020 we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated July 29, 2020, Notice of Adverse Benefit Determination Number [REDACTED], REDUCING the 24 hours per week of homemaker service (the person who cleans for you), provided to [Petitioner].

On October 8, 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 24 hours per week of homemaker services, effective October 8, 2020.

**The reason for our decision was: The appeal to overturn the reduction in 12 hours per week of Homemaker Services is DENIED for lack of medical necessity. 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 Family Medicine.

...  
Sincerely,  
Dr. Sapnalaxmi Amin, MD  
Medical Director

Respondent's Composite Exhibit 1, pages 78-80. (Emphasis added).

9. In making a medical necessity determination, Sunshine Health relied upon their internal policy, the LTC Ancillary Service Criteria. *Id.* at 85-114. The LTC Ancillary Service Criteria states as follows regarding Homemaker services:

**1. Determinants for Services**

When considering the level of support the member requires and which of the ancillary services may support the member's cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member's support needed due to ADL deficits, living situation, and supervision needs.

a) Activities of Daily Living (ADL's)/Instrumental Activities of Daily Living (IADL's)

- Independent where member is able to provide the task without support, with or without assistive devices
- Minimal functional impairment where the ADL's require one of the following:
  - Supervision
  - At least minimum assistance
  - Member ambulates with assistance of a person or a device
  - Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply
  - Member has ADLs requiring at least minimal assistance
  - Member ambulates with assistance of a person or device
  - Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
  - Member has ADLs requiring total assistance
  - Member is non-ambulatory
  - Member transfers require one (1) to two (2) person assist
  - Member's treating physician has certified that member meets Maximum unctional impairment.

b) Living situation consideration

- Lives alone.

- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
- Lives with non-family (with consideration of the number of days and hours that nonfamily members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

The criteria for each ancillary service is described below:

...

**6. Homemaker Services**

Homemaker provides assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to members 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 Activity of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

See Section C.1 for more details

Covered Homemaker service may include:

- a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Housekeeping Considerations:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member
- For members living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area.
- The entire size of the home may be considered if cleaning of specific areas not used by the member is needed to maintain sanitary living conditions.
- For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.

- b) Shopping for the recipient's food and essential household items, picking up prescriptions and needed medical supplies

Shopping Considerations:

- Member's ability to obtain groceries, household goods, and medications on their own
- Member's ability to put away groceries, household goods, and medications on their own
- Member lives with family who does the shopping for the member and puts away groceries, household goods and medications  
Member has other supports who do the shopping for the member and puts away groceries, household goods and medications

- c) Meal preparation includes menu planning, storing, preparing, cooking, and serving food (buttering bread and cutting food into bite size pieces, plating). Meal preparation does not include the cost of the food.

Meal Preparation considerations

- Number of meals per days eaten by member or number of meals the member should eat per day
  - Number of daily meals prepared by a caregiver and left in a location that the member can access, heat if necessary, and get to the table to eat.
  - Meal preparation tasks member is able to complete independently. Is member able to use the microwave stove or oven?
  - Amount of assistance needed in the preparation and cleanup, such as:
    - Meal planning
    - Meal preparation
    - Special diets
    - Special food preparation
    - Assembling food on plates
    - Getting food to the table
  - Will additional supports allow the member to eat more often or improve nutritional status
- d) Laundry includes washing, drying, folding, and putting away the recipient’s personal laundry. The recipient pays all Laundromat and/or cleaning fees.

Laundry Considerations:

Identify the amount of laundry to be done on a weekly basis, including washing, drying, folding and putting away member’s clothes, bed linens and towels, including:

- Amount of clothing and other items to be laundered
- Identify if member soils their clothing or bedding due to incontinence, therefore more frequent laundry is needed, which results in more smaller loads
- Preparing clothes and other items to be washed
- Putting the clothes and other items in the washer and dryer
- Hanging clothes and other items to dry
- Other chores could be done while the member’s clothes or other items are being washed, dried, folded, and put away.
- If laundry must be done in an apartment laundry room or a community laundry, additional time can be given for waiting for the laundry to be done.
- Routine changing of bed linens is considered part of bedroom housekeeping

Homemaker Service Determination Table

<b>Support needed for housekeeping:</b>	<b>Support needed for shopping:</b>
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<p>The following guide assists in determining the amount of support needed by the member:</p> <ul style="list-style-type: none"> <li>• Lives alone and is able to provide own housekeeping: 0 minutes</li> <li>• Lives alone and needs minimum to maximum support of outside assistance for some housekeeping: 15-120 min/week</li> <li>• Lives with family who is able to provide all of member's housekeeping: 0 minutes</li> <li>• Lives with family who provide a minimum or moderate amount of the member's housekeeping: 15-90 minutes/week</li> <li>• Has informal supports who provide all of member's housekeeping: 0 minutes</li> </ul>	<p>The following guide assists in determining the amount of support needed by the member:</p> <ul style="list-style-type: none"> <li>• Lives alone and is able to provide own shopping: 0 minutes</li> <li>• Lives alone and needs minimum to maximum support of outside assistance for some shopping: 15-90 min/week</li> <li>• Lives with family who is able to provide all of member's shopping: 0 minutes</li> <li>• Lives with family who provide a minimum or moderate amount of the member's shopping: 15-75 minutes/week</li> <li>• Has informal supports who provide all of member's shopping: 0 minutes</li> </ul>
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<p><b>Support needed for housekeeping:</b></p> <ul style="list-style-type: none"> <li>• Has informal supports who provide a minimum or moderate amount of the member's housekeeping: 15-90 minutes/week</li> <li>• Member requires maximum support for housekeeping: up to 120 minutes/week</li> </ul>	<p><b>Support needed for shopping:</b></p> <ul style="list-style-type: none"> <li>• Has informal supports who provide a minimum or moderate amount of the member's shopping: 15-75 minutes/week</li> <li>• Member requires maximum support for shopping: up to 90 minutes/week</li> </ul>
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<p><b>Support needed per meal:</b></p>	<p><b>Support needed for laundry:</b></p>
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<p>The following guide assists in determining the amount of support needed by the member:</p> <ul style="list-style-type: none"> <li>• Breakfast by self –1-15 min/day</li> <li>• Breakfast with others –1-5 min/day</li> <li>• Lunch by self –1-20 min/day.</li> <li>• Lunch with others –1-5 min/day</li> <li>• Dinner by self –1-30 min/day.</li> <li>• Dinner with others –1-5 min/day</li> <li>• Additional Meal –1-10 min per meal.</li> </ul>	<p>The following guide assists in determining the amount of support needed by the member:</p> <ul style="list-style-type: none"> <li>• Lives alone and is able to provide own laundry: 0 minutes</li> <li>• Lives alone and needs minimum to maximum support of outside assistance for laundry : 15- 120 min/week</li> <li>• Lives with family who is able to do all of member’s laundry: 0 minutes</li> <li>• Lives with family who provide a minimum or moderate amount for the member’s laundry: 15-90 minutes/week</li> <li>• Has informal supports who do all of member’s laundry: 0 minutes</li> <li>• Has informal supports who do a minimum or moderate amount of the member’s laundry: 15-90 minutes/week</li> </ul> <p>Member requires maximum support for laundry: up to 120 minutes/week</p>
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<b>Authorization Calculation</b>
<ul style="list-style-type: none"> <li>• Calculate the total number of minutes of support needed for housekeeping or chores.</li> <li>• Convert the total number of minutes to units. <ul style="list-style-type: none"> <li>○ One (1) unit equals 15 minutes</li> </ul> </li> </ul> <p>If the total number of minutes is less than 15, that will equal one (1) unit.</p>

Exclusions and Limitations for Homemaker include but are not limited to:

1. Service must be provided at member’s residence.
2. Member must reside in a non-facility based setting.
3. For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member’s bedroom and one bathroom.
4. Homemaker services shall not be provided overnight.
5. Homemaker services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Member/member’s representative must be able to provide direction to aid when aid is in the home.
7. Care, grooming, or feeding of pets and animals
8. Yard work, gardening, or home maintenance work
9. Escort Services
10. Day care or afterschool care
11. Assistance with homework
12. Meal preparation does not include the cost of meals

Pest Control and Chore services are include under homemaker.

## **6a. Pest Control Services**

For the purpose of this guideline, pests are defined as roaches, fleas, ticks, mice, and rats. Pest Control Services are services to regulate pests and to enhance safety, sanitation, and cleanliness of the member's residence. This service is provided due to health and safety issues associated with pest infestation in a tropical climate. Services are provided to regulate pests that can be hazardous to persons with declining health if present in the recipient's environment.

Prior to using the Pest Control Benefits, the LTC Care Coordinator is responsible for coordination of benefits and utilizing covered benefits under Medicare, Veterans Administration, MMA, LTC, and any additional insurances member has available.

The pest control benefit, if approved will be authorized for a period of 3 consecutive months to provide a reduction of pest infestation within the member's primary residence for each occurrence.

### Approval Criteria

1. Pests are present inside the member's home residence. For the purpose of this guideline, pests are defined as roaches, fleas, ticks, mice, and rats.
2. CC observes pests or observable evidence of pest infestation and documents this on the 701B's Residential Living Environment section (page 11) in the comments section.
3. Pests must present a direct threat to the member's physical health
4. Member is the homeowner
5. CC reviews pest control handout with member/authorized representative

### Exclusions and Limitations include but are not limited to:

1. Services must be provided at member's residence.
2. Pest Control can only be approved if no other relative, caregiver, landlord, community agency, volunteer agency or third party is capable of performing or is responsible for this service. If the member's home is a rental property, the landlord's responsibilities must be verified before services are approved.
3. If the member resides in the home with a family member who owns the home or is the lessee, the family member(s) is responsible for pest control.
4. If member is the lessee, the lease agreement is examined and states it is not the landlord's responsibility to provide pest control.
5. Member / authorized representative does not plan to move to another location within 90 days of the service delivery date as documented in the case notes.
6. CC determines prior to requesting the service that the member does not have any health conditions that need to be considered by the pest control provider.

7. Pest Control services provided by Sunshine Health may not duplicate services that are provided under by another provider.
8. Pest control provider must be allowed full access to residence for assessment and treatment purposes.
9. When the Provider gives member follow up instructions to prevent re-infestation, member or authorized representative will abide by guidelines provided. Case management will provide support as needed.

Bed bug requests are subject the general exclusions and limitations listed above in for general pest control in addition to these criteria:

- Service are only provided 1x/year
- Member / authorized representative must be able and willing to part with infested furniture as indicated by the pest control provider.
- Abide by the scope of work for the treatment (are we able to deny if member does not abide by post treatment instructions

When the Provider gives member follow up instructions to prevent re-infestation, member or authorized representative will abide by guidelines provided. Case management will provide support as needed.

#### **6b. Chore Services**

Those services needed to maintain the member in a home that is clean and sanitary and provides a safe environment. Chore services include heavy household chores such as washing floors, windows, and walls, tacking down rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress. Chore services performed on the exterior of the member's home are limited to those promoting safe access and egress to the home.

Enhanced Chore Services: May include removal of debris, cleaning roofs and gutters, correcting code violations, cleaning carpet, as well as renting dumpsters, carpet cleaning machines, and protective clothing for the provider. This service is only provided when neither the member nor anyone else in the household is capable of performing or financially able to obtain this service.

This can only be approved if no other relative, caregiver, landlord, community agency, volunteer agency or third party is capable of performing or is responsible for this service. If the member's home is a rental property, the landlord's responsibilities must be verified before services are approved. The services must be performed at the member's residence. A team of no more than three (3) people may be used[.]

Respondent's Composite Exhibit 1, pages 85-114.

10. On December 1, 2020, Petitioner's Authorized Representative timely requested a Fair Hearing to contest Respondent's reduction of Homemaker services. On December 11, 2020, the undersigned scheduled the Fair Hearing to be conducted by telephone on January 8, 2021, at [REDACTED].

11. At the hearing and under oath, Ms. Mojica testified that Petitioner is enrolled into the Participant Direction Option ("PDO") program through Florida Medicaid. Petitioner's Authorized Representative confirmed that she is Petitioner's Direct Service Worker ("DSW") in the PDO program, and renders all of Petitioner's authorized Personal Care services and Homemaker services.

12. At the hearing and under oath, Dr. Carter testified that the reduction of Homemaker services was based on the current 701-B Comprehensive Assessment completed by the Petitioner's Case Manager. Specifically, Respondent used the information provided in ADL section, the IADL section, and the Primary Caregiver section of the current 701-B Comprehensive Assessment to make its medical necessity determination. Dr. Carter testified that the natural support provided to Petitioner was also considered given that Petitioner's Authorized Representative lives next door and is available to care for Petitioner throughout the day. Dr. Carter disclosed his credentials as follows: Board Certified in Internal Medicine, Geriatric Medicine, and Hospice & Palliative Care. Dr. Carter determined that 12 hours per week of Homemaker services were in excess of Petitioner's needs, and that these services at issue were no longer medically necessary.

13. At the hearing and under oath, Petitioner's Authorized Representative testified that she assists Petitioner with all ADLs and all IADLS in addition to performing physical therapy

exercises three (3) times per day. Petitioner's Authorized Representative testified that Petitioner's meal preparation requires extensive time because of Petitioner's special diet. Petitioner's Authorized Representative testified that Petitioner also requires extensive time for transportation and shopping. Petitioner's Authorized Representative stated, "I am with [Petitioner] 24 hours a day unless I have to leave to go to the store." Petitioner's Authorized Representative testified that she does not work outside of the home. Petitioner's Authorized Representative testified that she renders all of Petitioner's Personal Care services and Homemakers and also renders natural support of 24-hours per day.

14. At the hearing and under oath, [REDACTED] testified that in her experience at [REDACTED] office, Petitioner is out of breath and has difficulty ambulating on her own when she comes in to visit the doctor. [REDACTED] testified that Petitioner's Authorized Representative needs the money provided by the 12 hours per week of Homemaker services or else Petitioner will have to consider alternative care to meet her needs. [REDACTED] testified that Petitioner's needs require 24-hour care in her professional opinion.

#### **CONCLUSIONS OF LAW**

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

16. Pursuant to Fla. Admin. Code R. 59G-1.100(17)(b), this hearing was held as a *de novo* proceeding.

17. Because Respondent reduced an existing service, the burden of proof is on the Respondent. See Fla. Admin. Code R. 59G-1.100(17)(g). The standard of proof in an administrative

hearing is a preponderance of the evidence. *Id.* 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 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.

(Emphasis added).

19. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“LTC Policy”) (March 2017), incorporated by reference in Fla. Admin. Code R. 59G-4.192, establishes the provision and the coverage for LTC services available under the Florida Medicaid program. 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.

...

#### **4.1 General Criteria**

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary;
- Do not duplicate another service; and
- Meet the criteria as specified in the 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 restrictive setting

#### **4.2.1 Home and Community-Based Supportive Services**

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

##### **4.2.1.9 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.

20. Based on the NABD and the NPAR, Respondent reduced Petitioner's Homemaker services from 24 hours per week to 12 hours per week based on medical necessity. *See supra* ¶ 7-8. Respondent determined that 12 hours per week no longer medically necessary based on the Petitioner's present care needs, household status, and caregiver status. *See supra* ¶ 7. Respondent declared that 12 hours per week of Homemaker services are sufficient to meet the Petitioner's needs. *See supra* ¶ 12. Dr. Carter added that the Petitioner's needs for ADLs and IADLs as well as Petitioner's natural support addressed in the 701-B Comprehensive Assessment led to the reduction of Homemaker services.

21. Homemaker services provide assistance with general household activities and routine household care when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. *See supra* ¶ 19. Homemaker services are covered by the LTC Policy if they are determined to be medically necessary. *See supra* ¶ 19. *See supra* ¶ 16. Section 1.3.14(b) of the LTC Policy outlines the criteria that must be met for Home and Community-Based Supportive services such as Homemaker services to be medically necessary. *See supra* ¶ 16. Based on the NABD and Dr. Carter's testimony, Respondent determined that the following medical necessity standard has not been met for a continuation of services: Services must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs. *See supra* ¶ 7, 12. This specific medical necessity standard is required to be met by section 1.3.14(b) of the LTC Policy. *See supra* ¶ 16.

22. The record indicates that the Homemaker services, at issue, are in excess of the Petitioner's needs. Dr. Carter asserted that the following information led to the reduction of

services: the Ccurrent 701-B Comprehensive Assessment; Petitioner's needs for ADLs and IADLs; and the natural support (unpaid voluntary assistance) of Petitioner's Authorized Representative. See supra ¶ 12. In addition, Dr. Carter presented credible testimony that Petitioner's natural support and 12 hours per week of Homemaker services are sufficient to meet Petitioner's needs for general household activities and routine household care. Petitioner's Authorized Representative confirmed that she is Petitioner's PDO DSW and also that she provides natural support that amounts to 24 hours per day. Petitioner's Authorized Representative also confirmed that she is not currently employed outside of the PDO program. The record indicates that Respondent's assessment of Petitioner's natural support was correct. Thus, it appears that Petitioner's needs for Homemaker services are met through the currently approved LTC services and Petitioner's Authorized Representative's natural support.

23. Petitioner's Authorized Representative and ██████████ provided credible testimony that Petitioner requires 24-hour care and assistance. ██████████ and ██████████ also provided letters regarding Petitioner's needs for care and assistance. However, the record indicates that Petitioner currently receives this care and assistance through her daughter. The only difference in Respondent's action is that Petitioner's Authorized Representative is not compensated to care for her mother, the Petitioner, who she otherwise would already be providing such care to. Also, ██████████ testified that Petitioner's Authorized Representative needs the money provided by 12 hours per week of Homemaker services. Based on the aforementioned need, the request does not meet the following medical necessity standard: "services must be furnished in a manner not primarily intended for the convenience of the recipient's caretaker." Based on the record,

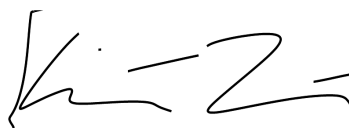
Respondent has demonstrated that the Homemaker services at issue (12 hours per week) are no longer medically necessary.

24. Accordingly, upon consideration of the evidence admitted into the record, the parties' sworn testimony, and the LTC Policy, the undersigned concludes that Respondent has shown that 12 hours per week of Homemaker services are no longer medically necessary. Thus, Respondent has also shown by a preponderance of the evidence that Respondent's reduction of Homemaker services was correct.

**DECISION**

Respondent's reduction of Homemaker services from 24 hours per week to 12 hours per week is **AFFIRMED**. Petitioner's request for relief is hereby is **DENIED**.

**DONE AND ORDERED** this 5th day of February, 2021, in Tallahassee, Leon County, Florida.



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Kristopher León  
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**KRISTOPHER LEÓN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
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**Tallahassee, FL 32308-5407**  
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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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