



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

FILED

Feb 09, 2021, 12:28 pm
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]
Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the above-styled case on January 12, 2021, at [REDACTED]

APPEARANCES

For the Petitioner: [REDACTED]
Authorized Representative

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 twelve (12) hours per week of Adult Companion Care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the Fair Hearing telephonically. [REDACTED] (“Petitioner’s Authorized Representative”), Petitioner’s daughter, appeared for the Fair Hearing as a representative for Petitioner and did not call any witnesses.

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; Dr. Michael A. Silverman (“Dr. Silverman”), Medical Director for Florida Care Management Services Agency, Inc. (“FCMSA”); Kenny Casaneda, Case Management Director for Sunshine Health; and Jessica Carrillo, Case Manager for FCMSA.

Chrissy Simmons, 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.

Interpreter Diane (Identification #349287), Spanish Interpreter for Cyracom International, appeared for the Fair Hearing to provide language translation services for Petitioner. Interpreter Carlos (Identification #354089), Spanish Interpreter for Cyracom International, also appeared for the Fair Hearing to provide language translation services for Petitioner.

Petitioner’s Authorized Representative introduced an evidence packet containing four (4) pages, which was admitted into evidence as Petitioner’s Composite Exhibit 1. Petitioner’s Composite Exhibit 1 includes the following: a fax confirmation email; a letter from [REDACTED] (“[REDACTED]”) (dated June 23, 2020); and two completed Designations of Authorized Representative for Medicaid Fair Hearing Participation (DAR) (signed on December 15, 2020).

Respondent introduced an evidence packet containing one hundred and twenty (120) pages, which was admitted into evidence as Respondent's Composite Exhibit 1. Respondent's Composite Exhibit 1 includes the following: a Table of Contents; the Medicaid Fair Hearing Summary (dated December 18, 2020); a Notice of Adverse Benefit Determination ("NABD") (dated June 29, 2020); a Long Term Care Person-Centered Plan ("Plan of Care") (signed by Care Manager on June 24, 2020); a Plan of Care (signed by Care Manager on December 10, 2020); the Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B Comprehensive Assessment") (dated June 24, 2020); the 701B Comprehensive Assessment (dated October 14, 2020); a copy of the letter from Dr. Delgado (dated June 23, 2020); an excerpt from a Sunshine Health form (signed on July 15, 2020); a Standard Appeal Acknowledgment letter (dated July 22, 2020); a Notice of Plan Appeal Resolution ("NPAR") (dated September 10, 2020); the FCMSA internal policy for Statewide Medicaid Managed Care ("SMMC") Long-term Care ("LTC") Policy #: QA-013 (revised January 21, 2020); Sunshine Health Policy and Procedure: LTC Ancillary Service Criteria (LT.UM.09) ("LTC Ancillary Service Criteria"); and the Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010 (166).

FINDINGS OF FACT

1. As of [REDACTED] 2017, Petitioner is an enrolled member of Sunshine Health's LTC 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 88 years old and resides in the community with a primary caregiver, Petitioner's Authorized Representative. *Id.* at 52-53. Petitioner is diagnosed with the following

conditions: Alzheimer's disease; dementia; anxiety; depression; insomnia; acid reflux; moderate anemia; pssteoarthritis; high blood pressure; high cholesterol; heart problems; frequent dizziness; frequent bowel and bladder incontinence; Coronary Artery Disease (CAD); unsteady gait; and Vitamin B12 deficiency. *Id.* at 54, 57-58, 60. Petitioner receives Vitamin B12 treatment on a monthly basis. *Id.* at 59. Petitioner displays forgetfulness. *Id.* at 61.

3. Petitioner's Authorized Representative is the Petitioner's primary caregiver and resides with the Petitioner. *Id.* at 66-67. Petitioner's Authorized Representative does not work outside of the home. *Id.* Petitioner's Authorized Representative has someone ([REDACTED] Petitioner's relative) who can assist her in providing care to Petitioner. *Id.* Petitioner's Authorized Representative has been providing care to the Petitioner for 2 or more years. *Id.* Petitioner's Authorized Representative provides 60 hours per week of care to the Petitioner. *Id.* Petitioner's Authorized Representative is very confident in her ability to continue providing care to the Petitioner. *Id.*

4. Dr. Delgado declared that the Petitioner's mental condition and physical condition have deteriorated over the last six months. *Id.* at 71; *see also* Petitioner's Composite Exhibit 1, page 2. Dr. Delgado declared that Petitioner "requires direct constant supervision to meet her daily adult care needs." *Id.*

5. Petitioner needs assistance (but not total help) with activities of daily living ("ADLs") such as bathing, dressing, eating, using the bathroom, transferring, and walking/mobility. *Id.* at 56. Petitioner needs total assistance with instrumental activities of daily living ("IADLs") such as heavy chores, light housekeeping, managing money, preparing meals, using the telephone, and shopping. *Id.* at 57. Petitioner needs assistance (but not total help) with managing medication

and using transportation. *Id.* Petitioner’s needs for assistance with ADLs and IADLs were confirmed by Dr. Silverman at the hearing.

6. As testified to by Dr. Silverman, prior to the instant request, Petitioner receives the following LTC services:

- Homemaker services – 14 hours per week;
- Personal Care services – 14 hours per week;
- Personal Emergency Response System (“PERS”) – 1 unit monthly;
- Home Delivered Meals – 7 meals per week;
- Personal Care products – 1 unit per month;
- Underpads – 1 case per month;
- Pull-ups – 1 case per month;
- Wipes – 2 packs per month; and
- Liner/Shield/Pads – 1 case per month.

Respondent’s Composite Exhibit 1, page 28-31.

7. On June 29, 2020, Sunshine Health issued an NABD denying Petitioner’s request for twelve (12) hours per week of Adult Companion Care services. *Id.* at 4-9. The NABD states as follows, in pertinent part:

Sunshine Health has reviewed your request for 12 hours of Adult Companion Care (the person who helps and watches over you), which we received on 06/24/2020. After our review, this service has been:

DENIED as of 06/25/2020

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 hours (12 hours a week of Adult Companion Care services) is denied. **Based on the assessment of the member's care needs and household and caregiver status the current services meet the member's needs. Member's current assessment does not reflect a change in member's need for adult companion care. This decision was made with Florida Care Management Services Utilization Management Policy QA-013.**

...

Sincerely,
Michael Silverman MD
Medical Director

Respondent's Composite Exhibit 1, pages 4-9. (Emphasis added).

8. On September 10, 2020, Sunshine issued an NPAR denying Petitioner's plan appeal. *Id.* at 80-82. The NPAR states as follows:

On July 17, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated June 29, 2020, Notice of Adverse Benefit Determination Number [REDACTED], denies the 12 hours per week of companion care (the person who helps watches over you), provided to [Petitioner].

On August 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 the 12 hours per week of companion care, effective August 13, 2020.

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the denial of 12 hours/week of Companion Care Services is upheld. The presently approved services are enough to meet the member's care needs.

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

This decision was made by a Sunshine Health's Medical Director who is Board Certified in Internal Medicine, Geriatric Medicine, and Hospice & Palliative Care.

...

Sincerely,
John Carter, MD ("Dr. Carter")
Medical Director

Respondent's Composite Exhibit 1, pages 80-82. (Emphasis added).

9. Respondent also relied upon the LTC Ancillary Service Criteria to make its Medical Necessity determination. *Id.* at 89-119. The LTC Ancillary Service Criteria states as follows regarding Adult Companion Care 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:

2. Adult Companion Care

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks include Adult Companion Care to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental Illness requiring supervision
- Parkinson's disease
- Multiple Sclerosis
- ALS
- Congestive Heart Failure
- COPD
- Cancer
- End Stage Renal disease
- TBI
- Other diagnosis as deemed medically necessary by Medical Director

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
 - See Section C.1.c. for more details
- Informal Supports
 - None
 - Few friends/family in area
 - Family nearby
- Living Situation
 - Lives alone
 - Lives with others but is alone for extended periods of time due to the necessary absence of a caregiver
 - Lives with caregiver and others
- Services in Place
 - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations for Adult Companion Care 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. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.
5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal care tasks.
6. The member has memory deficits, which prevent him or her from managing care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in and comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

Respondent's Composite Exhibit 1, pages 89-119.

10. On December 3, 2020, Petitioner's Authorized Representative timely requested a Fair Hearing to contest Respondent's denial of Adult Companion Care services. On December 18, 2020, the undersigned scheduled the Fair Hearing to be conducted by telephone on January 12, 2021, at [REDACTED]

11. At the hearing and under oath, Petitioner's Authorized Representative testified that Petitioner's current Plan of Care is insufficient for Petitioner's needs because Petitioner needs more hours for assistance with ADLs and IADLs. Petitioner's Authorized Representative testified that she spends "24 hours a day" with the Petitioner and even sleeps next to the Petitioner at night.

12. At the hearing and under oath, Dr. Silverman testified that Petitioner is enrolled into the Participant Direction Option (“PDO”) program and Petitioner’s Authorized Representative is Petitioner’s Direct Service Worker (“DSW”). Petitioner’s Authorized Representative renders Petitioner’s LTC services as follows: Homemaker services – 14 hours per week, and Personal Care services – 14 hours per week. Respondent determined that Petitioner’s request for 12 hours per week of Adult Companion Care services is not medically necessary based on Petitioner’s needs and Petitioner’s Authorized Representative’s natural support of 24 hours per day. Dr. Silverman cited the most recent Plan of Care to reference the natural support offered by Petitioner’s Authorized Representative and [REDACTED] Petitioner’s niece. See Respondent’s Composite Exhibit 1, page 26. Respondent determined that Petitioner’s needs for Adult Companion Care can be met by Petitioner’s natural support.

CONCLUSIONS OF LAW

13. Pursuant to Florida Statute (“Fla. Stat.”) § 409.285(2) (2019), the Agency’s Office has jurisdiction over the subject matter of this proceeding and the parties. This Final Order is the final administrative decision of AHCA. See Fla. Stat. § 409.285(2)(a).

14. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.100(17)(b).

15. Pursuant to Fla. Admin Code R. 59G-1.100(17)(g), the burden of proof is 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).

16. Because Petitioner requested a new service, the burden of proof is on the Petitioner. *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.).

17. 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 coverage for LTC services available to 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:

4.2.1.1 Adult Companion Care

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

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.2 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.

18. Based on the NABD and the NPAR, Respondent denied Petitioner's request for twelve (12) hours per week of Adult Companion Care services based on medical necessity. *See supra* ¶ 7-8. Specifically, the NPAR determined that Petitioner's current LTC services are adequate to meet the Petitioner's needs. *See supra* ¶ 8. At the hearing, Dr. Silverman testified that Petitioner's request was not medically necessary because Petitioner's needs for Adult Companion Care can be met with Petitioner's natural supports and Petitioner's current plan of care. *See supra* ¶ 12.

19. Adult Companion Care services are covered if they are determined to be medically necessary. Because Adult Companion Care services are classified as a Home and Community-Based Supportive Service, the LTC Policy's definition of medical necessary applies. To be medically necessary, a service must meet the criteria set forth in the section 1.3.14(b) of the LTC Policy. Based on the record, *supra* ¶ 12 and 18, Respondent denied Petitioner's request for Adult Companion Care services for not meeting the following medical necessity standard: Services must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs. This criterion is stated in section 1.3.14(b) of the LTC Policy. *See supra* ¶ 17.

20. Both the NABD and the NPAR disclosed that the medical necessity determination for 12 hours per week of Adult Companion Care services was made with the LTC Ancillary Service Criteria. *See supra* ¶ 7-8. As for the LTC Ancillary Service Criteria criteria at issue, the criteria for Adult Companion Care services weighs two factors: Trigger diagnosis; and 4 Dimensions of Determination. *See supra* ¶ 9. Petitioner is diagnosed with a trigger diagnosis (Alzheimer's

disease, Dementia). *See supra* ¶ 2. The record indicates that Petitioner needs some supervision, *supra* ¶ 4, however, in light of Petitioner's natural support and approved services, the record does not indicate that Petitioner has an unmet need for supervision. Petitioner lives with Petitioner's Authorized Representative who renders 28 hours per week of LTC services (14 hours per week of Personal Care Services, 14 hours per week of Homemaker Services) as Petitioner's DSW in the PDO program and also spends 60 hours per week caring for Petitioner. *See supra* ¶ 3, 6, 12. Through her own admission, Petitioner's Authorized Representative spends 24 hours per day with Petitioner. *See supra* ¶ 11. Also, Petitioner's niece provides some natural support to the Petitioner. *See supra* ¶ 3, 12. The undersigned considered Petitioner's Authorized Representative's testimony with respect to Sunshine's internal criteria, the Definitions Policy criteria for Medical necessity, and the LTC Policy criteria for Medical Necessity with respect to Adult Companion Care services.

21. The record indicates that the 12 hours per week of Adult Companion Care services are in excess of the Petitioner's needs because Petitioner resides with Petitioner's Authorized Representative, who provides 60 hours per week of unpaid care for the Petitioner, is available to Petitioner 24 hours per day, and does not work outside of the home. Petitioner's Authorized Representative is also Petitioner's DSW rendering 28 hours per week of paid LTC services to the Petitioner. Petitioner also receives some natural support from Mercedes Dahdah. Dr. Silverman asserted that Petitioner's request was not medically necessary because Petitioner's LTC services and natural supports are sufficient to meet their needs. Petitioner's Authorized Representative testified that Petitioner needs more hours for assistance with ADLs and IADLs. However, assistance with ADLs is not addressed under the LTC Policy's definition of Adult Companion Care

services. *See supra* ¶ 17. Adult Companion Care services are implemented to provide “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,” which includes “assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.” Thus, evidence and testimony regarding Petitioner’s need for supervision and social enrichment is relevant in this case. Dr. Delgado, declared that Petitioner “requires direct constant supervision to meet her daily adult care needs.” *See supra* ¶ 4. Further, the Dr. Delgado cited Petitioner’s mental and physical condition has deteriorated over the last six months. *See supra* ¶ 4. The undersigned considered Dr. Delgado’s recommendation. Although the record indicates that Petitioner requires some supervision, the record does not show that Petitioner’s needs for supervision cannot be met with their natural support and currently authorized LTC services. Further, in light of Petitioner’s approved services and natural support, Petitioner does not have unmet socialization needs, nor does she have unmet needs insofar as IADL tasks incidental to her health, safety, or well-being. Based on the record, Petitioner has not demonstrated that 12 hours per week of Adult Companion Care services are not in excess of Petitioner’s needs at this time. Thus, the Petitioner has not met criterion number two for medical necessity.

22. Accordingly, upon consideration of Petitioner’s Composite Exhibit 1, Respondent’s Composite Exhibit 1, the parties’ sworn testimony, evidence, and the aforementioned applicable laws and policies, the undersigned concludes that Petitioner failed to prove that 12 hours per week of Adult Companion Care services, at issue, are medically necessary. The undersigned finds

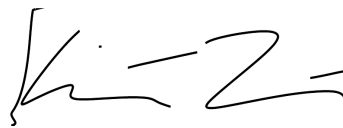
that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of 12 hours per week of Adult Companion Care services was incorrect.

DECISION

Respondent's denial of twelve (12) hours per week of Adult Companion Care services is **AFFIRMED**. Petitioner's request for relief is hereby is **DENIED**.

DONE and ORDERED this 9th day of February, 2021, in Tallahassee, Leon County, Florida.

Digitally signed by
Kristopher León
Reason: 20-FH [REDACTED]
Date: 2021.02.09
12:24:35 -05'00'



KRISTOPHER LEÓN, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649
Fax: (850) 487-1423
Email: OfficeOfFairHearings@ahca.myflorida.com

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

COPIES FURNISHED TO:



Sunshine Health
SunshineHealth_MFH@centene.com

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