



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

FILED

Apr 13, 2021, 10:47 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.

_____ /

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PETITIONER,

AHCA Case No.: 20-FH █
Plan ID No.: █

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SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 5, 2021, at █ January 13, 2021, at █ and on February 17, 2021, at █

APPEARANCES

For the Petitioner:

█
Petitioner

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

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

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

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

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared on her own behalf.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses: Melissa Layne, for Sunshine; Frances Bombard, Supervisor for Sunshine; and Shelly Green, Long Term Care Coordinator for Sunshine. Dr. John Carter ("Dr. Carter"), Long Term Medical Director for Sunshine appeared at the January 5, 2021, hearing only. Dr. Erin O'Brien ("Dr. O'Brien"), Medical Director for Sunshine appeared at the February 17, 2021, hearing, only.

Chrissy Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and eleven (111)-page evidence packet and a one hundred and twenty-nine (129)-page evidence packet. The one hundred and eleven (111)-page evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; an NABD, dated July 14, 2020; a Long Term Care Person-Centered Care Plan (“POC”), dated July 7, 2020; a POC, dated September 30, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated July 7, 2020; a 701B, dated September 30, 2020; Standard Appeal Acknowledgement, dated August 26, 2020; an Expedited Appeal Request Decision, dated November 10, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated September 4, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from Petitioner, the undersigned admitted the second evidence packet as Respondent’s Composite Exhibit 1.

The one hundred and twenty-nine (129)-page packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination (“NABD”), dated November 2, 2020; a Long Term Care Person-Centered Care Plan (“POC”), dated July 7, 2020; a POC, dated September 30, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated July 7, 2020; a 701B, dated September 30, 2020; Standard Appeal Acknowledgement, dated November 10, 2020; an Expedited Appeal Request Decision, dated November 10, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated November 17, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.10; and Florida Administrative Code

Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from Petitioner, the undersigned admitted the first one hundred and twenty-nine (129)-page evidence packet as Respondent’s Composite Exhibit 2.

At the Fair Hearing, the record was held open until March 10, 2021, by 5:00 p.m. EST, to allow Petitioner to submit medical records. Petitioner did not submit any documents.

At the Fair Hearing, the record was held open until February 26, 2021, to allow Respondent to submit an updated 701B. Petitioner was allowed until March 12, 2021, by 5:00 p.m. EST to offer any comments or objections to the 701B. On February 24, 2021, Respondent timely submitted a 701B, dated December 16, 2020. Absent an objection from the Petitioner, the undersigned hereby admits the 701B as Respondent’s Exhibit 3.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. See page 2 of Respondent’s Composite Exhibit 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is seventy-one (71)-years old. See page 1 of Respondent’s Exhibit 3. Petitioner lives alone. *Id.* at 2. Petitioner is diagnosed with the following: severe anemia; osteoarthritis; low blood pressure; constant dizziness; fibromyalgia; heart problems; constant bladder incontinence; occasional bowel incontinence; asthma; osteoporosis; hypothyroid problems; and Von Willebrand’s bleeding disorder; narcolepsy; sleep apnea; chronic recurring pancreatitis; head and back trauma; aortic valve problems; pulmonary fibrosis; chronic bronchitis; 2 nodules in right lung; Sjogren’s Syndrome; Cyst in left kidney; and migraines. *Id.* at 7 – 8.

3. Petitioner's needs for activities of daily living ("ADLs") are as follows: for bathing, dressing, and using the bathroom, Petitioner needs assistance (but not total help); for transferring, Petitioner needs supervision or prompting. *Id.* at 5. Petitioner's needs for her instrumental activities of daily living ("IADLs") are as follows: for heavy chores, Petitioner needs total assistance (cannot do at all); and for light housekeeping and preparing meals, Petitioner needs assistance (but not total help). *Id.* at 6.

4. Petitioner's plan of care, for the period of September 1, 2020, through August 31, 2021, includes the following: three (3) hours of adult companion care services, weekly; seven (7) hours of homemaker services, weekly; twelve (12) hours of personal care services, weekly; seven (7) home delivered meals, weekly; a Personal Emergency Response System; four (4) boxes of gloves, per month; one case of pull-ups, per month; one (1) case of liners, per month; three (3) packs of wipes, per month; eleven (11) cases of Glucerna, per month; and one (1) tube of a personal care product, per month. *See* page 25 – 28 of Respondent's Composite Exhibit 1.

5. Petitioner uses pull ups at night and nap times and uses liners during the day due to urine leakage. *See* page 5 of Respondent's Exhibit 3.

6. Petitioner is unable to drive. *See* page 6 of Respondent's Exhibit 3. Petitioner's aides drive her to her doctor's appointments. *Id.* at 5.

7. Petitioner requested an additional seven (7) hours of both personal care and homemaker services, weekly. *See* pages 4 – 12 of Respondent's Composite Exhibit 1. Petitioner's request was denied in the NABD dated July 14, 2020. The NABD explained the basis of the denial as follows:

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

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

and one of the following:

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

...

The facts that we used to make our decision are: The request for an extra 7 hours/week of Personal Care Services and an extra 7 hours/week of Homemaker Services is denied. Based on the assessment, the member’s currently approved services are adequate to meet the member’s care needs.

...

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

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

8. In the NABD, dated November 2, 2020, Respondent terminated one (1) case of liners, per month. See pages 5 – 14 of Respondent’s Composite Exhibit 2. The NABD explained the basis of the denial as follows:

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

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;

2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

The facts that we used to make our decision are:

...

Based on the assessment, Sunshine Health will terminate the 1 case per month of Liners. Liners are meant to be used in underpants or light bladder incontinence. The member is reported to have constant incontinence with of both bladder and bowel and users Pull-Ups. Liners are not meant to be used with Pull-Ups.

...

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

Pages 5 - 7 of Respondent's Composite Exhibit 2.

9. Petitioner requested a plan appeal regarding the denial of seven (7) hours, weekly, each of personal care and homemaker services and received an NPAR dated September 4, 2021, upholding the denial. The NPAR explained as follows:

The reason for our decision was the appeal to overturn the denial of an extra 7 hours per week of Personal Care Services (the person who helps bathe and dress you) and an extra 7 hours per week of Homemaker Services (the person who helps you around the house) is denied for lack of medical necessity (not needed). 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 12 hours/week of Personal Care Services, 7 hours/week of Homemaker Services, 3 hours/week of Companion Care Services, and 7 meals/week of Home Delivered Meals. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Page 73 of Respondent's Composite Exhibit 1.

10. Petitioner requested a plan appeal regarding the termination of liners and received an NPAR dated November 17, 2020, upholding the termination. See pages 81 – 88 of Respondent’s Composite Exhibit 2.

11. On December 2, 2020, Petitioner requested a Fair Hearing to challenge the denial of seven (7) hours, weekly, each of personal care services and homemaker services, and the termination of one (1) case of liners, monthly. On December 10, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for January 5, 2021, at [REDACTED]. Petitioner requested a continuance at the January 5, 2021, hearing and the final hearing was held on February 17, 2021, at [REDACTED].

12. Dr. O’Brien is a Medical Director at Sunshine. Dr. O’Brien testified that the use of liners with pullups can lead to skin breakdown. Dr. O’Brien testified that transportation is available to Petitioner as a part of her benefit.

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

6. Homemaker Services

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

Approval Criteria

Homemaker Service reviews include four (4) criteria:

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

Pages 100 – 103 of Respondent’s Composite Exhibit 1.

14. LT.UM.09 provides as follows in regards 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 administer any medications, but may bring medications to the member and remind the member to take the medications 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.

...

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

...

Exclusions and Limitations for Personal Care services 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. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort services

15. LT.UM.10 provides as follows in regards to incontinence supplies:

2. Incontinence Supplies

Prior Authorization is required for diapers, gloves, perineal wipes, emollients and absorbent products used to manage incontinence in individuals covered by Sunshine Health LTC product. Coverage determinations are based on an assessment of the individual's unique clinical needs as documented in the clinical information submitted by the requesting provider and/or the current 701B assessment completed by the LTC Care Coordinators. The 701B assessment is used to identify the member's level of incontinence, functional status as measured through Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL), and level of caregiver support.

Sunshine Health does not require a physician's prescription to review, approve or deny a request for standard incontinence supplies found on the Florida Medicaid Fee Schedule. Sunshine Health covers items for LTC members listed on the fee schedules for Medicaid Recipients "Under the Age of 21 Years" and "All Medicaid Recipients", even when the member is over the age of 21. Diapers, gloves, perineal wipes, emollients and absorbent products may be considered medically necessary in the management of incontinence associated with a broad range of medical conditions including, but not limited to neurological conditions, congenital anomalies, injuries to the pelvic region, injuries to the spinal cord, fistula, bowel prolapse and infections. Consideration is always given to the unique needs of a given individual.

Criteria to support need for incontinence products

Upon review of the 701B assessment, Sunshine Health will consider but is not limited to the following:

- Member must have current incontinence of the bladder and/or bowel; and/or
- Member must have one of the following limitations in their Activities of Daily living:
Using the bathroom (toileting, hygiene, cleaning) and/or Walking/Mobility and/or Transferring:
 - Needs supervision or prompt
 - Needs assistance without a caregiver
 - Needs assistance with a caregiver
 - Needs total assistance without a caregiver
 - Needs total assistance with a caregiver

Sunshine Health may approve up to the amount allowed on the Medicaid fee schedule depending on the member's level of incontinence.

The clinical reviewer takes into consideration the individual needs of the member, which includes assessment and identification of the individual's specific medical, mobility and psychosocial needs. The assessment includes the frequency in which a member may need an incontinence diaper/brief changed and considers the health and lifestyle of the member wearing them. An independent individual with limited functional deficits may be able wear an incontinence diaper/brief longer than someone who is frail and bedridden. Most adults with incontinence need to change their diaper between 5-8 times a day.

Diapers/briefs should be changed as soon as they become soiled or wet. If a bedbound individual does not wet diapers or briefs often, or has small leakage, consideration may be given to alternating between pads and diapers. The frequency and volume of urinary and bowel incontinence should be identified in order to select the appropriate type and amount of incontinence supplies. The goal is promote skin integrity. The impact of a brief allowing good air circulation, must be considered as this can lead to skin irritation and rashes.

Pages 123 - 124 of Respondent's Composite Exhibit 1.

CONCLUSIONS OF LAW

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

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

18. Because Petitioner is requesting new services, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to Petitioner, for the personal care and homemaker services issues. Because Respondent is terminating a previously approved service, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to Respondent, for the termination of liners. 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.)

19. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services, homemaker services, and medical supplies:

1.1 Description and Program Goal

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

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

...

4.1 General Criteria

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

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service

- Meet the criteria as specified in this policy

...

4.2.1.9 Homemaker Services

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

...

4.2.2.5 Medical Equipment and Supplies

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

...

4.2.2.6 Personal Care

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

...

20. The Florida Medicaid Personal Care Policy ("PCS Policy"), incorporated by reference in

Fla. Admin. Code R. 59G-4.215, provides as follows:

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

...

- Escort services

...

21. As provided in Fla. Admin Code R. 65C-2.002, escort service is defined as follows:

(6) Escort Service is the personal accompaniment of an individual to and from services, or personal assistance to enable clients to obtain other required services needed to implement the service plan.

22. The LTC Policy also addresses medical necessity:

1.3.14 Medically Necessary or Medical Necessity

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

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

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

And, one of the following:

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

23. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational

- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

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

PERSONAL CARE SERVICES

24. Petitioner requested seven (7) additional hours of personal care services, weekly. In the NABD, dated July 14, 2020, Respondent denied Petitioner's request. *See* ¶ 5. In the NABD, Respondent explained that seven (7) additional hours of personal care services, weekly, were not medically necessary because "[b]ased on the assessment, the member's currently approved services are adequate to meet the member's care needs." *Id.* at 5.

25. As provided in Respondent's policy, LT.UM.09, personal care services are to "provide assistance with eating, bathing, dressing, and personal hygiene, and other activities of daily living." Further, the policy provides that personal care provides with "preparation of meals" and "housekeeping tasks". As discussed in LT.UM.09, personal care services are determined, in part, based on: the recipient's ADL limitations; the recipient's living situation; the recipient's supervision needs; and the available supports. Moreover, as provided in the LTC Policy, personal care is 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."

26. Petitioner currently receives twelve (12) hours of personal care services, weekly, and seven (7) hours of homemaker services, weekly. *See* ¶ 4. Appendix 9.1 of the PCS Policy, which is

incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides the time allotted for personal care tasks. The times allotted for the ADL tasks applicable to the Petitioner are as follows: a full body bath is allotted up to 30 minutes; dressing is allotted 15 minutes; toileting is allotted between 15 and 45 minutes; and transfers can take up to “15 minutes/every 2 hours when medically indicated. Assuming that Petitioner is bathed and dressed once per day, those two tasks combined total forty-five (45) minutes each day. Thus, Petitioner has 6.75 hours of personal care and seven (7) hours of homemaker services to assist with her remaining ADLs and IADLs.

27. As Petitioner bears the burden of proof, Petitioner must show that it is medically necessary for her to receive seven (7) hours of personal care services, weekly. Here, Petitioner argued that the time it takes for her aides to drive her to her appointments exhausted the majority of her service time. However, as provided in the PCS Policy, personal care services are not to be used for escort services, which means the twelve (12) hours of personal care services already provided are not being used as intended. Further, as testified to by Dr. O’Brien, Petitioner has a transportation service available to take her to her appointments. See ¶ 12. Moreover, Petitioner failed to provide estimates of how long her ADLs or IADLs took to accomplish. Thus, Petitioner did not show that an additional seven (7) hours of personal care services were medically necessary.

28. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of seven (7) hours, weekly, of personal care services was incorrect.

HOMEMAKER SERVICES

29. Petitioner requested seven (7) additional hours of homemaker services, weekly. In the NABD, dated July 14, 2020, Respondent denied Petitioner's request. See ¶ 5. In the NABD, Respondent explained that seven (7) additional hours of homemaker services, weekly, were not medically necessary because "[b]ased on the assessment, the member's currently approved services are adequate to meet the member's care needs." *Id.* at 5.

30. As provided in Respondent's policy, LT.UM.09, homemaker services are to provide "assistance with essential shopping, light housework, laundry, and meal preparation." As discussed in LT.UM.09, homemaker services are determined, in part, based on: IADL limitations; the recipient's living situation; supervision needs; and available supports. Moreover, as provided in the LTC Policy, homemaker services are for 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." Additionally, as provided in the LTC policy, personal care services may be used to provide assistance with ADLs and IADLs. Petitioner currently is approved to receive twelve (12) hours of personal care services and seven (7) hours of homemaker services.

31. As provided in section 4.1 of the LTC policy, homemaker services must be medically necessary. A component of medical necessity is that services must 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." Here, there was little evidence shown that Petitioner specifically needs seven (7) additional hours of homemaker care, weekly, to address her needs.

The Petitioner did not establish which areas of household care were not being met by the seven (7) hours of homemaker services that are already provided by Respondent.

32. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of seven (7) hours, weekly, of homemaker services was incorrect.

MEDICAL SUPPLIES: LINERS

19. In the NABD, dated November 2, 2020, Respondent terminated Petitioner's liners (one case monthly). *Supra* ¶ 8. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessity criteria was the basis for its decision. *Id.*

20. As provided in Respondent's policy, LT.UM.10, incontinence supplies may be provided when:

- Members must have current incontinence of the bladder/and or bowel; and/or
- Members must have one of the following limitations in their Activities of Daily Living: Using the bathroom (toileting, hygiene, cleaning) and/or Walking/Mobility and/or Transferring:
 - Needs supervision or prompt
 - Needs assistance with a caregiver
 - Needs assistance with a caregiver
 - Needs total assistance without a caregiver
 - Needs total assistance with a caregiver.

Supra ¶ 15.

In this case, Petitioner suffers from constant bladder incontinence, occasional bowel incontinence, and has the following limitations: needs assistance (but not total help) with

toileting; and needs supervision or prompting with transferring. See ¶¶ 2, 3. Additionally, Petitioner is receiving one (1) cases of pull ups per month. See ¶ 4.

21. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive one case of liners per month. Here, Dr. O'Brien testified, *supra* ¶ 12, that the use of liners and pull ups concurrently can lead to skin breakdown. However, as shown by the record, Petitioner uses liners and pull ups at different times. See ¶ 5. Moreover, it was not shown that liners were duplicative of pull ups – such as whether they are used for the same purpose. As discussed *supra* ¶ 20, Petitioner needs assistance with toileting and suffers from constant bladder incontinence and occasional bowel incontinence – thus it appears Petitioner meets the requirements established by Respondent's LT.UM.10 for incontinence supplies. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's termination of liners was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's denial of homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's termination of liners is **REVERSED**. Petitioner's appeal based on Respondent's termination is **GRANTED**.

DONE and ORDERED this 13th day of April, 2021, in Tallahassee, Leon County, Florida.



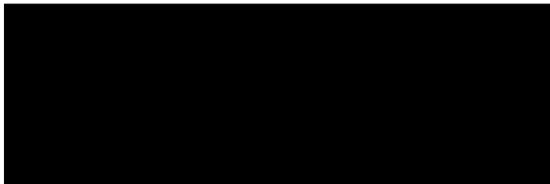
Joseph Mabry
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FH [REDACTED] & 20-FH [REDACTED]
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JOSEPH MABRY, Hearing Officer
Agency for Health Care Administration
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

Copies Furnished To:



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