



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

FILED

Apr 01, 2021, 9:41 am

OFFICE OF FAIR HEARINGS

█

PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on March 12, 2021, at █ and January 28, 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 denial of an additional 14 hours per week of personal care services was incorrect.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's denial of an additional 16 hours per week of homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner appeared at the hearing and provided testimony on her own behalf.

Maria Mojica (“Ms. Mojica”), Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”), appeared for the hearing and represented Respondent. Dr. Andrew Russell (“Dr. Russell”), Medical Director for Sunshine, provided testimony on behalf of the Respondent. The following individuals also appeared on behalf of Respondent: Melissa Layne (“Ms. Layne”), Senior Manager for Member Appeals for Sunshine; Louise Jeanty, Supervisor of Quality Improvement for Sunshine; Carmen Guerrero, Case Manager Supervisor for Sunshine; Tamala Smith, LTC Care Coordinator for Sunshine; and Dr. Michael Gervasi, Medical Director for Sunshine.

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

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

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 116-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated December 11, 2020; a Notice of Adverse Benefit Determination (“NABD”), dated [REDACTED] 2020; Sunshine’s LTC Person-Centered Care Plan (“care plan”), signed by the Care Manager on October 7, 2020; the care plan, signed by the Care Manager on [REDACTED] 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of October 7, 2020; the 701B with an assessment date of October 19, 2020 (the “10/19/20 701B”); a 5-page facsimile transmission from [REDACTED] dated November

20, 2020; Sunshine’s Standard Appeal Acknowledgment, dated November 18, 2020; the Notice of Plan Appeal Resolution (“NPAR”), dated December 1, 2020; the Sunshine Health Policy and Procedure LT.UM.09; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent’s 116-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine’s LTC plan. *See* Respondent’s Composite Exhibit 1, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida. *See* Respondent’s Composite Exhibit 1, page 85.

2. As of the time of the hearings, Petitioner was a 63-year old widowed female who lives in a private residence. *See* Respondent’s Composite Exhibit 1, page 49. Petitioner has the following health conditions: allergies; arthritis; diabetes; fibromyalgia; constant bladder incontinence; occasional bowel incontinence (past); and “diabetic ulcer on right leg.” *See* Respondent’s Composite Exhibit 1, pages 55 – 56.

3. The 10/19/20 701B, which is the most recent 701B in evidence, reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”). Petitioner needs no assistance with eating and dressing. *See* Respondent’s Composite Exhibit 1, page 53. Petitioner uses assistive devices for using the bathroom, transferring, and walking/mobility. *Id.* Petitioner needs assistance (but not total help) with bathing. *Id.* The 10/19/20 701B reflects that Petitioner “is independent with feeding, dressing, transferring and mobility” and “has a roller walker to aid in transfer and mobility.” *Id.*

4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the 10/19/20 701B reflects that Petitioner needs no assistance with using the telephone, managing money, or managing medication. See Respondent's Composite Exhibit 1, page 54. Petitioner needs assistance (but not total help) with light housekeeping, preparing meals, shopping, and using transportation. *Id.* Petitioner needs total assistance (cannot do at all) with heavy chores. *Id.* The 10/19/20 701B reflects that Petitioner "has access to transportation resources" and "reports that landlord manages heavy chores." *Id.* Petitioner's "son lives with member and able to assist if available." *Id.*

5. Petitioner was hospitalized on [REDACTED] 2020, at [REDACTED] for lower leg infection. See Respondent's Composite Exhibit 1, page 56. Petitioner receives skilled nursing services for wound care. *Id.* Petitioner's medical record for [REDACTED] 2020, reflects that Petitioner receives wound care and "no other issues or concerns." *Id.* at 69. The Petitioner's medical record for [REDACTED] 2020, also reflects that Petitioner is "well nourished, in no acute distress." *Id.*

6. Petitioner is currently authorized to receive the following home and community-based services: 20 hours weekly of personal care services;¹ 4 hours per week of homemaker services; 4 cases of pull-ups per month; 1 case of underpads per month; and 7 home delivered meals weekly. See Respondent's Composite Exhibit 1, page 25.

¹ It was established during Dr. Andrew Russell's testimony that: the 20 hours per week of personal care services includes the additional 14 hours per week of personal care services that were requested in this case; Petitioner was originally receiving 6 hours per week of personal care services; and the requested additional 14 hours per week of personal care services were temporarily approved for Petitioner.

7. On October 22, 2020, Respondent issued an NABD denying an additional 14 hours per week of personal care services and an additional 16 hours per week of homemaker services. See Respondent's Composite Exhibit 1, pages 4 – 8. The NABD stated the reason for Respondent's determination as follows:

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

...

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

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

And one of the following:

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

...

The facts that we used to make our decision are: The request for an extra 14 hours per week of Personal Care Services and an extra 16 hours per week of Homemaker Services is partially approved. The member's present care plan includes 6 hours per week of Personal Care Services and 4 hours per week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will approve the temporary addition of an extra 14 hours per week of Personal Care Services for 30 days to give the member extra assistance while her wound heals. Sunshine Health will deny the ongoing addition of 14 hours per week of Personal Care Services and 16 hours per week of Homemaker Services. The updated care plan approved by Sunshine Health will include 20 hours per week of Personal Care Services for 30 days then resuming 6 hours per week of Personal Care Services and 4 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term

Care Ancillary Service Criteria.

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

8. Petitioner requested an appeal of Respondent's denial of an additional 14 hours per week of personal care services and an additional 16 hours per week of homemaker services. See Respondent's Composite Exhibit 1, page 72. On December 1, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 78. The NPAR stated as follows:

On November 13, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated October 22, 2020, Notice of Adverse Benefit Determination Number [REDACTED], PARTIALLY DENYING the ongoing addition of 14 hours per week of Personal Care Services and 16 hours per week of Homemaker Services provided to [Petitioner].

On November 30, 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 additional 14 hours per week of personal care services and the 16 hours per week of Homemaker Services, effective November 30, 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 an ongoing extra 14 hours per week of Personal Care Services (the person who helps bathe and dress you) is upheld (stands), and the denial of an ongoing extra 16 hours per week of Homemaker Services (the person who helps you around the house) is upheld (stands). 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 Medical Director who is Board Certified in Internal Medicine, Geriatric Medicine, and Hospice & Palliative Care.

Respondent's Composite Exhibit 1, page 78.

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

6. Homemaker Services

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

Approval Criteria

Homemaker Service reviews include four (4) criteria:

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

...

7. Personal Care Services

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

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
 - b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
 - c. Assisting the member in following through with physician orders
- The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required
- and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

Respondent's Composite Exhibit 1, pages 96, 102 – 103.

10. Petitioner requested a Fair Hearing due to the denial of an additional 14 hours per week of personal care services and an additional 16 hours per week of homemaker services. The undersigned scheduled the Fair Hearing for March 12, 2021, at [REDACTED], and all parties were duly notified.

11. Petitioner's 28-year old son resides in the home with her. Petitioner's son does not work outside the home. Petitioner described herself as being in a wheelchair since [REDACTED] 2020, unable to cook for herself, and unable to stand or walk on her right leg. Petitioner needs assistance with grocery shopping, and she needs someone to take her wheelchair in and out of the trunk when she goes to the store. Petitioner has open wounds on her legs and feet. A nurse comes into the home to change the gauze on the wounds.

12. Dr. Russell is a Medical Director for Sunshine. Dr. Russell personally reviewed all documentation submitted to Respondent for this case, including all documents admitted in evidence. In making a determination in this case, Respondent took the following into consideration: the amount of assistance Petitioner needs with ADLs and IADLs; and the fact that Petitioner lives with her son. It was established during Dr. Russell's testimony that the only service that was temporarily approved for Petitioner was the additional 14 hours per week of personal care services. Regarding Petitioner's request for an additional 16 hours per week of homemaker services, Dr. Russell's testimony established that Petitioner was never authorized to receive an additional 16 hours per week of homemaker services, and it was denied on the initial request.

CONCLUSIONS OF LAW

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

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

15. 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.

16. Because Petitioner is requesting additional services, so in Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

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

1.1 Description and Program Goal

Under the Statewide Medicaid Managed Care Long-term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and

community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

1.3 Definitions

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

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.5 701-B Comprehensive Assessment

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

...

1.3.14 Medically Necessary or Medical Necessity

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

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

And, one of the following:

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

...

2.2 Who Can Receive

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

...

4.0 Coverage Information

4.1 General Criteria

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

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

4.2 Specific Criteria

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

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

...

4.2.1 Home and Community-Based Supportive Services

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

...

4.2.1.9 Homemaker Services

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

...

4.2.2 Mixed Services

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

...

4.2.2.6 Personal Care

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

...

6.0 Documentation

...

6.2 Specific Criteria

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

SMMC LTC Policy, pages 1-8.

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

2.83 Medically Necessary or Medical Necessity

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

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

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

Definitions Policy, page 7.

19. The Agency's Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy") has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215. The PC

Policy provides as follows:

1.1 Description

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

...

1.1.2 Statewide Medicaid Managed Care Plans

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

...

4.0 Coverage Information

4.1 General Criteria

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

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

4.2 Specific Criteria

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

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

...

5.1 General Non-Covered Criteria

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

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

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act

- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

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

...

7.0 Authorization

7.1 General Criteria

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

...

Personal Care Task	General Time Allowances
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes

Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
Grooming and Skin Care	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
Positioning	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
Transfers	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
Toileting and Maintaining Continence	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy, pages 3 – 8, and 10.

20. In the instant case, Respondent denied an additional 14 hours per week of personal care services and an additional 16 hours per week of homemaker services. *See supra* ¶ 7 and 8. As established on the record by the evidence and testimony, Respondent denied Petitioner's request, because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. *See supra* ¶ 7 and 8.

21. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 17.

22. Section 4.2.2.6 of the SMMC LTC Policy reflects that personal care services are "[t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." *See supra* ¶ 17. Further, Section 1.1 of the PC Policy provides that personal care services are to "provide medically necessary assistance, in the home or in the community, with [ADL] and age appropriate [IADL] to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability." *See supra* ¶ 19. The Sunshine Health Policy and Procedure LT.UM.09 reflects that personal care services provide "assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living." *See supra* ¶ 9.

23. Section 4.2.1.9 of the SMMC LTC Policy reflects that homemaker services are "[t]he provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly

responsible for these activities is temporarily absent or unable to manage these activities.” *See supra* ¶ 17. The Sunshine Health Policy and Procedure LT.UM.09 reflects that homemaker services provide “assistance with essential shopping, light housework, laundry, and meal preparation.” *See supra* ¶ 9.

24. The evidence presented in this case does not reflect that Petitioner is in need of an additional 14 hours per week of personal care services and an additional 16 hours per week of homemaker services. Specifically, regarding ADLs, the 10/19/20 701B, which is the most recent 701B in evidence, reflects Petitioner needs: no assistance with eating and dressing; and assistance (but not total help) with bathing. *See supra* ¶ 3. Petitioner uses assistive devices for using the bathroom, transferring, and walking/mobility. *See supra* ¶ 3. Regarding IADLs, the 10/19/20 701B reflects that Petitioner: needs no assistance with using the telephone, managing money, or managing medication; needs assistance (but not total help) with light housekeeping, preparing meals, shopping, and using transportation; and needs total assistance (cannot do at all) with heavy chores. *See supra* ¶ 4. Petitioner has multiple medical conditions, including bowel and bladder incontinence. *See supra* ¶ 2. Petitioner needs assistance with grocery shopping, and she needs someone to take her wheelchair in and out of the trunk when she goes to the store. *See supra* ¶ 11.

25. However, Petitioner’s 28-year old son resides in the home with her, and he does not work outside the home. *See supra* ¶ 11. Petitioner’s “son lives with member and able to assist if available.” *See supra* ¶ 4. Petitioner “has access to transportation resources” and “reports that landlord manages heavy chores.” *See supra* ¶ 4. Although Petitioner has open wounds on her legs and feet, a nurse comes into the home to change the gauze on the wounds. *See supra*

¶ 5 and 11. The 10/19/20 701B reflects that Petitioner “is independent with feeding, dressing, transferring and mobility” and “has a roller walker to aid in transfer and mobility.” See supra ¶ 3. However, Petitioner described herself as being in a wheelchair since [REDACTED] 2020, unable to cook for herself, and unable to stand or walk on her right leg. See supra ¶ 11. Petitioner did not provide any medical documentation to corroborate her position that she is in a wheelchair and unable to stand or walk on her right leg. See supra ¶ 11. In fact, Petitioner’s medical record for [REDACTED] 2020, which occurred after her discharge from her [REDACTED] [REDACTED] 2020 admission to [REDACTED] for lower leg infection, reflects that Petitioner is “well nourished, in no acute distress.” See supra ¶ 5. Although Petitioner needs assistance with grocery shopping and needs someone to get her wheelchair in and out of the trunk when shopping, Petitioner provided no evidence (e.g., a daily schedule, a schedule of ADLs or IADLs, the amount of time needed for *each* ADL and IADL) to justify the approval of the additional 14 hours per week of personal care services and additional 16 hours per week of homemaker services. Based upon the evidence presented by both parties, Petitioner failed to establish that the requested personal care services and homemaker services are warranted in this case.

26. Section 1.3.14 of the SMMC LTC Policy requires that the requested services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” See supra ¶ 17. It should be noted that Petitioner is currently authorized to receive the following home and community-based services: 20 hours weekly of personal care services; 4 hours per week of homemaker services; 4 cases of pull-ups per month; 1 case of underpads per month; and 7 home delivered

meals weekly. *See supra* ¶ 6. Regarding personal care services, it should be noted that the PC Policy sets forth general time allowances for the performance of personal care tasks. *See supra* ¶ 19. However, the record is unclear as to how much time Petitioner needs for each ADL, since Petitioner did not provide details on how long it takes to perform her ADLs. Even without the requested additional 14 hours per week of personal care services, Petitioner still has 6 hours per week of personal care services to assist with her ADLs and the assistance of her son who resides with her and does not work outside the home. *See supra* ¶ 4 and 11. Regarding homemaker services, it should be noted that while Petitioner requires assistance with her IADLs, the record reflects that she already receives 4 hours per week of homemaker services, *supra* ¶ 6, plus her adult son lives with her and assists her. *See supra* ¶ 4 and 11. Even though Petitioner needs total assistance (cannot do at all) with heavy chores, the record reflects that the landlord manages heavy chores. *See supra* ¶ 4. Although Petitioner needs assistance with meal preparation, *supra* ¶ 4, Petitioner receives 7 home delivered meals weekly. Considering Petitioner's ADL and IADL needs, her currently authorized services, and the fact the Petitioner resides in the home with her son who assists her, *supra* ¶ 24 and 25, Petitioner did not demonstrate that her aforementioned needs, *supra* ¶ 2, 3, 4, 5, and 11, are not sufficiently met by her currently authorized services. Further, given that Petitioner failed to establish that the additional personal care services and homemaker services are warranted in this matter, *supra* ¶ 25, the requested personal care services and homemaker services are "in excess of [Petitioner's] needs." *See supra* ¶ 17.

27. In light of the both parties' testimony and evidence, the SMMC LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet

her burden of proving that an additional 14 hours per week of personal care services and an additional 16 hours per week of homemaker services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional personal care services and homemaker services and personal care services was incorrect.


DECISION

Respondent's denial of an additional 14 hours per week of personal care service is **AFFIRMED**.

Respondent's denial of an additional 16 hours per week of homemaker services is **AFFIRMED**.

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

DONE AND ORDERED this 1st day of April, 2021, in Tallahassee, Leon County, Florida.

 Tracie Hardin
20-FH [REDACTED]
2021.04.01 07:37:29
-04'00'

TRACIE HARDIN, 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
E-mail: 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 State Health Plan, Inc.
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com