



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

FILED

Feb 10, 2021, 4:20 pm
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

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

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

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

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 11, 2021, at [REDACTED]

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner's Authorized Representative

For the Respondent: Debra Havey-Leavy
Program Integrity Manager
UnitedHealthcare of Florida, 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 an additional seven (7) hours per week of Homemaker Services per week 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 an additional three (3) hours per week of Personal Care Services per week was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and daughter, [REDACTED] (" [REDACTED] ") appeared on behalf of Petitioner.

Debra Havey-Leavy, Program Integrity Manager for UnitedHealthcare of Florida Inc. ("United") appeared on behalf of Respondent. Dr. Sloan Karver, ("Dr. Karver") Long Term Care Medical Director for United, attended as a witness for Respondent.

Linda Latson, Registered Nurse Specialist 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 two hundred and thirty-nine (239)-page statement of matters packet. The statement of matters packet included: a Statement of Matters table of contents; a Notice of Adverse Benefit Decision ("NABD"), dated July 13, 2020; a CSP – General Request Form – [REDACTED] dated August 21, 2020; a Durable Power of Attorney, executed August 4, 2014; a plan appeal acknowledgment letter in Spanish, dated August 21, 2020; Print HSC History; a Florida Department of Elder Affairs 701B Comprehensive

Assessment (“701B”), dated March 27, 2020; Appeal Review; a Notice of Plan Appeal Resolution (“NPAR”) in English and Spanish, dated September 5, 2020; Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1 in its entirety; Florida Medicaid Statewide Medicaid Managed Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”); the Florida Medicaid Authorization Requirements Policy (June 2016); the Florida Medicaid Personal Care Services Coverage Policy (November 2016); the Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); the Home Health Visit Services Fee Schedule (January 1, 2017); the Personal Care Services Fee Schedule (January 1, 2017); the Private Duty Nursing Services Fee Schedule (January 1, 2017); the Participant Direction Option Manual; 42 C.F.R. § 441.480; the Florida Medicaid Hospice Services Coverage Policy (June 2016); 42 C.F.R. Part 418, Subpart C (Conditions of Participants: Patient Care); Fla. Stat. § 400.6105 (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from Petitioner, the undersigned admitted the two hundred and thirty-nine (239)-page state of matters packet as Respondent’s Composite Exhibit 1.

At the Fair Hearing, the record was held open to accept Petitioner’s seventy-one (71) evidence packet not submitted within ten (10) days prior to the hearing and to allow Respondent to provide a written response Respondent was permitted to submit a response by January 26, 2021. Respondent did not submit a response. Petitioner’s evidence packet included: a Medical Certification for Medicaid Long-term Care Services and Patient Transfer Form, dated September 29, 2020; an undated facsimile cover letter; Petitioner’s medication list; a letter dated September 11, 2020; Instructions for Completing the Medicaid Long-term Care Services and Patient Transfer Form; a facsimile cover letter, dated September 28, 2020; Observation notes, dated [REDACTED]

█ 202, through █ 2020; Petitioner's Assistance Needed, dated September 28, 2020; Petitioner's medical records; a letter dated October 20, 2020; Petitioner's Neuropsychology records and evaluation, dated █ 2020; call records to Petitioner's case managers; Record of Petitioner's family support, dated September 26, 2020; emails dating from September 25, 2020, through December 22, 2020. Absent an objection, the undersigned admits Petitioner's seventy-one (71)-page evidence packet as Petitioner's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is seventy-two (72) years old and diagnosed with dementia, generalized anxiety disorder, chronic obstructive pulmonary disorder ("COPD"), and depression. Petitioner's Composite Exhibit 1 at 17.
3. Petitioner's lives alone in a one-bedroom apartment. Prior to Petitioner's request for additional services, Petitioner's plan of care included: twelve (12) home delivered meals per week; seven (7) hours per week of Personal Care Services; and three (3) hours per week of Homemaker Services. Respondent's Composite Exhibit 1 at 53.
4. Petitioner requested an additional three (3) hours of Personal Care Services per week and an additional seven (7) hours of Homemaker services per week. Respondent denied the request in the NABD, dated October 8, 2020. The NABD explained as follows:

UnitedHealthcare Community Plan has reviewed your request for Personal Care 3 more hours a week and Homemaker Services 7 more hours a week, which we received on October 5, 2020. After our review, this service has been:

DENIED as of October 8, 2020

...

- 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:

You are getting 7 hours a week of personal care to help you. The personal care aide can clean your bedroom and bathroom so the homemaker aide does not have to.

Your assessment tells us that you need some help with cleaning your home, chores and preparing meals. This has not changed.

You are getting 3 hours a week of homemaker services to help you.

You are getting 12 home delivered meals a month. The personal care aide and homemaker aide can also set you up with other meals if it is needed.

You have family that helps you.

Id. at 5-6.

5. Petitioner requested a plan appeal and received an NPAR dated November 12, 2020, upholding the denial. The Plan denied the additional three (3) hours of Personal Care services per

week and an additional seven (7) hours of Homemaker services per week requested by Petitioner.

The NPAR explained as follows:

On October 21, 2020 we received your timely plan appeal request regarding UnitedHealthcare Community Plan's Notice of Adverse Benefit Determination dated October 8, 2020, [REDACTED], denying the Personal Care 3 more hours a week and Homemaker Services 7 more hours a week provided to [REDACTED]

On November 12, 2020, after consideration of the information you provided to UnitedHealthcare Community Plan in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal. As part of our review we look at information you or your provider gave us. We also look at your benefits. Based on our review of your appeal, we have determined that the service you requested will not be approved.

John Szafranski, MD, specializing in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Administrative Code 59G-1.010(166).

Part 1 of 2: You asked for additional personal care. You would like 3 more hours a week. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving 7 hours a week. You can help yourself some. You have family who can help some too. These should meet your personal care needs. You have other paid services for help. These include homemaker service 3 hours a week and home delivered meals 12 meals a week. Your aide does not have to make these meals for you. That is why we cannot approve what you asked for. Please talk about this with your doctor.

Part 2 of 2: You asked for additional homemaker service. You would like 7 more hours a week. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving 3 hours a week. You have family who can help some. You can help yourself some. You have other paid services for help too. These include personal care 7 hours a week and home delivered meals 12 meals a week. Your personal care aide can clean-up after caring

for you. Your aide does not have to make these meals for you. These should meet your needs. That is why we cannot approve what you asked for. Please talk about this with your doctor.

Id. at 58-59.

6. Petitioner's need for assistance as of September 28, 2020, is documented in pertinent part as follows:

Managing Money

- Pay rent
- Pay [REDACTED] electricity bill
- Pay [REDACTED] Bill
- Pay [REDACTED] cell phone bill
- Managing Finances--including but not limited to monthly budgeting, paying bills, documenting
- Managing applications & renewals for assistance (SNAP, UHC, Medicaid, Elder Services)
- Transfer money weekly to [REDACTED] for groceries/items not covered by food stamps
- Review insurance claims to ensure patient responsibility is correct & follow up

Shopping

- General Shopping--clothing & household goods
- Order bulk supplies from Amazon--laundry pods, fabric softener sheets, toilet paper, paper towels
- Grocery shopping (up to 3-4 times per week)
- Assistance with making a grocery list

Managing Medications

- Refill Prescriptions & follow up with Pharmacy
- Pick up & deliver prescriptions
- Daily reminders to take medication
- Refill pillboxes weekly

Transportation

- Transportation to Dr Appointments (10-15 per year)

Light Housekeeping

Performed Every Visit by Home Health Aide

- Cleaning Dishes
- Sweeping
- Cleaning countertops and microwave
- Cleaning bathroom
- Cleaning and organizing refrigerator and freezer
- Empty trash in bathroom, kitchen, and patio

Performed Weekly

- Change bed sheets
- Prepare clean towels and clothes

Performed Monthly

- Schedule pest control
- Drop off/pickup comforter at dry the dry cleaners

Dressing

- Daily reminders to change undergarments
- Assistance putting on bra as needed

Bathing

- Daily reminders to bathe
- Assistance with washing hair as needed

Petitioner's Composite Exhibit 1 at 12-13.

7. Petitioner's neuropsychologist, [REDACTED] (" [REDACTED] ") evaluated Petitioner on [REDACTED] 2020. In the recommendations of Petitioner's evaluation, [REDACTED] recommends 24/7 care for supervision and assistance with IADLs and ADLs. *Id.* at. 41.

8. Petitioner requested a Fair Hearing on December 3, 2020. On December 23, 2020, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for January 11, 2020, at [REDACTED]

9. During the hearing, [REDACTED] testified that she never assisted Petitioner with responses as indicated in the in the 701B, dated May 19, 2020. [REDACTED] noted the following items in the 701B as inaccurate: Petitioner has assistance most of the time with bathing,

dressing, and eating; Petitioner does not require assistance with using the telephone; Petitioner needs assistance but not total help with shopping and managing money; Petitioner needs no assistance with using transportation; Petitioner has assistance with preparing meals most of the time; Petitioner always has assistance with managing money; managing medication; and using transportation; Petitioner is not at all forgetful and confused and does not get lost or wonder off; Petitioner can tell the difference between her pills. [REDACTED] testified that Petitioner is refusing placement in an assisted living facility.

10. Dr. Karver testified that as of January 4, 2021, Petitioner's home health aide services have been increased as the result of a pending self-neglect case and Department of Children and Families investigation. Petitioner is currently receiving thirty-five (35) hours of Personal Care Services per week, eighteen (18) hours homemaker and twenty-one (21) hours of companion care services for sixty (60) days pending Petitioner's placement in an assisted living facility. Dr. Karver testified that Petitioner requires twenty-four (24) hour care and needs to be placed in an assisted living facility. Dr. Karver argued that because the current services in place are in excess of Petitioner's request Petitioner's case is moot.

CONCLUSIONS OF LAW

11. 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).

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

13. Because Petitioner is requesting new services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to 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.

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

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)

...

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 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

...

4.2.1.1 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.

15. 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.

16. The 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.

17. The evidence shows that Petitioner is diagnosed with dementia, generalized anxiety disorder, COPD, and depression. *Supra* ¶ 2. The record reflects that the 701B, dated May 19, 2020, contains inaccuracies pertaining to Petitioner’s available assistance and need for assistance with IADLs and ADLs, Petitioner’s cognitive ability, and who assisted Petitioner with responding to the assessment. *See supra* ¶ 9. Petitioner’s list of tasks that she receives assistance with shows multiple needs with regards to light housekeeping, managing medication, managing money, and shopping. *See supra* ¶ 6. As testified to by Dr. Karver, Petitioner’s services were increased on January 4, 2020, to include thirty-five (35) hours of Personal Care Services per week, eighteen (18) hours of homemaker and twenty-one (21) hours of companion care services for sixty (60) days pending Petitioner’s placement in an assisted living facility. *Supra* ¶ 10. The evaluation conducted on ██████████ 2020, by Petitioner’s neuropsychologist, ██████████ recommends 24/7 care to assist Petitioner with IADLs and ADLs. *Supra* ¶ 7. Dr. Karver testified that Petitioner’s needs 24/7 care and to be placed in an assisted living facility. *Supra* ¶ 9. The record shows that Petitioner’s refuses placement in an assisted living facility. *Supra* ¶ 9.

Homemaker Services

18. Respondent denied seven (7) hours per week of Petitioner’s request for Homemaker services on the basis that the requested service is not medically necessary. *Supra* ¶ 4. The NABD and NPAR do not specifically identify the component of medical necessity serving as the basis for the denial. *See supra* ¶¶ 4-5. However, the notice documents state that Petitioner’s needs are already met with the level of services in place, placing at issue whether the services requested are “[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness

or injury under treatment, and not in excess of the patient's needs". *Id.* As provided in the LTC Policy, Homemaker services are intended 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. *Supra* ¶ 14.

19. Petitioner has been approved to receive more Homemaker Services than Petitioner had previously requested, but on a temporary basis. As testified to by ██████████, Petitioner does not always have assistance with preparing meals or managing her medication. As discussed *supra* ¶ 7 & ¶ 10, the opinions of both Dr. Karver and ██████████ concur that Petitioner needs constant care. Comparing the list of tasks and activities, dated September 28, 2020, with Petitioner's current ongoing Homemaker Services, which is at three (3) hours per week, shows that that Petitioner's needs cannot be met. While Petitioner did not offer evidence as to the duration of homemaker tasks, the range of tasks that Petitioner needs assistance with, including cleaning Petitioner's kitchen and bathroom, sweeping the home, emptying the trash, and doing Petitioner's laundry, cannot reasonably be performed in three (3) hours per week. Respondent appears to recognize that Petitioner's need for Homemaker services are greater than three (3) hours per week considering that Respondent has temporarily approved eighteen (18) hours per week. Petitioner's documents, along with ██████████ testimony, are more credible than the 701B which is over nine (9) months old as of the date of the hearing and identifies ██████████ as having assisted in the assessment responses, which ██████████ denies. ██████████ denial is credible in light of the fact that the only evidence conflicting with her testimony is the document itself. ██████████ testimony was subject to cross-examination

at the hearing which did not result in any testimony that inconsistent with her claim or was otherwise inherently improbable or unreasonable. The fact that Petitioner has temporarily approved additional Homemaker services does not make Petitioner's request moot for the portion of Petitioner's request outside of the temporary approval. Thus, Petitioner has met the burden of proof to establish that the Homemaker Services requested are "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." The additional Homemaker Services are medically necessary.

Personal Care Services

20. Respondent denied an additional three (3) hours per week of Personal Care services requested by Petitioner on the basis that the requested service is not medically necessary. *Supra* ¶ 4. The NABD and NPAR do not specifically identify the component of medical necessity serving as the basis for the denial. *See supra* ¶¶ 4-5. As discussed, *supra* ¶ 18, the noticing documents state that Petitioner's needs are already met with the level of services in place, placing at issue whether the services requested are "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." *Supra* ¶ 16. As provided in the LTC Policy, Personal Care Services are intended 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. *Supra* ¶ 14.

21. The component of medical necessity at issue is whether Petitioner's request is 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. *Supra* ¶ 16. Here, Petitioner is already receiving Personal Care Services in excess of the amount requested but only on a temporary basis pending placement in an assisted living facility. As discussed *supra* ¶ 19, Respondent's own medical witness, Dr. Karver, appears to be in agreement with the evaluation recommendation made by [REDACTED]. Though the record indicates that Petitioner may accept placement in an assisted living facility sometime in the future, Petitioner has rejected such placement currently. Thus, the possibility of such placement is speculative at this point and does not render Petitioner's request as duplicative or excessive under the facts of this case.

22. As discussed *supra* ¶ 7 & ¶ 10, the opinions of both Dr. Karver and [REDACTED] concur that Petitioner needs constant care. It does not appear that Petitioner's need for Assistance with her ADLs and IDLs can be met with the level of "ongoing" or "non-temporary" Personal Care Services approved when considering the activities described in Petitioner's needs for assistance as of September 28, 2020. As discussed *supra* ¶ 19, Petitioner's documents and testimony are more credible than the 701B provided in this case. Petitioner's need for assistance with tasks, including managing her bills, documenting finances, grocery shopping three (3) to four (4) times per week, managing prescription refills and pickups, prompting Petitioner daily to bathe and take medication, and assisting petitioner with washing her hair and dressing, cannot be reasonably performed in seven (7) hours per week. Respondent appears to recognize that Petitioner's need for Personal Care services are greater than seven (7) hours per week considering that Respondent has temporarily approved thirty-five (35) hours per week.

23. Though Petitioner is temporarily approved for a level of service that exceeds the amount requested at issue in this case, Petitioner's request is not moot because the request is for services

outside of the dates of the temporary approval. In light of the evidence provided by the parties, specifically [REDACTED] testimony relating to the 701B, Petitioner's needs for Assistance as of September 28, 2020, Dr. Karver's own testimony, and the current level of services temporarily approved, Petitioner has met the burden of proof to establish that the Personal Care Services requested are "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." Accordingly, the additional Personal Care Services are medically necessary.

Conclusion

24. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable law and policies, the undersigned concludes that Petitioner has proved by a preponderance of the evidence that that Respondent's denial of an additional seven (7) hours per week of Homemaker Services week was incorrect. Furthermore, Petitioner has proved by a preponderance of the evidence that Respondent's denial of an additional three (3) hours per week of Personal Care Services per week was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of an additional seven (7) hours per week of Homemaker services is **REVERSED**. Petitioner's appeal based on Respondent's denial of an additional seven (7) hours per week of Personal Care Services is **GRANTED**. Respondent's denial of an additional three (3) hours per week of Personal Care Services is **REVERSED**. Petitioner's appeal based on Respondent's denial of an additional three (3) hours per week of Personal Care Services is **GRANTED**.

DONE and ORDERED this 10th day of February, 2021, in Tallahassee, Leon County, Florida.

Charles T Martin

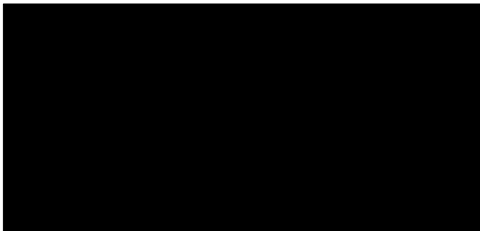
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CHARLES MARTIN, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649
Fax: (850) 487-1423
Email: OfficeOfFairHearings@ahca.myflorida.com

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:



UnitedHealthcare of Florida, Inc.
UHC_Hearings@uhc.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com