

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



FILED

Mar 04, 2021, 8:23 am

OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

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PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic consolidated Fair Hearing in the above-styled case on January 7, 2021, at █

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**APPEARANCES**

For the Petitioner:

█

Petitioner

For the Respondent:

Deborah Wingo  
Director of Long-Term Care  
Aetna Better Health of Florida, Inc.

PRR0002018

### **STATEMENT OF ISSUE**

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional six (6) hours per week of Personal Care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional eight (8) hours per week of Adult Companion Care services was incorrect.

### **PRELIMINARY STATEMENT**

All parties and witnesses appeared for the Fair Hearing telephonically. Petitioner appeared for the Fair Hearing and provided testimony. [REDACTED] ("[REDACTED]"), Petitioner's aunt, appeared for the Fair Hearing as a witness for Petitioner.

Deborah Wingo ("Ms. Wingo"), Director of Long-Term Care ("LTC") for Aetna Better Health of Florida, Inc. ("Aetna"), appeared for the Fair Hearing as representative for Respondent. The following persons appeared for the Fair Hearing as witnesses for Respondent: Elaine Bonge, Director of Operations for Aetna; Dr. Olunwa Ikpeazu ("Dr. Ikpeazu"), Medical Director for Aetna; and Dawn Williams, LTC Supervisor for Aetna.

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

Petitioner did not introduce any exhibits at the Fair Hearing. Respondent introduced an evidence packet for AHCA Case Number 20-FH [REDACTED] containing one hundred and twenty (120) pages, which was admitted into evidence as Respondent's Composite Exhibit 1. Respondent's

Composite Exhibit 1 includes the following: a Medicaid Fair Hearing & Appeal Document Checklist; AHCA Case Number 20-FH[REDACTED] Acknowledgement of Medicaid Fair Hearing Request (“Acknowledgement”) (dated December 9, 2020); a Notice of Adverse Benefit Determination (“NABD”) (dated November 19, 2020) for AHCA Case Number 20-FH[REDACTED]; a Plan Appeal Acknowledgement letter (dated December 10, 2020) for AHCA Case Number 20-FH[REDACTED]; a Notice of Plan Appeal Resolution (“NPAR”) (dated December 10, 2020) for AHCA Case Number 20-FH[REDACTED]; a Comprehensive LTSS Plan of Care (“Plan of Care”) (signed on November 12, 2020); a Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B Comprehensive Assessment”) (dated November 12, 2020); a Members Medication Listing – Medication Events document; a Caregiver Supplemental Assessment (undated); a Final Order of Dismissal – Abandonment for AHCA Case Number 20-FH[REDACTED] and 20-FH[REDACTED] (issued on November 12, 2020); the Florida Medicaid Statewide Medicaid Managed Care Long-Term Care Program Coverage Policy (“LTC Policy”) (March 2017); the Florida Medicaid Home Health Visit Services Coverage Policy (“HHV Policy”) (November 2016); and the Florida Medicaid Personal Care Services Coverage Policy (“PCS Policy”) (November 2016).

Respondent introduced an additional evidence packet for AHCA Case Number 20-FH[REDACTED] containing one hundred and five (105) pages, which was admitted into evidence as Respondent’s Composite Exhibit 2. Respondent’s Composite Exhibit 2 included the following: a Medicaid Fair Hearing & Appeal Document Checklist; AHCA Case Number 20-FH[REDACTED] Acknowledgement (dated December 9, 2020); an NABD (dated November 19, 2020) for AHCA Case Number 20-FH[REDACTED]; a Plan Appeal Acknowledgement letter (dated December 10, 2020) for AHCA Case Number 20-FH[REDACTED]; an NPAR (dated December 10, 2020) for AHCA Case Number 20-FH[REDACTED]; a Plan of Care

(signed on November 12, 2020); 701B Comprehensive Assessment”) (dated November 12, 2020); a Members Medication Listing – Medication Events document; a Caregiver Supplemental Assessment (undated); a Final Order of Dismissal – Abandonment for AHCA Case Number 20-FH [REDACTED] and 20-FH [REDACTED] (issued on November 12, 2020); the LTC Policy (March 2017); and the HHV Policy (November 2016).

### **FINDINGS OF FACT**

1. As of [REDACTED] 2019, Petitioner is an enrolled member of Aetna’s LTC Program. *See* Respondent’s Composite Exhibit 1, page 38; *see also* Respondent’s Composite Exhibit 2, page 38. Aetna is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.

2. Petitioner is 50 years old and resides in the community with her husband. *See* Respondent’s Composite Exhibit 1, pages 44-45. Petitioner is wheelchair bound secondary to paraplegia. *Id.* at 48. Petitioner is diagnosed with the following physical health conditions: bed sores (left hip), constant bladder incontinence, osteoporosis, neuromyelitis optic, legal blindness, paraplegia, scoliosis, venous insufficiency, peripheral neuropathy, lymphedema, chronic monocytosis, constipation, and a neurogenic bladder. *Id.* at 50-51. Petitioner receives wound care services several times per day. *Id.* Petitioner receives bladder/bowel treatment several times per week. *Id.* Petitioner receives skilled nursing services once per week for “disease process.” *Id.* Petitioner is diagnosed with depression and is prescribed medication (Lexapro). *Id.* at 52. Petitioner uses the following Durable Medical Equipment (“DME”): hoyer lift, wheelchair, shower chair, and a bedside commode. *Id.* at 54. Petitioner does not have a primary caregiver. *Id.* at 58.

3. Petitioner needs total assistance with activities of daily living (“ADLs”), such as bathing, dressing, using the bathroom, transferring, and walking/mobility. *Id.* at 48. Petitioner needs assistance (but not total help) with eating. *Id.* Petitioner is unable to transfer independently. *Id.* Petitioner requires total assistance (cannot do at all) with instrumental activities of daily living (“IADLs”), such as heavy chores, light housekeeping, meal preparation, money management, medication management, using transportation, and shopping. *Id.* at 49. Petitioner needs assistance (but not total help) with using the telephone. *Id.*

4. [REDACTED] is the Petitioner’s Direct Service Worker (“DSW”) in the Participant Direction Option (“PDO”) program. *Id.* at 49. [REDACTED] cannot continue assisting Petitioner with her care due to [REDACTED] own health issues and other caregiving responsibilities. *Id.* [REDACTED] current PDO work schedule is as follows: Monday (9:00 am – 4:00 pm); Tuesday through Thursday (9:00 am – 5:00 pm); and Saturdays (9:00 am – 4:00 pm). *Id.* at 60. Petitioner’s Personal Care services are rendered by another provider Monday through Friday (6:00 pm – 9:00 pm). *Id.* As testified to by [REDACTED], Petitioner renders natural support on the weekends (11:00 am – 5:00 pm). [REDACTED] witnessed first hand Petitioner’s decline due to recent immobility and need for more time to complete daily tasks. [REDACTED] is only Petitioner’s Direct Service Worker because there is no other family member who can help Petitioner. [REDACTED] assists Petitioner with all ADLs. As testified to by Ms. Wingo and [REDACTED], [REDACTED] renders 37 hours per week as Petitioner’s Direct Service Worker.

5. Petitioner’s husband is [REDACTED] (“[REDACTED]”). *Id.* at 45. [REDACTED] does not provide any assistance to Petitioner due to his employment as a truck driver, which requires him to travel

out of town most days. *Id.* [REDACTED] is not considered a caregiver. *Id.* at 66. As testified to by Petitioner, [REDACTED] can be gone for 2-3 weeks at a time due to his job.

6. Prior to the instant request, Petitioner received the following LTC services: 15 hours per week of Personal Care services; 19 hours per week of Homemaker services; and 18 hours per week of Adult Companion Care services. See Respondent's Composite Exhibit 1, page 38; see also Respondent's Composite Exhibit 2, page 37. This was confirmed by Ms. Wingo at the hearing. As testified to by Ms. Wingo, Petitioner's new Home Health Agency, [REDACTED], will be Petitioner's provider starting on Sunday January 10, 2021, and will render services 7 days per week.

7. On November 19, 2020, Aetna issued an NABD denying Petitioner's request for an additional 6 hours per week of Personal Care services and Petitioner's request for an additional 8 hours per week of Adult Companion Care services. See Respondent's Composite Exhibit 1, pages 11-17; see also Respondent's Composite Exhibit 2, pages 11-17. The NABD states as follows:

Aetna Better Health of Florida has reviewed your request for 6 additional hours of Personal Care Services weekly and 17 additional hours of Adult Companion Care Services weekly, which we received on 06/26/2020. After our review, this service has been:

**Denied** as of 07/02/2020

We made our decision because:

- 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 criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR
  - 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.

...

**Other authority**

The facts that we used to make our decision are: You have asked Aetna Better Health of Florida to cover 6 additional hours of Personal Care Services weekly and 17 additional hours of Adult Companion Care Services weekly. **We will not approve this request because you are receiving enough hours to meet your needs.** You are currently getting 15 hours of Personal Care Services weekly, 19 hours of Homemaker Services weekly, and 18 hours of Adult Companion Care Services weekly, for a total of 52 hours of a Home Health Aide weekly and 7 Home Delivered Meals weekly. You do not live alone. We have records dated 5/26/2020 that shows you need total assistance with bathing, dressing, using the bathroom, transferring and walking/mobility; you need assistance with eating. You need total assistance with doing laundry, meal preparation, housekeeping, shopping, managing money, managing medicines, and using the telephone.

**We do not see that you:**

- **Any change in your condition.**
- **Do not have enough care.**
- **No risk of isolation.**

You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. Based on the clinical records we have; your care plan will be the same, 15 hours of Personal Care Services weekly, 19 hours of Homemaker Services weekly, 18 hours of Adult Companion Care Services weekly, for a total of 52 hours of a Home Health Aide weekly and 7 Home Delivered Meals weekly. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-term Care Program pages 4-7.

...

Sincerely,

Olunwa Chisara Ikpeazu, M.D., MBA, F.A.A.P ["Dr. Ikpeazu"]

Medical Director  
Aetna Better Health of Florida, Prior Authorization Department

Respondent's Composite Exhibit 1, pages 11-17; *see also* Respondent's Composite Exhibit 2, pages 11-17. (Emphasis added).

8. On December 10, 2020, Aetna issued an NPAR denying Petitioner's plan appeal. *See* Respondent's Composite Exhibit 1, pages 30-31; *see also* Respondent's Composite Exhibit 2, pages 29-30. The NPAR states the following:

On December 9, 2020 we received your timely plan appeal request regarding Aetna Better Health of Florida's Notice of Adverse Benefit Determination dated November 18, 2020, NABD Number [REDACTED], denying 6 additional hours of personal care services and 8 hours of companion care services per week provided to [Petitioner].

On December 10, 2020, after consideration of the information you provided to Aetna Better Health of Florida in support of your plan appeal, Aetna Better Health of Florida hereby denies your plan appeal. As a result, [Petitioner] will not receive 6 additional hours of personal care services and 8 hours of companion care services per week, effective 12/10/2020.

Dr. Lia Rodriguez, MD, Medical Director, Florida Board Certified in Pediatrics reviewed your appeal. You asked Aetna Better Health of Florida to appeal the decision to deny 6 additional hours of Personal Care Services weekly and 8 additional hours of Adult Companion Care. We reviewed the information available about you and your health.

- The notes we have say you have neuromyelitis optica.
- We have records from your last assessment on 11/12/20 that show you need total assistance with bathing, dressing, using the bathroom, and moving around. You need assistance with eating. You need total assistance with preparing meals, laundry, housekeeping, shopping, and managing your medications, and finances.
- You live with your husband but he is not available to care for you because of his work.
- You are currently getting 15 hours of personal care services, 19 hours of homemaker services, and 18 hours of companion care services, 7 home delivered meals, consumable medical supplies, and 1 personal emergency system, for a total of 52 hours of a home health aide per week.

Based on the information we have:

- We are still not able to approve the additional hours because you are receiving enough hours to meet your needs and are not at risk of isolation. Your care plan will stay the same with 15 hours of personal care services, 19 hours of homemaker

services, and 18 hours of companion care services, 7 home delivered meals, consumable medical supplies, and 1 personal emergency system, for a total of 52 hours of a home health aide per week. If you have any questions, please discuss with your doctor. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-Term Care Program pages 4-7.

Respondent's Composite Exhibit 1, pages 30-31; *see also* Respondent's Composite Exhibit 2, pages 29-30.

9. On December 4, 2020, Petitioner timely requested a Fair Hearing to contest Respondent's denial of Personal Care services in AHCA Case Number 20-FH[REDACTED] and Respondent's denial of Adult Companion Care services in AHCA Case Number 20-FH[REDACTED]. On December 11, 2020, the undersigned consolidated both cases and scheduled the Fair Hearing to be conducted by telephone on January 7, 2020, at 9:00 a.m. EST.

10. At the hearing and under oath, regarding the request for Personal Care services, Petitioner testified that her mobility has deteriorated to the extent that she is prescribed medication and has a "back pump" (DME) for pain management. Petitioner testified that she now requires 4 transfers to get in and out of the shower on a daily basis. Petitioner testified that she is a fall-risk and has experienced injuries in the past from falling. Petitioner testified that the Home Health Agency has complained regarding the aides working more hours than approved because the aides do not have enough time to complete all tasks in the time allotted. Petitioner testified that her case manager is not in her home on a daily basis to see for themselves the difficulty in performing ADLs given her physical limitations. Petitioner testified that the additional hours would be used to implement Personal Care services 7 days per week. Petitioner disagrees with the time-allotments used by Dr. Ikpeazu and testified that she needs more time with all ADLs. Petitioner argues that time-allotments should be customized to her needs.

11. At the hearing and under oath, Petitioner testified her mother rendered natural support of Adult Companion Care services in the past. However, Petitioner's mother has since passed away. Petitioner testified that she does not have anyone to supplement the vacant Adult Companion Care services. Petitioner cannot afford to pay a caregiver out of pocket. Petitioner testified that [REDACTED] can no longer provide care or natural support.

12. At the hearing and under oath, Ms. Wingo testified that Aetna did not include [REDACTED] as Petitioner's natural support in their medical necessity determination. Respondent determined that the currently approved LTC services are sufficient to meet Petitioner's needs. Ms. Wingo testified that Petitioner can reallocate the hours of the LTC services as needed to be flexible to Petitioner's needs. Ms. Wingo testified that [REDACTED] Direct Service Worker hours can be transferred to a Home Health Agency if [REDACTED] is unable to continue providing care; [REDACTED] is not required to be Petitioner's DSW. Petitioner's case manager, Mairelys Gonzalez, is a Registered Nurse and is also certified to complete a 701-B Comprehensive Assessment. Respondent based their decision on Respondent's Composite Exhibit 1 and 2, which includes the 701-B Comprehensive Assessment. Ms. Wingo referenced the LTC Policy as the Florida Medicaid policy that Aetna used in making their medical necessity determination.

13. At the hearing and under oath, Dr. Ikpeazu testified she reviewed Petitioner's case, made the medical necessity determination to deny additional LTC services, and issued the NABD. Dr. Ikpeazu used the following time-allotments in making her medical necessity determination based on Petitioner's health condition: bathing (1 hour per day); dressing (30 minutes per day); eating (35 minutes per day); bathroom (1 hour per day); transferring (50 minutes per day); and walking/mobility (45 minutes per day).

## CONCLUSIONS OF LAW

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

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

16. Because Petitioner is requesting new services, the burden of proof is on the Petitioner. *See* Fla. Admin. Code R. 59G-1.100(17)(g). The standard of proof in an administrative hearing is a preponderance of the evidence. *Id.* The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

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

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or denial of a previously authorized service. **The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service.** The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

(Emphasis added).

18. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, establishes the provision and coverage of LTC services under Florida Medicaid. *See* Respondent’s Composite Exhibit 1, pages 73-94; *see also* Respondent’s Composite Exhibit 2, pages 72-93. The LTC Policy provides as follows, in pertinent part:

### **1.1 Description and Program Goal**

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

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

...

### **1.3 Definitions**

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

#### **1.3.1 Activities of Daily Living (ADLs)**

ADLs include:

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

#### **1.3.5 701-B Comprehensive Assessment**

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

#### **1.3.9 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

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

#### **1.3.14 Medically Necessary or Medical Necessity**

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

- a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
  - b) All other LTC supportive services must meet all of the following:
    - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
    - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
    - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider
- And, one of the following:
- Enable the enrollee to maintain or regain functional capacity; or
  - Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

### **1.3.16 Natural Supports**

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

## **4.1 General Criteria**

Florida Medicaid covers services that meet all of the following:

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

## **4.2 Specific Criteria**

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

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

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

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

#### **4.2.1.1 Adult Companion Care**

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a

functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

#### **4.2.1.9 Homemaker Services**

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

...

#### **4.2.2 Mixed Services**

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

##### **4.2.2.6 Personal Care**

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

Respondent's Composite Exhibit 1, pages 73-94; *see also* Respondent's Composite Exhibit 2, pages 72-93..

19. The Florida Medicaid Definitions Policy ("Definitions Policy") (August 2017), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines Medical Necessity as:

#### **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.

20. Petitioner is 50 years old and resides in the community with her husband. *See supra* ¶ 2.

Petitioner is wheelchair bound secondary to paraplegia. *See supra* ¶ 2. Petitioner's husband is not a caregiver. *See supra* ¶ 2. [REDACTED] is the Petitioner's DSW in the PDO program. *See supra* ¶

4. Petitioner currently receives 15 hours per week of Personal Care services; 19 hours per week of Homemaker services; and 18 hours per week of Adult Companion Care services. *See supra* ¶

6. The NABD and the NPAR indicate that Respondent determined that Petitioner's current care plan is sufficient to meet their needs. *See supra* ¶ 7. The NABD was issued by Dr. Ikpeazu, and the NPAR was issued by Dr. Lia Rodriguez. *See supra* ¶ 6-7. At the hearing, Respondent argued that Petitioner's request for additional Personal Care services and additional Adult Companion Care services were not medically necessary based on the 701-B Comprehensive Assessment, Petitioner's natural support, and Petitioner's Plan of Care. *See supra* ¶ 6-7.

21. To be medically necessary, a service must meet the five criteria set forth in section 1.3.14 of the LTC Policy. Based on Ms. Wingo's and Dr. Ikpeazu's testimony at the hearing, Respondent denied Petitioner's request for additional Personal Care services and additional Adult Companion Care services for not meeting the following medical necessity standard: services must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs. *See supra* ¶ 12-13.

**Respondent's denial of additional Adult Companion Care services**

22. Adult Companion Care is, “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.” See supra ¶ 18. The LTC Policy covers the Adult Companion Care services at issue if they are determined to be medically necessary. See supra ¶ 18. To be medically necessary, the LTC Policy requires that the Adult Companion Care services at issue 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.” See supra ¶ 18. Respondent determined that this medical necessity standard was not met because the records do not show a change in Petitioner’s condition, a change in Petitioner’s caregiver availability, a risk of isolation, or a lack of enough care. See supra ¶ 8. The record indicates that Petitioner’s request for Adult Companion Care services is not individualized and specific to her symptoms, diagnosis, or injury. ██████ renders Petitioner’s LTC services in the amount of 37 hours per week and also provides natural support on the weekends from 11:00 a.m. to 5:00 p.m. Petitioner and ██████ testified that due to Petitioner’s decline in mobility, Petitioner requires more time to complete ADLs and IADLs. However, according to the LTC Policy, assistance with ADLs and IADLs are addressed under Personal Care services, not Adult Companion Care services. In addition, Petitioner testified that she is a fall-risk and has experienced injuries in the past, which would be addressed under Adult Companion Care services. No documentation was found in the record to quantify the extent of such injuries, how often falls have occurred, and the circumstances behind the falls (e.g. falls without a caregiver present). Also, Petitioner testified that the additional Adult Companion Care services are being requested to compensate for the natural support of her mother who has since

passed away. Although credible, Respondent did not consider any natural support by Petitioner's mother in their medical necessity determination. In this case, Petitioner bears the burden to prove that she has an unmet need of 8 hours per week 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." Upon consideration of the Respondent's Composite Exhibit 1, Petitioner's Plan of Care, Petitioner's testimony, and ██████████ testimony, the record does not show an unmet need for such care. Thus, Petitioner has not demonstrated that the Adult Companion Care services at issue are not in excess of the Petitioner's needs at this time. Thus, the Petitioner does not meet criterion number two for medical necessity.

23. ██████████ is Petitioner's Direct Service Worker ("DSW") in the Participant Direction Option ("PDO") program. *See supra* ¶ 4. ██████████ cannot continue assisting Petitioner with LTC services due to ██████████ own health issues and other caregiving responsibilities. *See supra* ¶ 4. Petitioner testified that ██████████ can no longer provide care in the form of natural support or in the form of a Direct Service Worker in the PDO program. *See supra* ¶ 11. However, Ms. Wingo testified that ██████████ PDO work schedule can be transferred to a Home Health Agency if ██████████ is unable to continue providing care and that ██████████ is not required to be Petitioner's DSW. *See supra* ¶ 12. Petitioner did not respond to Ms. Wingo's assertion at the hearing. Thus, if needed, there is an alternate delivery model for Petitioner's currently authorized LTC services.

24. Accordingly, upon consideration of Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, both parties' sworn testimony, the LTC Policy, and the Definitions Policy, the undersigned Hearing Officer concludes that Petitioner has not shown by a preponderance of the evidence that Respondent's denial of Adult Companion Care services was incorrect.

**Respondent's denial of additional Personal Care services**

25. Personal Care provides “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 ¶ 18. The LTC Policy covers Personal Care services that are determined to be medically necessary. See supra ¶ 18. Under the LTC Policy, Mixed services such as Personal Care services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. See supra ¶ 18. To be medically necessary, the requested Personal Care services must meet the five criteria set forth in section 2.83 of the Definitions Policy. See supra ¶ 19. Based on the record, Respondent determined that Petitioner did not meet the following medical necessity standard: 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. See supra ¶ 6-7, 12-13.

26. With respect to the medical necessity standard at issue, Respondent presented the following Medical Directors who determined that Petitioner’s request is in excess of the their needs: Dr. Ikpeazu who issued the NABD and testified at the hearing, and Dr. Lea Rodriguez who issued the NPAR. See supra ¶ 6-7, 13. Respondent’s two Medical Directors based their determination on Petitioner’s needs, Petitioner’s Plan of Care, and Petitioner’s natural support. See supra ¶ 6-7, 13. At the hearing, Dr. Ikpeazu testified that Respondent used the following time-allotments in making her medical necessity determination based on Petitioner’s health condition: Bathing (1 hour per day); Dressing (30 minutes per day); Eating (35 minutes per day); Bathroom (1 hour per day); Transferring (50 minutes per day); and Walking/mobility (45 minutes per day). See supra ¶ 13. Petitioner and ██████████ disagree with the usage of these time-allotments and

argued that Petitioner requires more time to complete ADLs. See *supra* ¶ 10-11. However, neither Petitioner nor ██████ provided testimony or evidence as to how much time it takes to perform each ADL and how often each ADL occurs, to provide the undersigned with a comparison of the time Respondent allocates against the time Petitioner actually uses. Thus, the undersigned possesses no evidence to weigh against Respondent's time-allotments. Although Petitioner testified that the Home Health Agency does not have enough time to complete all tasks in the time allotted, *supra* ¶ 10-11, there was no evidence presented as to how much is required. Further, the record indicates that Petitioner now requires four transfers to get in the shower on a daily basis and four transfers to get out of the shower on a daily basis. See *supra* ¶ 10. However, Petitioner did not present sufficient evidence that she requires an additional 6 hours per week for assistance with transfers. Neither Petitioner nor ██████ presented any testimony that Petitioner requires more assistance with other ADLS (Bathing, Dressing, Eating, and Maintaining continence, and Toileting). In this case, Petitioner bears the burden to prove that she has an unmet need of six (6) hours per week of assistance with ADLs and IADLs. Upon consideration of the Respondent's Composite Exhibit 1, Petitioner's Plan of Care, Petitioner's testimony, and ██████ ██████ testimony, the record does not have an unmet need for such care. Although the record indicates that Petitioner may require additional time, specifically to assist with shower transfers, Petitioner failed to establish that such a need amounts to an additional 6 hours per week. Thus, Petitioner has not demonstrated that the Personal Care services at issue are not in excess of the Petitioner's needs at this time. Thus, the Petitioner does not meet criterion number two for medical necessity.

27. [REDACTED] is Petitioner’s Direct Service Worker (“DSW”) in the Participant Direction Option (“PDO”) program. See supra ¶ 4. [REDACTED] cannot continue assisting Petitioner with LTC services due to [REDACTED] own health issues and other caregiving responsibilities. See supra ¶ 4. Petitioner testified that [REDACTED] can no longer provider care in the form of natural support or in the form of a Direct Service Worker in the PDO program. See supra ¶ 11. However, Ms. Wingo testified that [REDACTED] PDO work schedule can be transferred to a Home Health Agency if [REDACTED] is unable to continue providing care and that [REDACTED] is not required to be Petitioner’s DSW. See supra ¶ 12. Petitioner did not respond to Ms. Wingo’s assertion at the hearing. Thus, if needed, there is an alternate delivery model for Petitioner’s currently authorized LTC services.

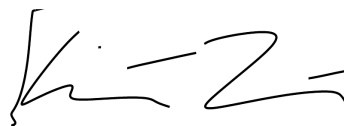
28. Accordingly, upon consideration of Respondent’s Composite Exhibit 1, Respondent’s Composite Exhibit 2, both parties’ sworn testimony, the LTC Policy, and the Definitions Policy, the undersigned Hearing Officer concludes that Petitioner has not shown by a preponderance of the evidence that Respondent’s denial of Personal Care services was incorrect.

**DECISION**

Respondent’s denial of an additional six (6) hours per week of Personal Care services is **AFFIRMED**. Petitioner’s request for relief is hereby is **DENIED**.

Respondent’s denial of an additional eight (8) hours per week of Adult Companion Care services is **AFFIRMED**. Petitioner’s request for relief is hereby is **DENIED**.

**DONE AND ORDERED** this 4th day of March, 2021, in Tallahassee, Leon County, Florida.



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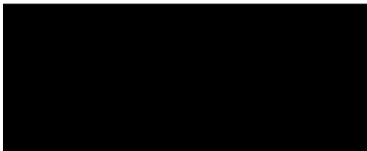
**KRISTOPHER LEÓN, Hearing Officer**

**Agency for Health Care Administration  
Office of Fair Hearings  
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Tallahassee, FL 32308-5407  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

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