



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

FILED

Mar 29, 2021, 2:38 pm  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

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

vs.

WELLCARE OF FLORIDA, INC. D/B/A  
STAYWELL HEALTH PLAN OF FLORIDA,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Medicaid Fair Hearing in the above styled case on February 2, 2021, at [REDACTED], and March 3, 2021, at [REDACTED]

**APPEARANCES**

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

For the Respondent: Michelle Burgos  
Regulatory Research Coordinator  
Wellcare of Florida, Inc. d/b/a  
Staywell Health Plan of Florida

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 20 hours per week of adult companion services was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and daughter-in-law, appeared at the Fair Hearing and provided testimony on Petitioner’s behalf. [REDACTED] (“[REDACTED]”), Petitioner’s son, also appeared for the Fair Hearing and provided testimony on Petitioner’s behalf.

Michelle Burgos (“Ms. Burgos”), Regulatory Research Coordinator for Wellcare of Florida, Inc. d/b/a Staywell Health Plan of Florida (“Staywell”), represented Respondent at the Fair Hearing. The following individuals appeared at the Fair Hearing on Respondent’s behalf: Dr. Sheryce Andrews (“Dr. Andrews”), Medical Director for Staywell; Carol Farranc, Operations Resolution Supervisor for Staywell; Claudia Nguyen, Long Term Care Specialist Service and Support for Staywell; Suzzette Lewis, Long Term Care Manager for Staywell; Nicole Vega, Regulatory Research Coordinator with Staywell; Brenda Longdon, Operations Manager for WellCare; Nathalie Pariag, Supervisor for WellCare Long Term Care; and Suzzette Lewis, Long Term Care Manager for Staywell.

Linda Latson, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Prior to the hearing on February 2, 2021, Petitioner sent a 10-page evidence packet to Respondent and the Office of Fair Hearings. The packet included the following documents: a facsimile transmission (“fax”) cover sheet, dated February 1, 2021; and a 9-page fax, dated February 1, 2021. Absent an objection from Respondent, the undersigned admitted Petitioner’s 10-page evidence packet into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing on March 3, 2021, Petitioner sent a 30-page evidence packet to Respondent and the Office of Fair Hearings. The packet included the following documents: a fax

cover sheet, dated February 16, 2021; and a 29-page fax, dated February 16, 2021. Absent an objection from Respondent, the undersigned admitted Petitioner's 30-page evidence packet into evidence as Petitioner's Composite Exhibit 2.

Prior to the hearing, Petitioner sent a 17-page evidence packet to Respondent and the Office of Fair Hearings. The packet included the following documents: an email from [REDACTED], dated March 1, 2021; and Petitioner's medical records for [REDACTED] 2021. Absent an objection from Respondent, the undersigned admitted Petitioner's 17-page evidence packet into evidence as Petitioner's Composite Exhibit 3.

Respondent sent to the Office of Fair Hearings and Petitioner a 110-page evidence packet. The packet included the following documents: the Summary; the Supporting Documents; the Eligibility Verification documents; the Prior Authorization screen; a Notice of Adverse Benefit Determination ("NABD"), dated August 14, 2020; the Appeal Request; the letter from Respondent to Petitioner, dated March 27, 2020; Respondent's Case Notes; Respondent's Clinical Notes; a cover sheet for Supporting Documents; the FL MLTC Supplemental Caregiver Assessment, dated February 18, 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B") with an assessment date of April 24, 2020; the Medical Director Case Review Form; Respondent's screenshots; Notice of Plan Appeal Resolution ("NPAR"), dated September 4, 2020; Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010; Respondent's Policy Number HS-500; the Florida Medicaid Managed Care Long-term Care Program Coverage Policy, March 2017 ("SMMC LTC Policy"); the Medicaid MMA Contract Section V.D.3.a (1)(2)(3)(4)(5) for Mixed Services; and excerpts from the Staywell Member

Handbook. Absent an objection from Petitioner, the undersigned admitted Respondent's 110-page evidence packet into evidence as Respondent's Composite Exhibit 1.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Staywell's Long-term Care ("LTC") plan. See Respondent's Composite Exhibit 1, page 1. Staywell is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is a [REDACTED] year-old male who resides in a private residence. See Respondent's Composite Exhibit 1, page 31. Petitioner has the following diagnoses: past and current acid reflux; past and current allergies (seasonal); current moderate anemia; past prostate cancer; current high cholesterol; current heart problems (congestive heart failure); current bladder incontinence (occasional); current bowel incontinence (occasional); past stroke; current macular degeneration; and current shortness of breath. *Id.* at 38 and 39.

3. The 701B reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner needs supervision or prompting with bathing, dressing, eating, using the bathroom, transferring, and walking/mobility. See Respondent's Composite Exhibit 1, page 36.

4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. See Respondent's Composite Exhibit 1, page 37.

5. The letter from [REDACTED] ("[REDACTED]"), dated [REDACTED] 2020, states:

This is to certify that [Petitioner] had a medical evaluation today and is under my care. Given his multiple medical issues including macular degeneration, congestive heart failure, cognitive impairment along with memory loss, and

unsteady gait with history of multiple falls he would benefit from at least 64 hours of home assistance.

Petitioner's Composite Exhibit 1, page 3.

6. On August 14, 2020, Respondent issued an NABD terminating 20 hours per week of adult companion care services. See Respondent's Composite Exhibit 1, page 9. 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:

WellCare received your request for to continue 20 hours of adult companion care services. This request was denied because the information provided does not support that it is required to manage your medical condition(s).

You do not live alone. You live with others; 1 who works outside of the home, and one who does not. We were informed that the family member that does not work outside of the home is unable to physically assist you because of her medical conditions. However, she is available to provide supervision for safety.

Given this, adult companion hours are not indicated. The number of hours for hands-on assistance with personal care (such as bathing and dressing), and for homemaking tasks will continue, unchanged. This new total number of hours - 44 - covers the time that your other natural caregiver is working outside of the home.

Criteria WellCare Clinical Coverage Guideline, Long Term Services and Supports (LTSS) – Florida

Respondent's Composite Exhibit 1, pages 9 – 10.

7. Petitioner requested a plan appeal for the termination of adult companion care services.

On September 4, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal.

See Respondent's Composite Exhibit 1, page 64. The NPAR stated as follows:

On 9/3/2020 we received your timely plan appeal request regarding Staywell's Notice of Adverse Benefit Determination dated 8/14/2020, NABD Number [REDACTED]: denying the service to be provided to [Petitioner].

The request has been reviewed. The review was completed by a licensed doctor. The doctor was not a part of the first review or the findings from that review.

The Medical Director involved is a Board Certified MD with a specialty in Pediatrics

On 9/3/2020, after consideration of the information you provided to Staywell in support of your plan appeal, Staywell hereby Denies your plan appeal. As a result, [Petitioner] will not receive S5135 Adult Companion Care, effective 9/4/2020.

The facts that we used to make our decision are: You live with your daughter-in-law who can spend this time with you. The reasons for this decision are based on a set of standards. This included WellCare Clinical Coverage Guideline for Long Term Services and Supports (LTSS) – Florida HS-500.

Respondent's Composite Exhibit 1, pages 64 – 65.

8. In making the determination to terminate the adult companion care services, Respondent

relied on the WellCare Clinical Coverage Guideline for Long Term Services and Supports (LTSS) –

Florida HS-500, which states as follows:

Long-term services and supports (LTSS) are services and supports used by Members of all ages with functional limitations and chronic illnesses. LTSS helps

those needing assistance to perform routine daily activities (e.g., bathing, dressing, meal preparation, administering medications). Types of LTSS benefits are noted below. To determine eligibility, Members should check their benefits package. . . .

...

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.

Florida Medicaid LTC plans cover services that are:

- 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

Florida Medicaid LTC plans cover services that meet the following:

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

...

Services **are considered medically necessary** when the following criteria are met:

1. Member must be enrolled in the State of Florida LTC program on the date of service; **AND**
2. Member is a State of Florida Medicaid recipient that requires medically necessary LTC services; **AND**
3. Member has a nursing facility level of care determined by the CARES program; **AND**
4. Authorization is for one of the following services:

...

- Companion Care;

...

- Homemaker Services;

...

- Personal Care. . . .

Respondent’s Composite Exhibit 1, page 75-77.

9. Petitioner’s Progress Note for his exam on [REDACTED] 2021, provides the following:

PAIN ASSESSMENT: Negative for pain

GENERAL: Fatigue, elderly

...

RESPIRATORY: Negative for cough. . . .dyspnea or shortness of breath

CARDIOVASCULAR: Chronic dyspnea on moderate exertion

...

PSYCH: Negative for sleep disturbance, mood disorder and recent psychosocial stressors

Physical Examination

...

2-Ambulatory and capable of all selfcare; unable to carry out work activities. Up and about > 50% of waking hours.

...

Constitutional: He is oriented to person, place, and time and well-developed, well-nourished, and in no distress

...

Neurological: He is alert and oriented to person, place, and time. Gait normal.

Petitioner's Composite Exhibit 2, page 12-15.

10. The After Visit Summary for Petitioner's medical visit on [REDACTED] 2021, states, "[t]he following issues were addressed: Episode of recurrent major depressive disorder, unspecified depression episode severity (HCC); Hyperlipidemia LDL goal <100; Anemia, unspecified type; Elevated prostate specific Antigen (PSA); Urinary frequency; Decreased activities of daily living. (ADL)." See Petitioner's Composite Exhibit 2, page 4. Petitioner's After Visit Summary from [REDACTED], for Petitioner's visit on [REDACTED] 2020, reflects that "[m]ild cognitive impairment with memory loss" was one of the issues addressed during the visit. *Id.* at 9.

11. Petitioner's Virtual Visit Progress Note for [REDACTED] 2021, reflects that Petitioner is negative for dizziness, and positive for blurred vision, shortness of breath, depression and memory loss. See Petitioner's Composite Exhibit 3, page 5. The note also states that Petitioner has impaired cognition and memory, and is oriented to person, place, and time. *Id.* at 6.

12. Petitioner's Progress Note for a medical visit on [REDACTED] 2021, reflects that Petitioner's dyspnea is "triggered" by exercise. See Petitioner's Composite Exhibit 3, page 8. The

note also reflects that Petitioner is “[a]lert, coherent during interview, with orientation to time, place, and person. Fully ambulatory.” *Id.* at 9.

13. On December 4, 2020, Petitioner requested a Fair Hearing due to the termination of adult companion care services. On December 28, 2020, the undersigned Hearing Officer scheduled the Fair Hearing for February 2, 2021, at [REDACTED] and all parties were duly notified. The hearing was continued, as the parties did not complete the Fair Hearing during the time allotted for the hearing on February 2, 2021. On February 8, 2021, the undersigned Hearing Officer scheduled the Fair Hearing for March 3, 2021, at [REDACTED] and all parties were duly notified.

14. Petitioner is currently authorized to receive the following Home and Community Based Services, excluding the 20 hours per week of adult companion care services that are at issue in the instant case: 21 hours per week of personal care services and 23 hours per week of homemaker services. See Respondent’s Composite Exhibit 1, page 23.

15. Dr. Andrews is a Medical Director for Staywell. Dr. Andrews explained that when Petitioner joined Respondent’s LTC program in August 2019, Petitioner had the 20 hours of adult companion care services in place, and the adult companion care hours were continued for a year as a provision of continuity of care. Dr. Andrews explained that she reviewed Petitioner’s case in August 2020 and made a medical necessity determination regarding the adult companion care hours.

16. Discussing the termination of adult companion care services, Dr. Andrews testified that Petitioner lives [REDACTED], who is physically limited, and [REDACTED], who works full time. Dr. Andrews explained that the adult companion care services were terminated, because [REDACTED] does not work outside the home and can provide supervision. Dr. Andrews also testified

that although [REDACTED] cannot provide hands-on care, she can provide supervision for safety. Dr. Andrews explained that Respondent continued Petitioner's personal care services and homemaker services, as [REDACTED] is unable to assist Petitioner physically due to her medical condition. Dr. Andrews explained that Respondent expects the family to provide general supervision after the aide has already left, and general supervision can be done by the family after paid aide leaves.

17. [REDACTED] is Petitioner's son. Petitioner resides in the home with [REDACTED] and his wife, [REDACTED]. [REDACTED] has been a medical doctor for 40 years, and is Board Certified in internal medicine and nephrology. [REDACTED] works out of town many days a week. [REDACTED] noted that Petitioner has fecal incontinence and severe urinary incontinence. [REDACTED] does not work outside of home, but has other engagements, and takes music and Spanish classes for her own peace of mind. [REDACTED] was working 8-12 hours per week as a volunteer, but had to quit when the 20 adult companion care hours were taken. If [REDACTED] has to leave the home and go somewhere, then [REDACTED] is at home. [REDACTED] and [REDACTED] do not leave Petitioner alone. [REDACTED] is a business accountant and does all the billing for [REDACTED] medical practice, as well as handles the personal finances for the home. When someone is downstairs with Petitioner, [REDACTED] does paperwork upstairs in the home 4 to 6 hours per day, Monday through Friday. Petitioner is fragile, cannot go upstairs, and cannot use emergency devices or walkie talkies because of dementia.

18. [REDACTED] is Petitioner's daughter-in-law. [REDACTED] tires easily, experiences back pain, and gets exhausted after standing for a few hours. [REDACTED] believes that Petitioner has cognitive decline, and needs supervision 24/7. If the 20 hours per week of adult companion care

services were approved, then [REDACTED] would volunteer in the church and be with other people, go for a walk outside for fresh air and for her health.

### CONCLUSIONS OF LAW

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

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

21. 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.

22. Because Respondent is terminating existing services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. 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.).

23. 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.

...

#### **1.3.16 Natural Supports**

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

...

### **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.

...

##### **4.2.1.1 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.

...

##### **4.2.2.6 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.

24. 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.

25. In the instant case, Respondent terminated 20 hours per week of adult companion care services. *See supra* ¶ 6 and 7. As established on the record by the evidence and testimony, Respondent terminated 20 hours per week of adult companion services, because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. *See supra* ¶ 6 and 7.

26. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 23.

27. Section 4.2.1.1 of the SMMC LTC Policy reflects that adult companion services are “[t]he

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.” See supra ¶ 23.

28. The evidence presented in this case reflects that Respondent’s termination of 20 hours per week of adult companion services is warranted under the circumstances of this case.

29. Specifically, regarding ADLs, Petitioner needs supervision or prompting with bathing, dressing, eating, using the bathroom, transferring, and walking/mobility. See supra ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. See supra ¶ 4. Petitioner multiple medical conditions, including macular degeneration, shortness of breath, “cognitive impairment along with memory loss, and unsteady gait with history of multiple falls.” See supra ¶ 2 and 5. Petitioner’s medical records reflect that Petitioner has “[m]ild cognitive impairment with memory loss” and is well-developed, well-nourished, alert and oriented to person, place, and time. See supra ¶ 9, 10, 11, and 12. However, Petitioner resides in the home with his son, ██████████, and his daughter-in-law, ██████████. See supra ¶ 17 and 18. ██████████ does not work outside of home, has other engagements, takes music and Spanish classes for her own peace of mind, tires easily, experiences back pain, and gets exhausted after standing for a few hours. See supra ¶ 17 and 18. Although ██████████ does paperwork upstairs in the home 4 to 6 hours per day, Monday through Friday, she does so when someone is downstairs with Petitioner. See supra ¶ 17. ██████████ believes that Petitioner requires 24/7 supervision, and ██████████ explained that

Petitioner cannot use emergency devices or walkie talkies because of dementia. *See supra* ¶ 17 and 18. Although [REDACTED] works out of town many days a week, if [REDACTED] has to leave the home and go somewhere, then [REDACTED] is at home. *See supra* ¶ 17. The record reflects that [REDACTED] and [REDACTED] do not leave Petitioner alone. *See supra* ¶ 17. It should be noted that Petitioner is currently authorized to receive 21 hours per week of personal care services and 23 hours per week of homemaker services. Dr. Andrews testified that: although [REDACTED] cannot provide hands-on care, she can provide supervision for safety; and Respondent continued Petitioner’s personal care services and homemaker services, as [REDACTED] is unable to assist Petitioner physically due to her medical condition. *See supra* ¶ 16. Further, the NABD explained that “[t]he number of hours for hands-on assistance with personal care (such as bathing and dressing), and for homemaking tasks will continue, unchanged. This new total number of hours - 44 - covers the time that your other natural caregiver is working outside of the home.” *See supra* ¶ 6. Given that Petitioner resides with [REDACTED] and [REDACTED], is not left alone, and has personal care services to assist with his ADLs and homemaker services to assist with his homemaking needs, Respondent demonstrated that it correctly terminated Petitioner’s adult companion care services. Based upon the evidence presented by both parties, Respondent established that the termination of 20 hours per week of adult companion services is warranted in this case.

30. Additionally, section 1.3.14 of the SMMC LTC Policy requires that “LTC supportive 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* ¶ 23. Petitioner is currently authorized to receive the following Home and Community

Based Services, excluding the 20 hours per week of adult companion care services that are at issue in the instant case: 21 hours per week of personal care services and 23 hours per week of homemaker services. See supra ¶ 14. The 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 ¶ 23. The 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.” See supra ¶ 23. Considering that Petitioner has homemaker services and personal care services to assist with his ADLs and IADS, while ██████████ does not work outside the home and can provide supervision of Petitioner, supra ¶ 6 and 16, Respondent demonstrated that Petitioner’s aforementioned needs, supra ¶ 2 – 4, are sufficiently met by his currently authorized services. Further, given that Respondent established that the requested adult companion services are not warranted in this matter, supra ¶ 29, the previously authorized amount of adult companion services are “in excess of [Petitioner’s] needs.” See supra ¶ 23.

31. Section 1.3.16 of the LTC Policy provides that natural supports are “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” See supra ¶ 23. Petitioner resides in the home with 2 adults: ██████████; and ██████████. See supra ¶ 17. ██████████ does not work outside of home, but tires easily, experiences back pain, and gets exhausted after standing for a few hours. See supra ¶ 17 and 18. Although ██████████ works out of town, supra ¶ 17, the record does not indicate that he is incapable of assisting Petitioner when he is present in the home with Petitioner. If Ms.

Marathe has to leave the home and go somewhere, then [REDACTED] is at home. See supra ¶ 17. [REDACTED] and [REDACTED] do not leave Petitioner alone. See supra ¶ 17. Therefore, Petitioner also has natural supports available to assist with his care and needs.

32. The letter from [REDACTED], dated [REDACTED] 2020, states, “[g]iven his multiple medical issues including macular degeneration, congestive heart failure, cognitive impairment along with memory loss, and unsteady gait with history of multiple falls he would benefit from at least 64 hours of home assistance.” See supra ¶ 5. The letter does not prescribe the amount of adult companion care services warranted to address Petitioner’s medical condition. Section 2.83 of the Definitions Policy mandates that “[t]he 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.” See supra ¶ 24. Therefore, the letter from [REDACTED] does not, in itself, make the requested adult companion care services medically necessary.

33. In light of the evidence submitted, testimony provided, and applicable laws and policies, the undersigned Hearing Officer finds that Respondent demonstrated that Petitioner’s previously authorized amount of adult companion services is not medically necessary.

34. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent’s termination of 20 hours per week of adult companion services was correct.

### **DECISION**

Respondent’s termination of 20 hours per week of adult companion services is

**AFFIRMED.**

Petitioner’s appeal based on Respondent’s termination in this matter is **DENIED.**

**DONE AND ORDERED** this 29<sup>th</sup> day of March, 2021, in Tallahassee, Leon County, Florida.



Tracie Hardin  
20-FH [REDACTED]  
2021.03.29 14:35:22 -04'00'

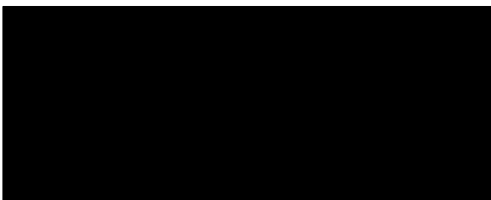
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**TRACIE HARDIN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
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**NOTICE OF 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.

**COPIES FURNISHED TO:**



**Wellcare of Florida, Inc. (Staywell)**  
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**AHCA Medicaid Hearing Unit**  
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