



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

FILED

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OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on January 25, 2021, at █ and February 8, 2021, at █

█

**APPEARANCES**

For the Petitioner:

█

Petitioner

For the Respondent:

Maria Mojica  
Compliance Specialist  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

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

**PRELIMINARY STATEMENT**

PRR0002059

All parties appeared telephonically. Petitioner appeared on his own behalf at both hearings. [REDACTED] appeared as a witness for Petitioner for the January 25, 2021, hearing only.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent for both hearings. The following attended as witnesses for Respondent for both hearings: Dr. Sapnalaxmi Amin ("Dr. Amin"), Medical Director for Sunshine; Alice Pace, Case Manager for Sunshine; Melissa Layne, Senior Manager for Member Appeals for Sunshine; and Katherine Calonje, Long Term Care Supervisor for Sunshine.

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer for the January 25, 2021, hearing only. Doris Rivera, Medical/Health Care Program Analyst for the Agency, appeared as an observer for the February 8, 2021, hearing only.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a six (6)-page document. The document included: an e-mail from Petitioner, dated January 25, 2021; a letter from [REDACTED] ("[REDACTED]"), dated October 12, 2020; and a letter from [REDACTED], dated January 14, 2021. Absent an objection from Respondent, the undersigned admitted the six (6)-page document into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and eleven (111)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination ("NABD"), dated September 28, 2020; a Long Term Care Person-Centered Care Plan ("POC"), dated July 8, 2020; a POC, dated December 2, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated July 8, 2020; a 701B, dated December 2, 2020; a

Standard Appeal Acknowledgement, dated October 14, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated November 9, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner, the undersigned admitted the one hundred and eleven (111)-page packet into evidence as Respondent’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 was forty-eight (48)-years old on the date of the Fair Hearing. *See* page 13 of Respondent’s Composite Exhibit 1. Petitioner lives alone. *Id.* at 50.
3. Petitioner is legally blind. *Id.* at 50. Petitioner had corneal implant surgery on September 23, 2020. *Id.* at 53. Petitioner is “only able to count fingers at 3 feet in his right eye and is only able to see hand motion in his left eye.” *See* page 3 of Petitioner’s Composite Exhibit 1. Petitioner requires “frequent (e.g. daily) eye doctor visits.” *Id.* Petitioner is diagnosed with glaucoma, keratoconus in both eyes, and cataracts. *See* page 56 of Respondent’s Composite Exhibit 1.
4. Petitioner’s plan of care includes the following services: six (6) hours of personal care services, weekly; four (4) hours of homemaker services, weekly; eleven (11) hours of adult companion care services, weekly; a Personal Emergency Response System (“PERS”); and seven (7) home delivered meals, weekly. *Id.* at 29.
5. Petitioner’s activities of daily living (“ADLs”) are as follows: for bathing and dressing, Petitioner needs assistance (but not total help); for transferring and walking/mobility, Petitioner uses an assistive device. *Id.* at 53. Petitioner’s instrumental activities of daily living (“IADLs”) are

as follows: for heavy chores and light housekeeping, Petitioner needs total assistance (cannot do at all); for using the telephone, Petitioner needs supervision or prompting; for managing money, preparing meals, shopping, and transportation, Petitioner needs assistance (but not total help). *Id.* at 54.

6. Petitioner requested sixteen (16) additional hours of personal care services, weekly. In the NABD, dated September 28, 2020, Respondent denied Petitioner's request for an additional sixteen (16) hours of personal care services, weekly. *Id.* at 4 – 12. The NABD explained the basis of the denial as follows:

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

...

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

and one of the following:

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

...

The facts that we used to make our decision are: The request for an extra 16 hours/week of Personal Care Services is denied. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs.

...

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

Pages 4 – 6 of Respondent’s Composite Exhibit 1.

7. Petitioner requested a plan appeal and received an NPAR dated November 9, 2020, upholding the denial of sixteen (16) hours of personal care services, weekly. *Id.* at 73 – 79. The NPAR explained as follows:

The reason for our decision was: The appeal to overturn the denial of an extra 16 hours/week of Personal Care Services is denied. Based on the assessment, the member’s currently approved services are adequate to meet the member’s care needs.

Page73 of Respondent’s Composite Exhibit 1.

8. On December 1, 2020, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On January 4, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for January 25, 2021, at 9:00 a.m., Eastern Standard Time. At the January 25, 2021, Fair Hearing, the hearing was continued to February 8, 2021, at [REDACTED]

9. At the Fair Hearing, Dr. Amin approved an additional five (5) hours of homemaker services, weekly.

10. Petitioner testified that, since his vision has worsened, his food has to be prepared for him, and his caregiver has to draw his bath and lay out his clothes for him.

11. LT.UM.09 provides as follows in regards to personal care services:

7. Personal Care Services

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

the member, rather than the member's family. Personal care services include the following:

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

...

#### Approval Criteria

Personal Care Services reviews include four (4) criteria:

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

...

Exclusions and Limitations for Personal Care services include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort services

*Id.* at 97-98 and 103 of Respondent's Composite Exhibit 1.

### **CONCLUSIONS OF LAW**

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

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

14. Because Petitioner is requesting additional 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.)

15. 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, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services, adult companion care services, and homemaker services:

**1.1 Description and Program Goal**

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

...

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

ADLs include:

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

...

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

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry

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

...

#### **4.1 General Criteria**

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

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

...

#### **4.2.1.1 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.

16. 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.

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

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

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

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

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

25. In the NABD, dated September 28, 2020, Respondent denied Petitioner's request for sixteen (16) hours of personal care services per week. See pages 4 – 12 of Respondent's Composite Exhibit 1. In the NABD, Respondent explained that Petitioner's request was not medically necessary, and that the Petitioner's services were adequate to meet the member's care needs. *Id.* at 4.

26. As provided in Respondent's policy, LT.UM.09, personal care services are to "provide assistance with eating, bathing, dressing, and personal hygiene, and other activities of daily living." Further, the policy provides that personal care provides with "preparation of meals" and "housekeeping tasks". As discussed in LT.UM.09, personal care services are determined, in part, based on: the recipient's ADL limitations; the recipient's living situation; the recipient's supervision needs; and the available supports. Moreover, as provided in the LTC Policy, personal care is to provide "assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." As provided in the record, in regards to his ADLs, for bathing and dressing, Petitioner needs assistance (but not total help); for transferring, and walking/mobility, Petitioner uses an assistive device. ¶ 4. In regards to his IADLs, for heavy chores and light housekeeping, Petitioner needs total assistance (cannot do at all); for using the telephone, Petitioner needs supervision or prompting; for managing money, preparing meals, shopping, and transportation, Petitioner needs assistance (but not total help). *Id.* Subsequent to the approval of additional homemaker services, Petitioner currently receives six (6) hours of personal care services, weekly; nine (9) hours of homemaker services, weekly; eleven (11) hours of adult companion care services, weekly; a Personal Emergency Response System ("PERS"); and

seven (7) home delivered meals, weekly. ¶ 9. Thus, Petitioner is allotted, each day, approximately fifty (50) minutes of personal care services to assist with his bathing, transferring, and other IADLs; and approximately one (1) hour and fifteen (15) minutes each day of homemaker services to assist with meal preparation and shopping. Further, Petitioner is allotted approximately one (1) hour and thirty (30) minutes each day of companion services, which can assist with meal preparation, laundry, and housekeeping tasks, as well as provide companionship. Appendix 9.1 of the PCS Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides the time allotted for personal care tasks. The times allotted for the tasks applicable to the Petitioner are as follows: a full body bath is allotted up to 30 minutes; and transfers can take up to “15 minutes/every 2 hours when medically indicated.”

27. As Petitioner bears the burden of proof, Petitioner must show that it is medically necessary for Petitioner to receive sixteen (16) additional hours of personal care services, weekly. Here, Petitioner provided credible evidence that his eye sight has worsened, but has not shown that sixteen (16) additional hours of personal care services are necessary to assist with ADLs and IADLs, especially in light of the approval at the hearing of five (5) additional hours, weekly, of homemaker services. For example, Petitioner did not show how long it took to accomplish each ADL or IADL. Thus, Petitioner did not show that an additional sixteen (16) hours of personal care services was medically necessary.


28. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of sixteen (16) hours, weekly, of personal care services was incorrect.

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

Respondent's denial of Petitioner's request for personal care services is **AFFIRMED**.

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

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

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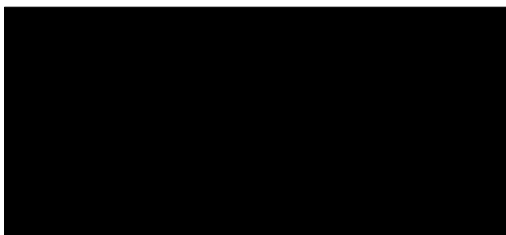
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**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**Copies Furnished To:**



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