



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

FILED

Dec 22, 2020, 9:54 am
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on December 17, 2020, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner Authorized Representative

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for sixty-four (64) hours per week of Personal Care services week was incorrect.

The second issue is Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for twenty (20) hours per week of Homemaker services week was incorrect.

PRELIMINARY STATEMENT

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

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following appeared as witnesses for Respondent: Louise Jeunty, Quality Improvement Supervisor for Sunshine; Consuela Suarez, Supervisor – Long Term Care for Sunshine; and Dr. John Carter ("Dr. Carter"), Medical Director – Long Term Care for Sunshine.

Sebastian, from Cyracom, Interpreter ID number 355538, provided translation services for Petitioner's Authorized Representative.

Suzanne Chillari, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-eight (128)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary, dated December 16, 2020; the Notice of Adverse

Benefit Determination (“NABD”), dated November 25, 2020; a Long Term Care Person-Centered Care Plan, reviewed November 20, 2020; a second Long Term Care Person-Centered Care Plan, reviewed December 11, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated October 14, 2020, 2020; a second 701B, dated December 11, 2020; a standard plan appeal acknowledgment, dated December 1, 2020; an expedited plan appeal acknowledgment, dated December 3, 2020; a Notice of Plan Expedited Appeal Resolution (“NPAR”), dated December 5, 2020; Sunshine Health Policy and Procedure LT.UM.09, last revised November 2019; and Fla. Admin. Code R. 59G-1.010(166). Absent an objection from the Petitioner, the undersigned admitted the one hundred and twenty-eight (128)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

Petitioner sent to the Office of Fair Hearings and Respondent a seventy (70)-page evidence packet prior to the hearing. The evidence packet included: an email dated December 15, 2020; telemedicine visit notes, dated [REDACTED] 2020; [REDACTED] treatment management notes, dated [REDACTED], 2020; new patient appointment notes, dated [REDACTED], 2020; follow up appointment note, dated [REDACTED], 2020; an MR Brain W/WO Contrast in [REDACTED] MRI report, dated [REDACTED], 2020; [REDACTED] treatment management notes, dated [REDACTED] 2020; [REDACTED] treatment management notes, dated [REDACTED], 2020; telemedicine visit notes, dated [REDACTED] 2020; [REDACTED] treatment management notes, dated [REDACTED], 2020; a letter of medical necessity, November 24, 2020; an imaging report, dated [REDACTED] 2019; an imaging report, dated [REDACTED] 2019; an imaging report, dated [REDACTED] 2019; an imaging report with no service date; progress notes, filed [REDACTED], 2020; progress notes, filed [REDACTED], 2020; progress notes, filed [REDACTED] 2020; progress notes, filed [REDACTED] 2020; telemedicine

psychiatry notes, dated [REDACTED] 2020; telemedicine psychiatry notes, dated [REDACTED] 2020; a letter addressed to the Office of Fair Hearings from Petitioner's Authorized Representative, dated December 15, 2020. Absent an objection from Respondent the undersigned admitted the seventy (70)-page evidence packet into evidence as Petitioner's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED] years old and diagnosed with high blood pressure, bladder incontinence, and has a benign brain tumor. Respondent's Composite Exhibit 1 at 59 and 66. Petitioner is legally blind and has hearing problems. *Id.* at 66. Petitioner cannot move the left side of his body. *Id.*
3. Petitioner lives in [REDACTED] and has three daughters who live in [REDACTED]. *See Id.* at 59 and 75. One of Petitioner's daughters was living with him but moved out on November 28, 2020. *Id.* [REDACTED] is currently staying with Petitioner but does not intend to stay on permanent basis. *Id.* Petitioner is currently receiving fifty-four (54) hours of Personal Care services per week, twenty (20) hours of Homemaker services per week, and ten (10) hours of Adult Companion services per week.
4. Petitioner needs some assistance with bathing as he can partially wash himself but requires assistance with most of the task. *See Id.* 63. Petitioner struggles with eating and requires some assistance with bringing the food to his mouth. *Id.* Petitioner uses a walker and a wheelchair to access the bathroom and for transferring/mobility. *Id.* Petitioner is unable to propel his

wheelchair and another person must assist him. *Id.* Petitioner always has assistance with his Activities of Daily Living or otherwise uses an assistive device. *Id.*

5. Petitioner needs total assistance with heavy chores, light housekeeping, managing money, preparing meals, and shopping. *Id.* at 64. Petitioner needs some assistance with managing money and using transportation. He uses an assistive device to use the telephone. *Id.* Petitioner always has assistance with his Instrumental Activities of Daily Living. *Id.*

6. ██████████ (“████████”), provided Petitioner with a letter of medical necessity, dated November 24, 2020. Petitioner’s Composite Exhibit 1 at 25. In the letter ██████████ states that Petitioner “[w]ill require more at-home care due to his disability as well as ongoing physical therapy. *Id.*

7. Petitioner requested an additional seventy-one (71) hours of Personal Care services per week and an additional twenty (20) hours of Homemaker services per week. Respondent denied the request in the NABD, dated November 25, 2020. The NABD explained as follows:

Sunshine Health has reviewed your request for an extra 71 hours per week of personal care (the person who helps bathe and dress you) and an extra 20 hours per week of homemaker service (the person who cleans for you), which we received on 11/20/2020. After our review, this service has been:

DENIED as of 11/25/20.

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

...

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

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;

2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and

3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider; and one of the following:

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

...

The facts that we used to make our decision are: The request for an extra 71 hours/week of Personal Care Services and an extra 20 hours/week of Homemaker Services is denied as not medically needed. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes:

- 47 hours/week of Personal Care Services;
- 20 hours/week of Homemaker Services; and
- 10 hours/week of Companion Care Services.

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

Respondent's Composite Exhibit 1 at 4 through 5.

8. The pertinent portion of Sunshine's Long Term Care Ancillary Criteria ("LT.UM.09") is as a follows:

B. Medical Necessity Determination

To assist in determining the medical necessity of any ancillary services, the clinical criteria established in this policy will be applied. Any decision to deny, reduce, suspend, or terminate services must be made by a Sunshine Health Medical Director as outlined in the policy Medical Necessity Review FL.UM.02.01 and Use of Clinical Criteria FL.UM.02 Sunshine Health will respond to requests within the timelines as outlined in the policy Timeliness of UM Decisions FL UM 05.

C. Criteria for Type of Service:

Criteria for each of the benefits noted in the Policy section will be used when reviewing the medical necessity of any ancillary services. In addition, the Medical Necessity Review policy FL.UM.02.01 is considered when determining medical necessity of ancillary services. The Florida Coverage Policies and Limitations

Handbooks are used to determine benefits, any benefit limitations, and additional criteria. The ancillary services of this policy are intended to augment and support the existing informal care and community services being provided to allow the member to remain safely in their home.

1. Determinants for Services

When considering the level of support the member requires and which of the ancillary services may support the member's cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member's support needed due to ADL deficits, living situation, and supervision needs.

a) Activities of Daily Living (ADL's)/Instrumental Activities of Daily Living (IADL's)

- Independent where member is able to provide the task without support, with or without assistive devices
- Minimal functional impairment where the ADL's require one of the following:
 - Supervision
 - At least minimal assistance
 - Member ambulates with assistance of a person or a device
 - Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply:
 - Member has ADLs requiring at least minimal assistance
 - Member ambulates with assistance of a person or device
 - Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
 - Member has ADLs requiring total assistance
 - Member is non-ambulatory
 - Member transfers require one (1) to two (2) person assist
 - Member's treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
- Lives with non-family (with consideration of the number of days and hours that nonfamily members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.

- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

...

6. Homemaker Services

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

Approval Criteria

Homemaker Service reviews include four (4) criteria:

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

...

7. Personal Care Services

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

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders

The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times

- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

Personal Care workers must be supervised by a registered nurse, licensed to practice nursing in Florida and who conducts a supervisory home visit every 60 days to observe the personal care worker. The services may be provided in the member's home or other location.

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

Id. at 101 through 103, 108, and 115.

9. Petitioner requested a plan appeal and received an NPAR dated December 5, 2020, partially upholding the denial. In the NPAR, the plan denied sixty-four (64) hours of Personal Care services per week requested by Petitioner and denied the entire twenty (20) hours per week of the Homemaker services requested. The NPAR explained as follows:

On December 3, 2020, we received your timely plan expedited appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated November 25, 2020, Notice of Adverse Benefit Determination Number [REDACTED], DENYING an extra 71 hours per week of personal care (the person who helps bathe and dress you) and an extra 20 hours per week of homemaker service (the person who cleans for you), provided to [REDACTED]

On December 4, 2020, after consideration of the information you provided to Sunshine Health in support of your expedited plan appeal, Sunshine Health hereby PARTIALLY DENIES your plan appeal. As a result, [REDACTED] will not receive an extra 71 hours per week of personal care (the person who helps bathe and dress you) and an extra 20 hours per week of homemaker service (the person who cleans for you), effective December 4, 2020.

The reason for our decision was: The appeal to overturn the denial of an extra 71 hours per week of Personal Care Services and an extra 20 hours per week of Homemaker Services is partially approved. Based on the assessment, Sunshine Health will approve an extra 7 hours per week of Personal Care Services and will deny the remaining requested 64 hours per week of Personal Care Services and extra 20 hours per week of Homemaker Services. The updated care plan approved by Sunshine Health will include: • 54 hours per week of Personal Care Services • 20 hours per week of Homemaker Services • 10 hours per week of Companion Care Services[.] This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 90.

10. ██████████ requested a Fair Hearing on December 9, 2020. On December 16, 2020, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for December 17, 2020, at ██████████

11. During the hearing, ██████████ testified that Petitioner is often disoriented or confused and does not recognize family members. ██████████ stated that Petitioner's three daughters are limited in their availability to care for Petitioner. One sister is diagnosed with leukemia, and the other who previously lived with Petitioner had back surgery and has limited physical ability to assist Petitioner. As for herself, ██████████ testified that she has her own health issues and must care for her son who has a brain injury. Referring to Petitioner's living situation, she testified that she is currently staying with Petitioner but cannot stay with him permanently. ██████████ explained that she requested hours through the Plan coordinator to achieve 24/7 care but did not account for the time required for assisting Petitioner.

12. Dr. Carter's medical background is in internal medicine, geriatric medicine, and hospice and palliative medicine. Dr. Carter testified that the total eighty-four hours of care Petitioner is receiving is sufficient to meet Petitioner's needs because Petitioner has other family members

living in the area and Petitioner requires some, but not total, assistance with his Activities of Daily Living.

CONCLUSIONS OF LAW

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

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

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

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

1.1 Description and Program Goal

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

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)

- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

...

1.3.16 Natural Supports

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

...

4.1 General Criteria

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

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

...

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.9 Homemaker Services

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

...

4.2.2.6 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.

17. 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.

18. The Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010,

defines "Medically Necessary" or "Medical Necessity" as follows:

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain

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

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

Personal Care

19. Respondent denied Petitioner's request for sixty-four (64) hours per week of Personal Care services on the basis that the requested hours are not medically necessary. *Supra* ¶ 7. As provided in the LTC Policy, Personal Care services are intended to provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. *Supra* ¶ 16.

20. Dr. Carter testified that Respondent reviewed Petitioner's level of services and determined that the current level of services is sufficient to meet Petitioner's needs. *Supra* ¶ 11. [REDACTED] testified that she currently lives with Petitioner but is unable to stay with him permanently. *Supra* ¶ 11. She added that all of Petitioner's daughters cannot care for him because one has leukemia, another has had back surgery recently, and that she has health problems and a son with a brain injury that she must care for. *Id.* The 701B, dated December 11, 2020, shows that Petitioner needs some assistance with bathing, dressing, and eating and uses a

wheelchair and walker to use the restroom, transfer, and move. *Supra* ¶ 4. Petitioner always has assistance with those tasks or uses an assistive device. *Id.* With respect to heavy chores, light housekeeping, managing money, preparing meals, and shopping Petitioner needs some assistance and always has assistance. Petitioner explained her request for the specified hours by stating that she wanted Petitioner to have 24/7 care. *Supra* ¶ 11.

21. The component of medical necessity at issue is whether Petitioner's request is individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs. *Supra* ¶ 17. In this case, Petitioner has not accounted for the time required to assist Petitioner with his ADLs and IADLs; instead, ██████████ asserts on behalf of Petitioner that his condition requires 24/7 care. The undersigned considered that Petitioner's daughters have medical issues that may limit their availability to assist Petitioner. ██████████ is also limited by the time that she needs to provide care for her son. However, Petitioner did not offer additional evidence as to the extent these issues cause Petitioner's daughters to be unable to care for Petitioner. Currently, ██████████ is still staying with Petitioner and acting as a natural support. While the undersigned considered that the arrangement is intended to be temporary, without more, the assistance provided to Petitioner cannot be disregarded for what may occur in the future. The undersigned also considered the letter of medical necessity from ██████████, noting that it does not make any recommendation as to how much additional assistance Petitioner requires. *Supra* ¶ 6. As noted in the Definitions Policy, "[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 or a medical necessity or a covered service." *Supra* ¶ 18. In light of the

evidence presented, Petitioner has not met the burden of proof to show that the Personal Care services requested are 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. Petitioner has not shown that the Personal Care services are medically necessary.

Homemaker Services

22. Respondent denied Petitioner's request for twenty (20) hours per week of Homemaker services on the basis that the requested hours are not medically necessary. *Supra* ¶ 7. As provided in the LTC Policy, Homemaker services are intended for the provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. *Supra* ¶ 16.

23. Dr. Carter testified that the eight-four hours of care services currently in place are sufficient to meet Petitioner's needs without specifically addressing Homemaker services. *Supra* ¶ 12. Petitioner did not specifically address Homemaker services or make any distinction from the total services requested. *Supra* ¶ 11.

24. The component of medical necessity at issue is whether Petitioner's request is individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs. *Supra* ¶ 17. Petitioner offered no evidence addressing any needs for additional Homemaker services. The 701B reflects that at the current service level Petitioner's needs with regards to meal preparation or household care are currently met. As with the Personal Care services, the testimony offered by Petitioner does not address whether the Homemaker services requested are medically necessary in the amount

requested. Petitioner has not accounted for the time required to meet her needs for tasks such as heavy chores, light housekeeping, and preparing meals. Also, as with the Personal Care services, both the hearing record and evidence, including the letter from [REDACTED], are void of any schedule of assistance, routines, or other information which could be used to arrive at a determined amount of Homemaker services Petitioner requires. Accordingly, Petitioner has not met the burden of proof to show that the Homemaker services requested are 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. Petitioner has not shown that the Homemaker services are medically necessary.

Conclusion

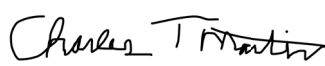
25. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of sixty-four (64) hours per week of Personal Care services week was incorrect. Furthermore, Petitioner has not proved by a preponderance of the evidence that Respondent's denial of twenty (20) hours per week of Homemaker services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of sixty-four (64) hours per week of Personal Care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of sixty-four (64) hours per week of Personal Care services is **DENIED**.

Respondent's denial of twenty (20) hours per week of Homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of twenty (20) hours per week of Homemaker services is **DENIED**.

DONE and ORDERED this 22nd day of December, 2020, in Tallahassee, Leon County, Florida.



Charles Martin
20-FH[REDACTED] & 20-FH[REDACTED]
2020.12.22 08:20:50 -05'00'

CHARLES MARTIN, Hearing Officer
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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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