

neurologist with the [REDACTED], provided testimony on behalf of Petitioner. [REDACTED] (“[REDACTED]”), Petitioner’s son, provided testimony on behalf of Petitioner.

Maria Mojica (“Ms. Mojica”), Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”), appeared as a representative for Respondent. Dr. John Carter (“Dr. Carter”), Long Term Care Medical Director for Sunshine, appeared as a witness for Respondent. Dr. Michael Gervasi (“Dr. Gervasi”) Long Term Care Medical Director for Sunshine, appeared as a witness for Respondent. The following individuals appeared as witnesses for Sunshine but did not testify at the Fair Hearing: Consuela Suarez, Supervisor for Long Term Care at Sunshine; Melissa Lane, Senior Manager for Member Appeals at Sunshine; Cynthia Morisaki, Long Term Care Supervisor at Sunshine; and Aurora Balan, Long Term Care Coordinator at Sunshine.

Chrissie Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Petitioner introduced a two-page evidence package at the Fair Hearing. The packet consists of the following documents: fax cover page, dated December 29, 2020; and letter from [REDACTED], dated October 29, 2019. Absent an objection from Respondent, the undersigned admitted the evidence packet into evidence as Petitioner’s Exhibit 1.

Respondent introduced a one hundred and seventeen (117)-page evidence packet consisting of the following documents: the Medicaid Fair Hearing Table of Content; Medicaid Fair Hearing Summary, dated December 22, 2020; Notice of Adverse Benefit Determination (“NABD”), dated June 29, 2020; Long Term Care Person-Centered Care Plan, signed May 1, 2020; Long Term Care Person-Centered Care Plan, signed December 17, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment, dated May 1, 2020; Florida Department of Elder

Affairs 701B Comprehensive Assessment (“701B Assessment” or “most recent 701B Assessment”), dated October 27, 2020; Standard Appeal Acknowledgement, dated July 17, 2020; Expedited Appeal Request Decision, dated July 17, 2020; Notice of Plan Appeal Resolution (“NPAR”), dated August 15, 2020; Sunshine Health Policy and Procedure, LTC (Long Term Care) Ancillary Service Criteria, LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection, the undersigned admitted Respondent’s one hundred and seventeen (117)-page hearing packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine’s Florida Long Term Care plan. See Respondent’s Composite Exhibit 1 at page 13. Sunshine 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 75-year-old female who lives alone in an efficiency apartment located in the back of her son, [REDACTED] house. *Id.* at 14, 23, 32, and 50. Petitioner has a second son, [REDACTED], who lives nearby with [REDACTED]. *Id.* at 32. Petitioner suffers from Parkinson’s Disease, severe balance issues, osteoarthritis, low blood pressure, frequent dizziness, fibromyalgia, frequent incontinence of bowel and bladder, anxiety, depression, hallucinations, and insomnia. *Id.* at 40, 55 – 56 and 58. Petitioner requires supervision due to difficulty ambulating. *Id.* at 58. Petitioner is forgetful or easily confused nearly every day, and she is easily agitated or disruptive more than half the days each month. *Id.* at 40.

3. By letter dated October 29, 2019, Petitioner’s neurologist, [REDACTED], provided the following information concerning Petitioner’s medical condition:

The above named patient was been under my neurologic care since [REDACTED] 2013. She was diagnosed with a progressive neurological condition of Parkinson disease

since 2000. Due to her condition, she experiences dementia, dyskinesia (involuntary movements), digestion problems, difficulties walking including gait, rigidity, tremors, difficulties speaking, freezing gait, postural instability or impaired balance.

Due to her progressive disease, [Petitioner] requires 24 hours care home health due to her cognitive and motor impairment.

Petitioner's Exhibit 1 at page 2.

4. Regarding Activities of Daily Living ("ADLs"), Petitioner needs total assistance (cannot do at all) with bathing, dressing, using the bathroom, transferring, and walking/mobility. *Id.* at 53. Petitioner needs assistance (but not total help) with eating. *Id.* Petitioner is unable to ambulate due to Parkinson's Disease and tremors; however, she has not had a fall in the previous 6 months. *Id.* Petitioner always has assistance with her ADLs. *Id.*

5. Regarding Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and using transportation. *Id.* at 54. Petitioner needs assistance (but not total help) with managing medication. *Id.* Petitioner always has assistance with her IADLs. *Id.*

6. On June 29, 2020, Respondent issued an NABD denying Petitioner's request for an additional 60 hours per week of personal care services, explaining that the requested services are not medically necessary. *Id.* at 4 - 8. The NABD stated:

Sunshine Health has reviewed your request for an extra 60 hours per week of Personal Care Services (the person who helps bathe and dress you), which we received on 06/22/2020. After our review, this service has been: DENIED as of 06/29/2020.

We made our decision because:

(Check all boxes that apply)

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 60 hours per week of Personal Care Services is denied for lack of medical necessity. 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:

- 50 hours per week of Personal Care Services
- 7 hours per week of Homemaker Services
- 14 hours per week of In Home Respite Care Services
- 16 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 4 – 5.

7. Petitioner requested a plan appeal. *Id.* at 79. On August 15, 2020, Respondent sent Petitioner an NPAR approving 6 additional hours per week of personal care services and denying 54 additional hours per week of personal care services. *Id.* at 79 - 81. The NPAR stated as follows:

On August 11, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby partially

approves your plan appeal. As a result, [Petitioner] will receive the extra 6 hours per week of personal care services, effective August 11, 2020.

The reason for our decision was:

Based on the assessment of the member's care needs and household and caregiver status, the denial of extra services is now partially overturned. Sunshine Health will now approve an extra 6 hours/week of Personal Care Services as medically needed, and will continue to to [sic] deny the remaining requested extra 54 hours/week of Personal Care Services as not medically needed.

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

Id. at 79.

8. Sunshine's Policy and Procedure LT.UM.09 Long Term Ancillary Service Criteria provide the following with regard 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 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

See Section C.1 for more details

Covered Personal Care services may include:

a) Bathing

Assistance with bathing, including washing, rinsing, and drying the body or body parts.

- Member's ability to transfer in and out of the tub or shower
- Amount of time it takes the member to transfer in and out of the tub or shower
- Ability of member to prepare the shower or run the bath water
- Ability of member to use any assistive devices, such as a grab-bar or shower chair
- Ability of member to use a sponge or wash cloth to clean himself/herself
- How many times per week does the member bathe, consider that:
 - o Incontinence episodes resulting in the need for a bath
 - o Daily bathing of the elderly is not recommended due to damage that occurs to the skin from the water and the soap
 - o Bathing more than once per day is a personal preference and not a necessity.
- Full bath (bathtub, shower, or bed bath) or partial sponge bath (washing of face, underarms, and private areas).
- A bed bath for members who are bed bound and cannot get out of the bed to be bathed in a shower or tub

b) Dressing and Grooming

Dressing assistance includes the laying out, taking off, putting on, and fastening of clothing and footwear, and includes:

- Member's ability to choose their own clothes, put them on, and put on socks and shoes
- Ability to put clothes, socks and shoes on if someone lays out the clothes
- Ability to button, zipper, tie, or buckle clothes or shoes

- Ability to successfully use assistive devices in dressing, such as reachers, sock pullers, or shoehorns
 - Ability to dress self in the morning or evening to get ready for bed
- Grooming includes assessment of member's ability to:
- Comb or brush hair
 - Shave
 - Complete oral hygiene, including brushing teeth, remove dentures/partials, clean dentures/partials, and replace dentures/partials
 - Trim and clean fingernails and toenails

c) Eating and Feeding Considerations

Eating/Feeding is the process of a member getting oral nourishment from a receptacle (dish, plate, cup, glass, bottle, etc.) into their body after it is cooked or prepared for eating. (This does not include tube feeding as that is considered a skilled task.)

Includes an assessment of the member's ability to:

- Cut foods into appropriate size pieces
- Move food or drink from the serving receptacle to their mouth

Support for eating considers the number of meals per day that the member eats.

Note: Assistance with the preparation of meals is considered as part of Meal Preparation

d) Toileting Considerations

- Taking off and putting on of clothing and/or diapers,
- Post-toilet hygiene
- Use of equipment, such as a urinal or bedpan
- Emptying of urinal or bedpan
- Cleaning of a catheter or ostomy bag
- Reminders or a toileting schedule

e) Transferring Considerations

Transferring is the member's ability to move horizontally and/or vertically between the bed, chair, wheelchair, commode, etc. It includes an assessment of the member's:

- Ability to use any mechanical devices such as a walker, cane, handrails, or wheelchair to assist with transfers
- Ability to safely transfer without the assistance of another person
- Ability to physically participate in the transfer by pivoting, holding on, or bracing themselves to assist the caregiver

f) Mobility Considerations

Mobility is the extent of the member's purposeful movement within their residence.

It includes an assessment of the member's:

- Ability to purposely move about his/her residence independently with or without the use of assistive devices, this includes the ability of a member to move around in a wheelchair
- Movements being unsafe without the assistance of another person in ambulating
- Muscle weakness, unstable gait or unstable balance

Id. at 103 – 106.

9. Petitioner is currently authorized to receive 56 hours per week of personal care services, 7 hours per week of homemaker services, 14 hours per week of respite care services, and 16 hours of companion care services. *Id.* at 5 and 79.

10. On December 10, 2020, Petitioner requested a Fair Hearing due to the denial of additional personal care services. On December 22, 2020, the undersigned scheduled the Fair Hearing for January 20, 2021, at [REDACTED], and all parties were duly notified.

11. At the Fair Hearing, [REDACTED] asserted that Petitioner has severe symptoms of late stage Parkinson's Disease. Referring to Petitioner's Exhibit 1, [REDACTED] testified that [REDACTED] wrote a letter of medical necessity recommending round clock care for Petitioner in 2019, and Petitioner's condition has worsened since that time. [REDACTED] maintained that Petitioner is bed ridden. Further, she explained that Petitioner takes a sleeping pill at night that makes her groggy and at risk of falling. [REDACTED] argued that Petitioner has no one to care for her during the night because her son, [REDACTED], suffers from spondylosis with back pain and is unable to work, lift, or bend. [REDACTED] further argued that she is unable to care for Petitioner because she has two tumors in her kidneys and is in Stage 3 renal failure. Finally, [REDACTED] argued that Petitioner's son, [REDACTED], is a truck driver who is unable to assist at night due to job-related sleep

and rest requirements as well as having a new baby. [REDACTED] asserted that Petitioner is totally dependent for her ADLs, and her food is pureed because she is at risk of choking. [REDACTED] maintained that hospice sends a nurse periodically to check on Petitioner, but they do not provide personal care, hygiene care, volunteer services, or duplicate the services provided by Sunshine.

12. At the Fair Hearing [REDACTED] testified he has treated Petitioner since 2013. [REDACTED] asserted that he last saw Petitioner via Zoom one week prior to the hearing. [REDACTED] maintained that Petitioner is in Stage 4 Parkinson's Disease, suffers from dementia and dysphagia, and is fully dependent for ADLs. He asserted that Petitioner needs constant supervision due to her major cognitive impairment and risk of falling, which are worsening over time. [REDACTED] asserted that Petitioner takes a sleeping pill for agitation and that also puts her at risk for falls if she gets up at night.

13. At the Fair Hearing, [REDACTED] testified that he concurs with the testimony of [REDACTED] and [REDACTED]. He stated that he is unable to assist Petitioner because he suffers from back pain. Further, he asserted that Petitioner lives in the back of his brother's house in an efficiency apartment, but his brother is unable to assist Petitioner due to his job as a truck driver and responsibilities with a new baby.

14. Dr. John Carter is a long term care Medical Director at Sunshine and is board certified in internal medicine, geriatric medicine, and hospice and palliative care. Dr. Carter agreed that Petitioner is in advanced stages of Parkinson's Disease and is totally dependent for all of her ADLs, except eating. Dr. Carter argued that Petitioner is currently approved for a total of 96 hours per week of paid services as follows: 56 hours per week of personal care services, 7 hours per week

of homemaker services, 14 hours per week of respite care services, and 16 hours of companion care services. He argued that paid services are intended to supplement the care provided by Petitioner's natural supports. In this case, he asserted, Petitioner lives on the same property with one son and has a second son living in the community who can help out. Dr. Carter argued that the remaining 54 hours of personal care services are not medically necessary in light of the available family support. Dr. Carter also noted that Petitioner has been receiving home care hospice services since July 2020. Dr. Carter argued that Sunshine reviewed Petitioner's documentation and correctly determined that an additional 54 hours per week of personal care services are not medically necessary.

CONCLUSIONS OF LAW

15. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

17. 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.

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

19. 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”) (“LTC Policy”). The Agency’s LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The 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 Home and Community-Based Supportive Services

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

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

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:

...

4.2.2.5 Medical Equipment and Supplies

In accordance with Rule 59G-4.070, F.A.C. This service includes the provision of medical equipment and supplies specified in the plan of care, including: devices, controls, or appliances that enable the enrollee to increase the ability to perform activities of daily living; devices, controls, or appliances that enable the enrollee to perceive, control, or communicate with the environment in which he or she lives; items necessary for life support or to address an enrollee's physical conditions, along with ancillary supplies and equipment necessary to the proper functioning of such items; such other durable and non-durable medical equipment not available under the State Plan that is necessary to address enrollee needs, including consumable medical supplies, such as adult diapers; and repair of such items or replacement parts.

...

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.

LTC Policy at pages 1-8.

20. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, states as follows:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to

accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

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.

...

1.3.2 Babysitting

Custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient.

...

1.3.6 Home Health Services

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

...

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following

...

- Babysitting

21. In the instant case, Petitioner requested an additional 54 hours of personal care services per week. *See supra* ¶ 6 and 7. As established on the record by the evidence and testimony, Respondent denied Petitioner’s request, 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.

22. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 19.

23. Section 4.2.2.6 of the LTC Policy indicates that 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* ¶ 19.

24. The evidence presented in this case suggests that Petitioner may need additional paid services because her condition is progressive, *supra* ¶ 3; however, the specific need for an additional 54 hours per week of personal care services was not demonstrated in this case. Specifically, Fla. Admin. Code R. 59G-1.100 requires that a service “[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* ¶ 19. In this case, Petitioner requires total assistance (cannot do at all) with almost all of her ADLs: bathing, dressing, using the bathroom, transferring, and walking/mobility. *See supra* ¶ 4. Petitioner needs assistance (but not total help) with eating, and she eats pureed food. *See supra* ¶ 4 and 11. Petitioner is unable to ambulate due to Parkinson’s Disease and tremors; however, the record indicates that she has not had a fall

in the 6 months previous to her most recent 701B Assessment. *See supra* ¶ 4. The record is devoid of any evidence that Petitioner has experienced a fall since the most recent 701B Assessment. Petitioner's most recent 701B Assessment states that Petitioner always has assistance with her ADLs, and it does not identify an unmet need for assistance with ADLs. *See supra* ¶ 4. With regard to IADLs, Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and using transportation. *See supra* ¶ 5. Petitioner needs assistance (but not total help) with managing medication. *See supra* ¶ 5. Petitioner's most recent 701B Assessment states that Petitioner always has assistance with her IADLs, and it does not identify an unmet need for assistance with IADLs. *See supra* ¶ 5.

25. Section 1.3.16 of the LTC Policy defines natural supports as "unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports." *See supra* ¶ 19. The record indicates that Petitioner has some level of natural supports available in that she lives in an efficiency apartment located in the back of her son's (██████) house, and she has a second son (██████) who lives nearby. *See supra* ¶ 2. Based on the testimony, Petitioner's caregivers are willing to assist Petitioner but are experiencing medical issues and challenges with work requirements and family obligations. The record indicates that one son (██████) is unable to stay with Petitioner overnight due to work requirements, *supra* ¶ 11 and 13, but the record is not clear why Petitioner's second son (██████), who has back pain but does not work, is unable to supervise Petitioner at night. Petitioner is currently authorized to receive a total of 93 hours per week of paid services as follows: 56 hours per week of personal care services, 7 hours per week of homemaker services, 14 hours per week of respite care services, and 16 hours of companion care services. *See supra* ¶ 9 and 14. Petitioner is also under

the care of hospice, although the record is unclear what service hospice provides to Petitioner beyond periodic nurse visits. *See supra* ¶ 11 and 14.

26. Petitioner's physician, [REDACTED], provided a letter of medical necessity and testified at the hearing in support of Petitioner's need for constant supervision due to her major cognitive impairment and risk of falls. *See supra* ¶ 12. [REDACTED] argued that Petitioner requires 24 hours of home care due to her cognitive and motor impairment. *See supra* ¶ 2. Although the record is clear that Petitioner's condition is progressive, [REDACTED] did not specify what specific services or mix of services Petitioner requires beyond the need for "supervision." [REDACTED] asserted that Petitioner takes a sleeping pill for agitation and is at risk for falls. *See supra* ¶ 11. However, Petitioner's most recent 701B Assessment indicates that Petitioner has had no falls in the previous 6 months, and there was no testimony at the Fair Hearing indicating that Petitioner has recently experienced a fall. *See supra* ¶ 4 and 11 – 14. Beyond the fall risk, the record does not identify that Petitioner currently has any specific unmet need for assistance with her ADLs and IADLs. *See supra* ¶ 2, 3 and 4. Mr. and [REDACTED] testified that Petitioner's family members are unable to assist Petitioner due to their medical conditions, work schedules, and family obligations, but the record is unclear why at least one family member is unable to assist or supervise Petitioner at night. *See supra* ¶ 11 and 13. At the Fair Hearing, [REDACTED] and [REDACTED] asserted that Petitioner needs constant supervision due to her major cognitive impairment and risk of falling in the future. *See supra* ¶ 12 and 13. However, the definition of personal care services excludes babysitting or supervision beyond what documented to be medically necessary for the recipient. *See supra* ¶ 20. Even accepting that Petitioner may need additional paid services due to having a progressive disease, there was no testimony or

documentary evidence (i.e., a daily schedule, or a schedule of ADLs and IADLs, showing the amount of time needed for each ADL and IADL) quantifying Petitioner's need, specifically, for 54 more hours of personal care hours in addition to the 93 total hours per week of paid services already approved for Petitioner.

27. Dr. Carter, who is board certified in internal medicine, geriatric care, and hospice and palliative care, argued that Sunshine reviewed all of the documentation submitted with Petitioner's request and correctly determined that Petitioner's currently approved services are adequate for Petitioner's needs. *See supra* ¶ 11. As Dr. Carter argued, paid services are intended to supplement natural supports provided by the family. In this case, Petitioner has the natural supports of family members living with her, or nearby, in addition to 93 hours of paid support and access to hospice services.

28. Therefore, considering Petitioner's currently authorized services, along with the LTC Policy definition for personal care services, Petitioner did not demonstrate that her aforementioned needs, *supra* ¶ 2 – 4, and 11 - 13, are not sufficiently met by her currently authorized services. Given that Petitioner failed to establish that the requested 54 additional hours of personal care services are warranted in this matter, *supra* ¶ 24 - 26, the requested personal care services are "in excess of [Petitioner's] needs." *See supra* ¶ 19.


29. In light of the both parties' testimony, Respondent's Composite Exhibit 1, the LTC Policy, and the PC Policy, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that the additional 54 hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer finds that Petitioner failed to prove by a

preponderance of the evidence that Respondent's denial of the requested additional personal care services was incorrect.

DECISION

Respondent's denial of an additional 54 hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE AND ORDERED this 16th day of February 2021, in Tallahassee, Leon County, Florida.


Laura Gallagher
20-FH [REDACTED]
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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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