



FILED

Mar 15, 2021, 11:34 am

OFFICE OF FAIR HEARINGS

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

[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 January 29, 2021, at [REDACTED]. During the hearing, upon Petitioner’s motion to continue the hearing, the parties stipulated to continue the hearing to February 15, 2021 commencing at [REDACTED]. Accordingly, pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant matter on February 15, 2021, at [REDACTED].

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to reduce Petitioner’s homemaker services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically and were in attendance for all hearings, unless otherwise noted. Petitioner's Authorized Representative and friend, [REDACTED] ("[REDACTED]"), appeared on behalf of Petitioner. Petitioner did not appear at either hearing.

Maria Mojica ("Ms. Mojica"), Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent. John Carter, M.D. ("Dr. Carter"), Long Term Care Medical Director for Sunshine, appeared as a witness for Respondent. Dr. Michael Jervasi, Medical Director for Sunshine, and Marquita Woodard, Care Coordinator for Sunshine, appeared but did not provide any testimony.

Jacqueline Seaton, Manager of Case Management for Sunshine, and Loise Jeanpy, Quality Supervisor for Sunshine, appeared at the first hearing only and did not provide any testimony. Linda Latson, Registered Nurse Specialist/Fair Hearings Liaison for the Agency for Health Care Administration ("AHCA" or "Agency") only appeared at the first hearing as an observer. Dillon Nicole, Hearing Officer for the Office of Fairing Hearings, only appeared at the first hearing as an observer.

Melissa Layne, Senior Manager for Member Appeals for Sunshine and Alba Rosknsky, Case Management Supervisor for Sunshine, only appeared at the second hearing, but did not provide any testimony. Doris Rivera, Medical Health Care Program Analyst for AHCA only appeared at the second hearing as an observer.

Petitioner did not introduce any exhibits during the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and nineteen page (119)-page evidence packet. The evidence packet included: Medicaid Fair Hearing Table of Content; Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination ("NABD")

dated October 13, 2020; a Long Term Care Person-Centered Care Plan (“POC”) review date September 14, 2020; a POC, review date December 10, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) dated September 14, 2020; Florida Department of Elder Affairs 701B dated December 10, 2020; an e-mail dated January 8, 2021 from ██████████ to Sunshine Appeals; an Expedited Appeal Request Decision dated November 13, 2020; a Standard Appeal Acknowledgement date November 13, 2020; a Notice of Plan Appeal Resolution (“NPAR”) dated December 8, 2020; Sunshine Health Policy and Procedure, LTC (Long Term Care) Ancillary Service Criteria, Reference Number Lt.UM.09 (“Lt.UM.09”); and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.1010(166). Absent an objection from the Petitioner, the undersigned admitted the 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. The POC with a 90-day review date of September 14, 2020, indicates that for the period of April 1, 2020 to March 31, 2021, Respondent had authorized Petitioner to received ten (10) hours of homemaker services per week. Respondent’s Composite Exhibit No. 1 at 30.
3. In an NABD dated October 13, 2020, Respondent informed Petitioner that it was reducing his homemaker services from ten (10) hours to five (5) hours per week. The NABD stated, in pertinent part, as follows:

Sunshine Health has reviewed your request for 10 hours weekly-homemaker service (the person who cleans for you), which we received on 10/13/2020. After our review, this service has been:
REDUCED as of 10/24/2020.

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: Sunshine Health has looked at the member's present care needs and provided home services. The member's present care plan includes:

- 11 hours per week of Personal Care Services
- 10 hours per week of Homemaker Services
- 2 hours per week of Companion Care Services
- 7 meals per week of Home Delivered Meals

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Homemaker Services from 10 hours per week to 5 hours per week, a reduction of 5 hours per week of Homemaker Services. The updated care plan approved by Sunshine Health will include:

- 11 hours per week of Personal Care Services
- 5 hours per week of Homemaker Services
- 2 hours per week of Companion Care Services
- 7 meals per week of Home Delivered Meals

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

Id. at 4 and 5.

4. Petitioner time appealed the NABD and received an NPAR dated December 8, 2020 denying Petitioner's appeal. *Id.* at 75 and 81. Petitioner requested a Fair Hearing on December 15, 2020, and the hearing was held on February 15, 2021.
5. Petitioner is fifty-four (54) years old. *Id.* at 50.
6. Petitioner's medical conditions include, acid reflux/GERD, partial amputation of his left foot, high blood pressure, high cholesterol, insulin dependent diabetes mellitus, frequent dizziness, congestive heart failure, constant bladder incontinence, occasional bowel incontinence, end stage renal disease, COPD, past stroke, and vision impairment. *Id.* at 53 and 56.
7. Petitioner attends dialysis treatment three (3) times a week with each treatment lasting five (5) hours. *Id.* at 57.
8. The 701B completed on December 10, 2020, states that during the prior year, Petitioner visited the emergency room one (1) time and was admitted to the hospital three (3) times. *Id.* at 53.
9. Petitioner is unable to drive a vehicle. *Id.*
10. The 701Bs completed on September 14, 2020, December 10, 2020, addressed the level of assistance Petitioner needs with Activities of Daily Living ("ADLs"). Both 701Bs indicate Petitioner needs assistance (but not total help) with bathing, dressing, using the bathroom, transferring, and walking/mobility. Petitioner needs no assistance with eating. *Id.* at 36 and 54. The 701Bs further indicate that, as to the ADLs for which Petitioner requires assistance, he always has assistance. *Id.*

11. The 701Bs also address the level assistance Petitioner needs with Instrumental Activities of Daily Living (“IADLs”). Both 701Bs indicate that Petitioner needs total assistance with (cannot do at all) heavy chores, light housekeeping, money management, meal preparation, medication management, and using transportation. Petitioner needs supervision or prompting when using the telephone and needs assistance (but not total help) with shopping. The 701Bs state that Petitioner always has assistance with IADLs. *Id.* at 37 and 55.

12. In addition to the homemaker services that are at issue in the instant case, Petitioner currently receives the following services on a weekly basis: eleven (11) hours of personal care services, two (2) hours weekly of adult companion services, and seven (7) home delivered meals per week. Petitioner also receives on a monthly basis the following supplies: one (1) case of pull-ups, one (1) case of liners or shields or pads, one (1) box of gloves and one (1) pack of wipes. *Id.* at 30.

13. ██████████ un rebutted testimony during the hearing established that Petitioner does not have enough friends or family to help him his daily needs, meal preparation and mobility issues. Petitioner's left foot was partially amputated in ██████████ 2020. Petitioner uses a wheelchair for mobility. Petitioner needs total assistance while bathing due to his amputation. He also needs total assistance with dressing. He also requires full care with meal preparation. Petitioner lives in a mobile home by himself. His laundry is located in a shed outside the home. He is unable to cross over the shed's raised threshold with his mobility device. Therefore, his caregivers are typically doing one load of laundry a day for Petitioner. Sometimes Petitioner skips meals because he does not have enough help with meal preparation. ██████████ ability to help Petitioner is limited by her own medical condition, lupus.

14. The findings are based on the testimony of Dr. Carter's testimony during the hearing. Dr. Carter's professional background includes internal medicine, geriatric medicine and hospice and palliative medicine and he is homecare physician for hospice. Petitioner requires partial assistance with a majority of ADLs such as bathing, dressing and mobility issues. In October 2020, Respondent completed a periodic routine review of the case manager's assessment as documented in the 701B. Respondent conducts such reviews on a regular basis with a recipient or recipient's caregiver in order to determine the recipient's current health and living conditions and the need for services and supplies. As a result of the October 2020 review, the Respondent determined the number of hours of homemaker services were more than needed, and, therefore medically unnecessary. Respondent decided to reduce Petitioner's homemaker services because the 701B's information indicated Respondent needs partial, not total, assistance for the majority of ADLs and because both personal care services and companion services can be used for homemaker like services if so directed by Petitioner.

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) of the Florida Statutes (2020). This order is the final administrative decision of AHCA under Fla. Stat. § 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. Because Respondent is reducing a previously authorized service, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence

standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

18. The Statewide Medicaid Managed Care Long-Term Care Program 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 including homemaker services. The LTC Policy provides the following with respect to 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

...

4.2.1.9 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.

19. 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.

20. 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

21. LT.UM.09 provides for the following regarding homemaker services:

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

See Section C.1 for more details

Covered Homemaker service may include:

- a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Housekeeping Considerations:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member
- For members living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area.
- The entire size of the home may be considered if cleaning of specific areas not

- used by the member is needed to maintain sanitary living conditions.
- For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.

b) Shopping for the recipient's food and essential household items, picking up prescriptions and needed medical supplies

Shopping Considerations:

- Member' ability to obtain groceries, household goods, and medications on own
- Member's ability to put away groceries, household goods, and medications on their own
- Member lives with family who does the shopping for the member and puts away groceries, household goods and medications
- Member has other supports who do the shopping for the member and puts away groceries, household goods and medications

c) Meal preparation includes menu planning, storing, preparing, cooking, and serving food (buttering bread and cutting food into bite size pieces, plating). Meal preparation does not include the cost of the food.

Meal Preparation considerations

- Number of meals per days eaten by member or number of meals the member should eat per day
- Number of daily meals prepared by a caregiver and left in a location that the member can access, heat if necessary, and get to the table to eat.
- Meal preparation tasks member is able to complete independently. Is member able to use the microwave stove or oven?
- Amount of assistance needed in the preparation and cleanup, such as:
 - o Meal planning
 - o Meal preparation
 - o Special diets
 - o Special food preparation
 - o Assembling food on plates
 - o Getting food to the table
- Will additional supports allow the member to eat more often or improve nutritional status

d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all Laundromat and/or cleaning fees.

Laundry Considerations:

Identify the amount of laundry to be done on a weekly basis, including washing, drying, folding and putting away member's clothes, bed linens and towels, including:

- Amount of clothing and other items to be laundered
- Identify if member soils their clothing or bedding due to incontinence, therefore more frequent laundry is needed, which results in more smaller loads
- Preparing clothes and other items to be washed
- Putting the clothes and other items in the washer and dryer
- Hanging clothes and other items to dry
- Other chores could be done while the member's clothes or other items are being washed, dried, folded, and put away.
- If laundry must be done in an apartment laundry room or a community laundry, additional time can be given for waiting for the laundry to be done.
- Routine changing of bed linens is considered part of bedroom housekeeping

Homemaker Service Determination Table

<p>Support needed for housekeeping: The following guide assists in determining the amount of support needed by the member:</p> <ul style="list-style-type: none"> • Lives alone and is able to provide own housekeeping: 0 minutes • Lives alone and needs minimum to maximum support of outside assistance for some housekeeping: 15-120 min/week • Lives with family who is able to provide all of member's housekeeping: 0 minutes • Lives with family who provide a minimum or moderate amount of the member's housekeeping: 15-90 minutes/week • Has informal supports who provide all of member's housekeeping: 0 minutes Has informal supports who provide a minimum or moderate amount of the member's housekeeping: 15-90 minutes/week • Member requires maximum support for housekeeping: up to 120 minutes/week 	<p>Support needed for shopping The following guide assists in determining the amount of support needed by the member:</p> <ul style="list-style-type: none"> • Lives alone and is able to provide own shopping: 0 minutes • Lives alone and needs minimum to maximum support of outside assistance for some shopping: 15-90 min/week • Lives with family who is able to provide all of member's shopping: 0 minutes • Lives with family who provide a minimum or moderate amount of the member's shopping: 15-75 minutes/week • Has informal supports who provide all of member's shopping: 0 minutes Has informal supports who provide a minimum or moderate amount of the member's shopping: 15-75 minutes/week • Member requires maximum support for shopping: up to 90 minutes/week
<p>Support needed per meal: The following guide assists in determining the amount of support needed by the member:</p> <ul style="list-style-type: none"> • Breakfast by self –1-15 min/day 	<p>Support needed for laundry: The following guide assists in determining the amount of support needed by the member:</p> <ul style="list-style-type: none"> • Lives alone and is able to provide own

<ul style="list-style-type: none"> • Breakfast with others –1-5 min/day • Lunch by self –1-20 min/day. • Lunch with others –1-5 min/day • Dinner by self –1-30 min/day. • Dinner with others –1-5 min/day • ☑ Additional Meal –1-10 min per meal. 	<ul style="list-style-type: none"> • laundry: 0 minutes • Lives alone and needs minimum to maximum support of outside assistance for laundry : 15-120 min/week • Lives with family who is able to do all of member’s laundry: 0 minutes • Lives with family who provide a minimum or moderate amount for the member’s laundry: 15-90 minutes/week • Has informal supports who do all of member’s laundry: 0 minutes • Has informal supports who do a minimum or moderate amount of the member’s laundry: 15-90 minutes/week • Member requires maximum support for laundry: up to 120 minutes/week
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Authorization Calculation

- Calculate the total number of minutes of support needed for housekeeping or chores.
- Convert the total number of minutes to units.
 - One (1) unit equals 15 minutes

If the total number of minutes is less than 15, that will equal one (1) unit.

Exclusions and Limitations for Homemaker 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. For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member’s bedroom and one bathroom.
4. Homemaker services shall not be provided overnight.
5. Homemaker services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Member/member’s representative must be able to provide direction to aid when aid is in the home.
7. Care, grooming, or feeding of pets and animals
8. Yard work, gardening, or home maintenance work
9. Escort Services
10. Day care or afterschool care
11. Assistance with homework
12. Meal preparation does not include the cost of meals

Id. at 99 through 103.

22. Dr. Carter testified that it was appropriate to reduce Petitioner's homemaker services because the 701B indicates that Respondent needs partial, not total, assistance for the majority of ADLs and because both personal care services and companion services can be used for homemaker like services. *Supra* ¶ 14.

23. Pursuant to LT.UM.09 the purpose of homemaker services is to provide assistance with essential shopping, light housework, laundry, and meal preparation. LT.UM.09 provides that the related approval criteria involve a review of IADLs' limitations; Living situation; supervision needs and available Supports. LT.UM.09 provides a detailed methodology for calculating the appropriate level of homemaker services based on various homemaker related activities. *Supra* ¶ 21. Dr. Carter did not explain how this methodology applied to Petitioner's unique medical condition. Furthermore, Dr. Carter did not establish that it would be feasible for Petitioner to use his personal care and adult companion services in lieu of homemaker services.

24. Prior to Respondent's decision to reduce the number of homemaker services hours, Petitioner was receiving ten (10) hours of homemaker services per week. Dr. Carter did not explain or describe any change in Petitioner's medical condition that would support the reduction of services. Furthermore, Respondent did not provide any documentation, such as a prior 701B, which was the initial basis for the authorization of ten (10) hours of homemaker services that would establish that Petitioner's medical condition or living conditions had improved to the extent that it would merit a reduction in services. To the contrary, ██████ testified that Petitioner's condition has worsened in that for some ADLs he now requires total assistance. Such a change is understandable considering that the initial authorization at issue pre-dated the

amputation of Petitioner's foot and Petitioner's numerous chronic medical conditions. *Supra* ¶ 2 and 13.

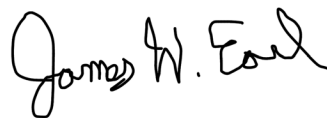
25. Considering that Petitioner's medical condition has worsened in that for some ADLs he now requires total assistance along with the Respondent's failure to explain how it's policy's methodology demonstrates that ten (10) hours of homemaker services are in excess of Petitioner's needs, Respondent did not prove that the homemaker services are excessive, and, therefore medically unnecessary.

26. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's termination of personal care was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of personal care services is **REVERSED**. Petitioner's appeal based on Respondent's reduction of is **GRANTED**.

DONE AND ORDERED this 15th day of March, 2021, in Tallahassee, Leon County, Florida.

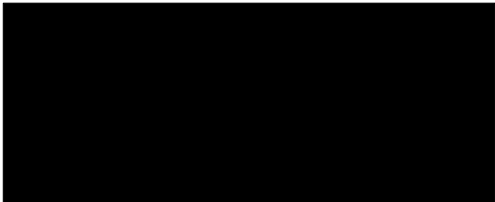


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JAMES W. EARL, Hearing Officer
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.



Sunshine State Health Plan, Inc. (Sunshine)
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AHCA Medicaid Hearing Unit
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