



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

FILED

Mar 17, 2021, 12:45 pm
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.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 21-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 February 17, 2021, at [REDACTED]

APPEARANCES

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

For the Respondent: Kizzy Alleyene
Senior Manager Compliance
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate four (4) hours per week of adult companion services was correct.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional five (5) hours of homemaker services was incorrect.

The third issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional five (5) hours of personal care services was incorrect.

The fourth issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate the provision of one case of disposable underpads per quarter to Petitioner was correct.

1.010(166). Absent an objection from the Petitioner, the undersigned admitted the one hundred and forty-eight (148)-page evidence packet into evidence as Respondent's Composite Exhibit 1.

Prior to the hearing, Respondent also sent to the Office of Fair Hearings and Petitioner a one hundred and forty-seven (147)-page evidence packet.¹ The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary, dated February 1, 2020; an NABD dated August 13, 2020; a Long Term Care Person-Centered Care Plan, signed August 7, 2020; a 701B dated [REDACTED] 2020; Petitioner's plan appeal and supporting medical records, transmitted by facsimile October 9, 2020; a plan appeal acknowledgment, dated October 15, 2020; an NPAR, dated November 7, 2020. Absent an objection from the Petitioner undersigned admitted the page packet into evidence as Respondent's Composite Exhibit 2.

At the Fair Hearing, the record was held open until February 24, 2021, without objection from Petitioner, to allow Respondent to submit an updated evidence packet naming the homemaker services as an issue. Petitioner was allowed until March 3, 2021, to provide a written response and did not submit a written response. On February 17, 2021, Respondent timely submitted a one hundred and forty-six (146)- packet that included an updated Medicaid Fair Hearing Summary.² Absent an objection, the undersigned admits the addendum as Respondent's Composite Exhibit 3.

¹ Documents duplicated from Respondent's Composite Exhibit 1 omitted.

² All other documents duplicated from Respondent's Composite Exhibit 1 and 2.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine State Health plan, Inc. (“Sunshine”). Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is eighty-five (85) years old and diagnosed with high blood pressure, constant bowel incontinence, frequent bladder incontinence, atrial fibrillation, Alzheimer’s disease, and dementia associated with other underlying disease with behavior disturbance. Respondent’s Composite Exhibit 1 at 57 and 75. Petitioner lives with her daughter and son-in-law. *See Id.* at 51 and 65. Petitioner is forgetful, easily confused, easily agitated, and disruptive nearly every day. *Id.* at 60. Petitioner does not intentionally harm herself or wander off. *Id.*
3. Petitioner requires total assistance with bathing, dressing, and transferring. *Id.* at 55. Petitioner requires some assistance with eating and utilizes a wheelchair for mobility and incontinence supplies for using the bathroom. *Id.* Petitioner always has assistance with all of these tasks with the exception of eating, which Petitioner has assistance with some of the time. *Id.* Petitioner receives assistance with these tasks from her home health aide and her daughter. *Id.* Per testimony from [REDACTED] works twenty-five (25) to twenty-seven (27) hours per week and reorganizes her work schedule to provide care for Petitioner when the home health aide is not working with Petitioner.
4. Petitioner needs total assistance with heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. *Id.* at 56 Petitioner needs some assistance with using the telephone. *Id.* Petitioner always has assistance with these tasks. Petitioner’s home health aide assists with preparing meals. *Id.* Petitioner’s son-

in-law assists Petitioner with grocery shopping, and Petitioner's daughter assists with managing Petitioner's money, preparing meals, managing Petitioner's medications, completing heavy chores, and using transportation. *Id.*

5. Respondent terminated four (4) hours per week of adult companion services provided to Petitioner and one (1) case of underpads provided to Petitioner per week. The NABD dated July 21, 2020 explained the basis of the termination as follows:

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

...

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

and one of the following:

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

The facts that we used to make our decision are: Sunshine Health has looked at the member's present care needs and provided home services and supplies. The member's present care plan includes:

- 14 hours per week of Personal Care Services
- 7 hours per week of Homemaker Services
- 4 hours per week of Companion Care Services
- 3 meals per week of Home Delivered Meals
- 1 unit per month of PERS (Personal Emergency Response System)
- 1 case per month of Pull-Ups

- 1 case per quarter of Disposable Underpads/Chux
- 1 case per quarter of Liners

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 4 hours per week of Companion Care Services. Companion Care is provided to prevent social isolation. Companion Care is not hands on care. The member does not live alone, has regular contact with family, and there is a low risk of social isolation. Sunshine Health will terminate the monthly PERS as it is reported that the member is never left alone. Sunshine Health will terminate the 3 meals per week of Home Delivered Meals. The member's daughter and Home Health Aide prepare all meals. Sunshine Health will terminate the 1 case per quarter of Liners. The member uses heavy absorbency PullUps for incontinence. Liners are not meant to be used with PullUps. Sunshine Health will terminate the 1 case per quarter of Disposable Underpads/Chux and replace it with a one time delivery of 4 Reusable Underpads. The updated care plan approved by Sunshine Health will include:

- 14 hours per week of Personal Care Services
- 7 hours per week of Homemaker Services
- 1 case per month of Pull-Ups
- 4 Reusable Underpads, one time

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Id. at 5-7.

6. Petitioner requested an additional five hours of personal care services per week and an additional five (5) hours per week of homemaker services. Respondent denied Petitioner's requests. In an NABD dated August 13, 2021, Respondent explained the basis for the denial as follows:

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

...

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

4. 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;
5. 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
6. 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:

3. Enable the enrollee to maintain or regain functional capacity; or
4. 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 5 hours per week of Personal Care Services and an extra 5 hours per week of Homemaker 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 14 hours per week of Personal Care Services and 7 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

7. The pertinent portion of Sunshine's Long Term Care Ancillary Criteria ("LT.UM.09")

provides as 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.

...

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

The criteria for each ancillary service is described below:

2. Adult Companion Care

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental Illness requiring supervision
- Parkinson's disease
- Multiple Sclerosis

- ALS
- Congestive Heart Failure
- COPD
- Cancer
- End Stage Renal disease
- TBI
- Other diagnosis as deemed medically necessary by Medical Director

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
 - See Section C.1.c. for more details
- Informal Supports
 - None
 - Few friends/family in area
 - Family nearby
- Living Situation
 - Lives alone
 - Lives with others but is alone for extended periods of time due to the necessary absence of a caregiver
 - Lives with caregiver and others
- Services in Place
 - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations for Adult Companion Care 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. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.
5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal care tasks.
6. The member has memory deficits, which prevent him or her from managing care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.

- 10. Cognitive ability of member to engage in and comprehend conversation with others
- 11. Care, grooming, or feeding of pets and animals
- 12. Yard work, gardening, or home maintenance work
- 13. Escort 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

...

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 112-115, 119, and 125-126.

8. The pertinent portion of Sunshine's Long Term Care Durable Medical Equipment (DME)/Supplies/ Orthotics & Prosthetics (O&P) Criteria ("LT.UM.10") provides as follows:

2. Incontinence Supplies

Prior authorization is required for diapers, gloves, perineal wipes, emollients and absorbent products used to manage incontinence in individuals covered by Sunshine Health LTC product. Coverage determinations are based on an assessment of the individual's unique clinical needs as documented in the clinical information submitted by the requesting provider and/or the current 701B assessment completed by the LTC Care Coordinators. The 701B assessment is used to identify the member's level of incontinence, functional status as measured through Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL), and level of caregiver support.

Sunshine Health does not require a physician's prescription to review, approve or deny a request for standard incontinence supplies found on the Florida Medicaid Fee Schedule. Sunshine Health covers items for LTC members listed on the fee schedules for Medicaid Recipients "Under the Age of 21 Years" and "All Medicaid Recipients", even when the member is over the age of 21. Diapers, gloves, perineal wipes, emollients and absorbent products may be considered medically necessary in the management of incontinence associated with a broad range of medical conditions including, but not limited to neurological conditions, congenital anomalies, injuries to the pelvic region, injuries to the spinal cord, fistula, bowel prolapse and infections. Consideration is always given to the unique needs of a given individual.

Criteria to support need for incontinence products

Upon review of the 701B assessment, Sunshine Health will consider but is not limited to the following:

- Member must have current incontinence of the bladder and/or bowel; and/or
- Member must have one of the following limitations in their Activities of Daily living:

Using the bathroom (toileting, hygiene, cleaning) and/or Walking/Mobility and/or Transferring:

- Needs supervision or prompt
- Needs assistance without a caregiver
- Needs assistance with a caregiver
- Needs total assistance without a caregiver
- Needs total assistance with a caregiver

Id. at 142-143.

9. Respondent issued an NPAR dated September 5, 2021 upholding the termination of the adult companion services and underpads. *Id.* at 94. The NPAR was subsequently revised January 30, 2021. The revised NPAR explained as follows:

On August 6, 2020 we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit OPFL0162042 terminating 4 hours per week of companion care, 1 unit per month of personal emergency response service, 3 meals a week of home delivered meals, 1 case per quarter of disposable liners and 1 case per quarter of disposable underpads/chux provided to ██████

On January 30, 2021, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denies your plan appeal. As a result, ██████ will not receive 4 hours per week of companion care, 1 unit per month of personal emergency response service, 3 meals a week of home delivered meals, 1 case per quarter of disposable liners and 1 case per quarter of disposable underpads/chux, effective January 30, 2021.

Id. at 101.

10. Petitioner also requested a plan appeal for the NABD dated August 13, 2021. Respondent issued NPAR dated November 7, 2021, upholding the denial of homemaker and personal care services. The NPAR explained as follows:

On October 9, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated August 13, 2020, Notice of Adverse Benefit Determination Number [REDACTED] DENYING an additional 5 hours a week of personal care (the person who helps bathe and dress you) and an additional 5 hours a week of homemaker service (the person who cleans for you), provided to [REDACTED]

On November 6, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby DENIES your plan appeal. As a result, [REDACTED] will not receive an additional 5 hours a week of personal care (the person who helps bathe and dress you) and an additional 5 hours a week of homemaker service (the person who cleans for you), effective November 6, 2020.

The reason for our decision was [t]he request for an additional 5 hours per week of Personal Care and 5 hours per week of Home Making is denied. Based on the assessment of the member's care needs and household and caregiver status, the member's current hours are appropriate. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Respondent's Composite Exhibit 2 at 109.

11. [REDACTED] requested a Fair Hearing on behalf of Petitioner regarding homemaker services, adult companion services, personal care services, and the termination of the underpad/chux on December 22, 2020. On January 29, 2021, the undersigned issued an Order Consolidating and Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 17, 2021, at [REDACTED]

12. Petitioner's plan of care since January 30, 2021, includes fourteen (14) hours of personal care services per week, seven (7) hours of homemaker services per week, one (1) case of pull-ups per month, and four (4) reusable pads provided once.

13. [REDACTED] established on the record that she assisted Petitioner with responding to the 701B Assessment dated [REDACTED] 2021. [REDACTED] admitted that prior to the termination of Petitioner's adult companion services, Petitioner's home health

aide utilized the additional hours to complete other personal care and homemaker tasks. [REDACTED]

[REDACTED] opined that Petitioner finds the disposable pads to be more comfortable and easier to avoid skin irritation than the reusable pads.

14. During the hearing, Dr. Amin explained the basis of Respondent's rationale for termination of services and denial of services at issue. Respondent terminated Petitioner's adult companion services because Petitioner has no history of wandering off and does not show a need for constant supervision. Petitioner's personal care services and homemaker services were based upon Petitioner's 701B and the availability of Petitioner's family who she lives with. Respondent also determined that Petitioner's need for incontinence supplies were already met by the reusable pads which can be cleaned utilizing the homemaker services available.

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 Fla. Stat. § 409.285(2). 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 Petitioner is requesting new services with regard to personal care services and homemaker services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. Where Respondent has terminated adult companion services and the case of underpad/chux provided to Petitioner per quarter, 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 LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, establishes and regulates 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.

...

4.2.2.5 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.

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

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.

Termination of Adult Companion Services

21. Respondent terminated the four (4) hours per week of adult companion services provided to Petitioner. *Supra* ¶ 5. In the NABD, Respondent indicated that the adult companion services were not medically necessary but did not identify which component of medical necessity the termination was based on. *Id.* The 701B dated [REDACTED] 2021, shows that Petitioner lives with her daughter and son-in-law. *Supra* ¶ 2. The 701B also shows that Petitioner is diagnosed with Alzheimer's disease and Petitioner's medical records show Petitioner has dementia. *Id.* Per the 701B, Petitioner experiences nearly daily occurrences of forgetfulness, agitation, and confusion. *Id.* Respondent's Policy LT.UM.09 shows that advanced Alzheimer's disease with dementia is a triggering diagnosis for adult companion services and that respondent evaluates a recipient's level of confusion and risk to herself when determining the appropriate service level. *Supra* ¶ 8. Dr. Amin testified that Respondent terminated Petitioner's companion care services on the basis that Petitioner is not a risk to herself or at risk of wondering off. *Supra* ¶ 14. [REDACTED] testified that the adult companion services were helpful to assist Petitioner with personal care and homemaker tasks. *Supra* ¶ 3. The record shows that [REDACTED] works twenty-five (25) to twenty-seven (27) hours per week and adjusts her schedule as needed to care for Petitioner. *Id.* The record also shows that [REDACTED] assisted Petitioner with responding to the [REDACTED] 2021, 701B. *Supra* ¶ 13.

22. As provided in the LTC Policy, adult companion services consist of non-medical care, supervision which are utilized if necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. *Supra* ¶ 19. At issue here is

whether the adult companion services at issue are (a) “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” under the facts of this case and (b) whether they are “furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” *Supra* ¶ 20. Here, [REDACTED] has admitted that the adult companion services were utilized to assist Petitioner with tasks falling under homemaker services and personal care services. However, Petitioner experiences near daily forgetfulness and confusion associated with her Alzheimer’s and dementia diagnoses. Petitioner’s diagnoses and symptoms appear to match those contemplated in Respondent’s Policy LT.UM.09. Dr. Amin’s testimony that Petitioner is not a risk to wonder off is supported by the 701B, but elopement is not the only reason Petitioner may need supervision. The entirety of the record beyond Petitioner’s low elopement risk, does not support Respondent’s conclusion that Petitioner is otherwise safely left unsupervised for the four (4) to six (6) hours per week where the home health aide is not in the home and [REDACTED] is otherwise working. Despite the fact that adult companion services had previously been used for purposes other than social enrichment and supervision, adult companion services may be utilized for assistance with those tasks where the assistance is incidental. *Supra* ¶ 18. Respondent has not shown where Petitioner’s need for supervision to provide for her safety does not warrant the adult companion services previously provided to Petitioner. Accordingly, Respondent has not shown that the adult companion services are not “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” and (b) not “furnished in a

manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider."

Denial of Homemaker Services

23. Respondent denied Petitioner's request for five (5) hours of homemaker services. *Supra* ¶ 6. On the NABD Respondent indicated that the homemaker services were not medically necessary but did not identify which component of medical necessity the denial was based on. *Id.*

24. As reflected in the 701B, Petitioner always has assistance with tasks relating to household activities including meal preparation, light housekeeping, and heavy chores. *Supra* ¶ 4. As discussed, *supra* ¶ 21, ██████████ assisted Petitioner with providing responses for the 701B.

25. As provided in the LTC Policy, Homemaker services are intended to provide assistance with general household activities (such as meal preparation) and routine household care (including laundry and pest control). *Supra* ¶ 19. The homemaker services requested by Petitioner must 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." *Supra* ¶ 20. Here, Petitioner's needs for homemaker services are already met as shown in the 701B completed ██████████ 2021. In the 701B in which ██████████ assisted Petitioner, the responses indicate that she always has assistance with tasks involving general household activities such as light housekeeping, preparing meals, or heavy chores. ██████████ argued on behalf of Petitioner that Petitioner's needs cannot be met with the homemaker hours allotted, but did not demonstrate the amount needed or provide additional explanation to

overcome her previous statements made for the 701B. Thus, Petitioner has not shown 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.”

Denial of Personal Care Services

26. Respondent denied Petitioner’s request for five (5) hours of personal care services. *Supra* ¶ 6. On the NABD, Respondent indicated that the personal care services were not medically necessary but did not identify which component of medical necessity the denial was based on. *Id.* The 701B shows that Petitioner always has assistance with her IADLs and ADLs. As discussed *Supra* ¶ 22, Petitioner’s adult companion care services were previously utilized to provide Petitioner with homemaker services and personal care services. The 701B shows that Petitioner lives with her daughter and son-in-law and that they assist Petitioner with her IADLs and ADLs.

27. As provided in the LTC Policy, personal care services are to provide assistance with ADLs and IADLs. *Supra* ¶ 19. The personal care services requested must 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.” *Supra* ¶ 21. Here Petitioner has total assistance with her IADLs and ADLs through the combination of the current personal care and homemaker services plus assistance from her natural supports. The 701B assessment was performed after the adult companion services which were used for personal care were terminated and Petitioner’s needs still remain met at the current service level. Thus, 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."

Termination of Underpads

28. Respondent terminated the one (1) case of underpads provided to Petitioner per quarter. *Supra* ¶ 5. On the NABD, Respondent indicated that the personal care services were not medically necessary but did not identify which component of medical necessity the denial was based on. *Id.* Per Respondent's policy LT.UM.10, LTC incontinence supplies are provided to recipients identified in a current 701B as having incontinence. *Supra* ¶ 9. The 701B shows that Petitioner has constant bowel incontinence and frequent bladder incontinence. *Supra* ¶ 2. The evidence shows that Petitioner currently receives a case of pull-ups per month and received four (4) reusable pads. *Supra* ¶ 12. [REDACTED] testified that the underpads are more comfortable for Petitioner and easier to use. *Supra* ¶ 13. Dr. Amin testified that the reusable pads can be cleaned using the homemaker services provided to Petitioner. *Supra* ¶ 14.

29. As provided in the LTC Policy, the underpads must be medical necessary. *Supra* ¶ 19. The underpads must 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." *Supra* ¶ 20. Here, while Petitioner is incontinent of bladder and bowel, Petitioner is already receiving a case of pull-ups per month and has four reusable pads. The testimony from [REDACTED] [REDACTED] asserting that the underpads are more comfortable and easier to use than the reusable pads does not make them medical necessary. The testimony is subjective in nature, and even if it were accepted it as fact, comfort and convenience while desirable, do not in themselves make the supplies currently provided insufficient to meet Petitioner's needs. In fact, the testimony

indicates that the underpads may not be medically necessary on account of being primarily for the convenience of the Petitioner or her caretaker. *Supra* ¶ 20. Petitioner has both homemaker services and natural supports that can clean her reusable pads. Considering the combination of reusable pads, other individuals available to clean the reusable pads, and the one case pull-ups per month provided to Petitioner, Respondent has met the burden of proof to show that are not “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.”

30. The LTC Policy also provides that services may not be duplicated. *Supra* ¶ 19. As discussed *supra* ¶ 29, Petitioner’s needs are already met with the pull-ups and reusable pads provided by Respondent. The underpads at issue would violate the policy as they would be duplicative of the incontinence supplies Petitioner is receiving.

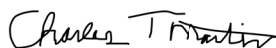
Conclusion

31. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes the following: Respondent has not proved by a preponderance of the evidence that termination of the four (4) hours of adult companion services was correct; Petitioner has not proved by a preponderance of the evidence that the denial of five (5) hours of homemaker services was incorrect; Petitioner has not proved by a preponderance of the evidence that the denial of five (5) hours of personal care services was incorrect; Respondent has proved by a preponderance of the evidence that the termination of one (1) case of underpads provided to Petitioner per quarter was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's termination of four (4) hours per week of adult companion services is **REVERSED**. Petitioner's appeal based on Respondent's termination of four (4) hours per week of adult companion services is **GRANTED**. Respondent's denial of an additional five (5) hours of homemaker services per week is **AFFIRMED**. Petitioner's appeal based on the denial of an additional five (5) hours of homemaker services per week is **DENIED**. Respondent's denial of an additional five (5) hours of personal care services per week is **AFFIRMED**. Petitioner's appeal based on the denial of an additional five (5) hours of personal care services per week is **DENIED**. Respondent's termination of one (1) case per quarter of underpads is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of one (1) case per quarter of underpads is **DENIED**.

DONE and ORDERED this 17th day of March, 2021, in Tallahassee, Leon County, Florida.



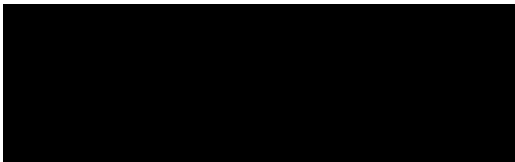
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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