



**FILED**

Mar 04, 2021, 1:44 pm  
OFFICE OF FAIR HEARINGS

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

[REDACTED]

**PETITIONER,**

**AHCA Case No.: 21-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.**

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[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 2, 2021, at [REDACTED]

### **APPEARANCES**

For the Petitioner:



Petitioner

For the Respondent:

Maria Mojica  
Compliance Specialist  
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 Petitioner's medical supplies (one (1) case of underpads and one (1) box of gloves, weekly) was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's seven (7) Home Delivered Meals, weekly, was correct.

The third issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's two (2) hours of adult companion care, weekly, was correct.

### **PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner appeared on her own behalf. 

 attended as a witness for Petitioner.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following appeared as witnesses for the Respondent: Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine; Dr. Michael Gervasi, Medical Director for Sunshine; Melissa Layne, Senior Manager for Quality Improvement for

Sunshine; Mirleine Augustin, Care Coordinator for Sunshine; and Sophia Lara, Case Manager Supervisor for Sunshine.

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a four (4)-page document. The document included: a letter from Petitioner, dated December 28, 2020 and a Notice of Plan Appeal Resolution (“NPAR”), dated October 22, 2020. Absent an objection from the Respondent, the undersigned admitted the four (4)-page document into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-seven (127)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination (“NABD”), dated September 21, 2020; a Long Term Care Person-Centered Care Plan (“POC”), dated August 26, 2020; a POC, dated January 11, 2021; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated [REDACTED] 2020; a 701B, dated [REDACTED] 2020; a Standard Appeal Acknowledgement; an Expedited Appeal Request Decision; an NPAR, dated October 22, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner, undersigned admitted the one hundred and twenty-seven (127)-page packet into evidence as Respondent’s Composite Exhibit 1.

## FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. *See* page 2 of Respondent’s Composite Exhibit 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is seventy-three (73)-years old. *Id.* at 14. . Petitioner’s diagnoses include: Acid Reflux/GERD; diabetes; constant dizziness; heart problems; frequent bladder incontinence; hypothyroid problems; urinary tract infection; and atrial fibrillation. *Id.* at 39.
3. Petitioner’s needs regarding activities of daily living (“ADLs”) are as follows: for bathing and using the bathroom, Petitioner needs assistance (but not total help); for transferring, Petitioner needs supervision or prompting; and Petitioner uses an assistive device for walking. *Id.* at 36. Petitioner’s needs regarding instrumental activities of daily living (“IADLs”) are as follows: for heavy chores and shopping, Petitioner needs total assistance (cannot do at all); and for light housekeeping and preparing meals, Petitioner needs assistance (but not total help). *Id.* at 37.
4. Petitioner talks to friends, relatives, or others at least once per day. *Id.* at 64. Petitioner spends time with someone who does not live with her at least once per day. *Id.* Petitioner does not need supervision. *Id.* at 59.
5. Petitioner’s plan of care, for the period of July 1, 2020, through June 30, 2021, included the following: eight (8) hours of personal care services, weekly; ten (10) hours of homemaker services, weekly; seven (7) home delivered meals, weekly; two (2) hours of adult companion care, weekly; one (1) box of gloves, monthly; two (2) cases of pull-ups, monthly; and one (1) case of underpads, monthly. *Id.* at 30.

6. In the NABD, dated September 21, 2020, Respondent terminated the following: one (1) box of box of underpads, monthly; one (1) box of gloves, monthly; seven (7) home delivered meals, weekly; and two (2) hours of adult companion care services, weekly. The NABD 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 has reviewed your current Plan of Care . . . . Based on further assessment of your health care needs and home status, Sunshine will terminate Companion Care 2 hours/weekly. Companion Care services provide socialization to prevent isolation. You are not at risk for social isolation as you can socialize with your home health aides. Sunshine will also terminate 7 Home Delivered Meals weekly as your home health aides can assist with meal preparations. Sunshine will also terminate Underpads 1 case/month, as you receive 2 cases of Pull-Ups each month, and terminate 1 box/month Gloves as home health agency provides care and gloves. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria and LT.UM.10 (Long Term Care) DME/Supplies/Orthotics & Prosthetics Criteria.

Pages 5-6 of Respondent's Composite Exhibit 1.

7. Petitioner requested a plan appeal and received an NPAR dated October 22, 2020, upholding the termination of medical supplies, home delivered meals, and adult companion care services. *Id.* at 80 – 86. The NPAR explained as follows:

The reason for our decision was: Based on the assessment of the member's care need and household and caregiver status, the termination of Companion Care 2 hours/weekly is upheld, and the termination of 7 Home Delivered Meals weekly is upheld, and the termination of the 1 box/month of Gloves is upheld, and the termination of Disposable Underpads 1 case/month is upheld. However, based on the assessment, Sunshine Health will approve the one-time addition of 6 Reusable Underpads. 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.

Pages 80 – 81 of Respondent's Composite Exhibit 1.

8. On January 6, 2021, Petitioner requested a Fair Hearing to challenge the termination of medical supplies (underpads and gloves), home delivered meals, and adult companion care services. On January 12, 2021, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 2, 2021, at [REDACTED]

9. As testified to at hearing, [REDACTED] spends between three (3) and five (5) hours with Petitioner each evening and her husband spends approximately two (2) hours with Petitioner each morning. Petitioner's reusable underpads have been washed so frequently that they have become "worn out" and have "lost the shape". [REDACTED] and her husband use the gloves to assist with cleaning Petitioner after an incontinent episode.

10. Dr. Carter is the Long Term Medical Director for Sunshine. Dr. Carter testified that Petitioner's adult companion care services, medical supplies, and home delivered meals were

terminated based on the assessment of the Petitioner's needs. Dr. Carter testified that it was his opinion that the approved services were sufficient to meet Petitioner's needs. Dr. Carter testified that, as Petitioner did not suffer from bowel incontinence, the one (1) box of gloves was not necessary.

11. Sunshine's Long Term Care Policy, LT.UM.09, provides as follows in regards to adult companion care services and home delivered meals:

## **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 State 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 other 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 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 tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal 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 an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

### **5. Home Delivered Meals**

Nutritionally sound meals to be delivered to the residence of the member who has difficulty shopping for or preparing appropriate, nutritious meals without assistance. The member must be given a choice of meals from a menu provided in advance. Each meal is designed to meet the USDA *2015-2020 Dietary Guidelines for Americans*. The service must be provided at the member's residence. The Home Delivered Meals must be provided at the member's residence. The Home Delivered Meals can be hot, cold, frozen, dried, canned, or a combination of these options. More than one meal can be delivered at a time if there is proper storage

and heating facilities at a member's residence. The member must be able to prepare and consume the meals him/herself with available assistance.

...

#### Approval Criteria

All home delivered meals will comply with any physician ordered and/or cultural special diets. The number of meals provided depend on caregiver availability and dietary need. To be eligible to receive home delivered meals, member must be:

- Ambulatory in the home and able to answer the door
- Able to obtain food from a refrigerator and able to microwave the food
- Homebound
- Live alone or spend extended periods of time alone
- Assistance is needed with IADL tasks for shopping and meal preparation
- Home delivered meals are not meant to cover the cost of meals

Exclusions and Limitations for Home Delivered Meals include but are not limited to:

1. Service must be provided at member's residence.
2. Member resides alone or resides with others and is left alone for long periods.
3. The service is not provided when other family members and/or friends reside in the home.
4. Member must reside in a non-facility based setting.
5. Member needs assistance with meal preparation/and or shopping for food.
6. Member must be able to ambulate to door to receive meals
7. The member must be able to prepare and consume the meals with him/herself with available assistance.
8. Member must be able to obtain food from the refrigerator and be able to operate microwave to prepare meals.
9. This service is not intended to cover the cost of meals.

Pages 93 – 94 and 96 – 98 of Respondent's Composite Exhibit 1.

12. Sunshine's Long Term Care policy, LT.UM.10, provides as follows in regards to incontinence supplies:

#### **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

Sunshine Health may approve up to the amount allowed on the Medicaid fee schedule depending on the member's level of incontinence.

The clinical reviewer takes into consideration the individual needs of the member, which includes assessment and identification of the individual's specific medical, mobility and psychosocial needs. The assessment includes the frequency in which a member may need an incontinence diaper/brief changed and considers the health and lifestyle of the member wearing them. An independent individual with limited functional deficits may be able wear an incontinence diaper/brief longer

than someone who is frail and bedridden. Most adults with incontinence need to change their diaper between 5-8 times a day.

Diapers/briefs should be changed as soon as they become soiled or wet. If a bedbound individual does not wet diapers or briefs often, or has small leakage, consideration may be given to alternating between pads and diapers. The frequency and volume of urinary and bowel incontinence should be identified in order to select the appropriate type and amount of incontinence supplies. The goal is promote skin integrity. The impact of a brief allowing good air circulation, must be considered as this can lead to skin irritation and rashes.

Pages 121 - 122 of Respondent's Exhibit 1.

### **CONCLUSIONS OF LAW**

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

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

15. Because Respondent is terminating previously approved services, Fla. Admin Code R. 59-1.100(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.)

16. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to home delivered meals, adult companion care services, and medical supplies:

#### **1.1 Description and Program Goal**

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and

community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

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

ADLs include:

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

...

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

When necessary for the recipient to function independently, including:

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

...

## **4.1 General Criteria**

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

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

...

### **4.2.1.1 Adult Companion Care**

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

...

### **4.2.1.8 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.

...

#### **4.2.2.5 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.

17. The LTC Policy also addresses medical necessity:

#### **1.3.14 Medically Necessary or Medical Necessity**

For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

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

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

18. The 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.

#### **MEDICAL SUPPLIES: UNDERPADS AND GLOVES**

19. In the NABD, dated October 22, 2020, Respondent terminated Petitioner’s underpads (one box monthly) and gloves (one box monthly). *Supra* ¶ 4. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessity criteria was the basis for its decision. *Id.*

20. As provided in Respondent’s policy, LT.UM.10, incontinence supplies may be provided when:

- Members must have current incontinence of the bladder/and or bowel; and/or

- Members 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 with a caregiver
  - Needs assistance with a caregiver
  - Needs total assistance without a caregiver
  - Needs total assistance with a caregiver.

*Supra* ¶ 12.

In this case, Petitioner suffers from frequent bladder incontinence and has the following limitations: needs assistance (but not total help) with toileting; and needs supervision or prompting with transferring. *See* pages 56, 36, and 37. Additionally, Petitioner is receiving two (2) cases of pull-ups per month and received six (6) reusable underpads in the NPAR, dated October 22, 2020.

21. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive one box, each, of underpads and gloves per month. Here, Dr. Carter testified, *supra* ¶ 10, that it was his opinion that two (2) case of pull-ups were sufficient to meet Petitioner's needs, and that gloves were not necessary as Petitioner did not suffer from bowel incontinence. However, it was not shown that underpads were duplicative of pull-ups – such as whether they are used for the same purpose or whether they are not to be used together. As discussed *supra* ¶ 20, Petitioner needs assistance with toileting and suffers from frequent bladder incontinence – thus it appears Petitioner meets the requirements established by Respondent's LT.UM.10 for incontinence supplies. Further, as shown by the record, despite not suffering from bowel incontinence, Petitioner's caregivers use the gloves to assist with cleaning Petitioner when she is incontinent. Moreover, it is not reflected in either Respondent's LT.UM.10 or in the LTC policy that gloves are intended solely for those suffering from bowel incontinence.

Additionally, the reusable underpads are “worn out” from frequent use. As such, Respondent did not show that the pull-ups were duplicative of the underpads, that the replacement reusable underpads are sufficient, or that the gloves are not medically necessary. 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 underpads and gloves was correct.

### **HOME DELIVERED MEALS**

22. In the NABD, dated October 22, 2020, Respondent terminated Petitioner’s home delivered meals (seven, weekly). *Supra* ¶ 4. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessity criteria was the basis for its decision. *Id.*

23. As provided in Respondent’s policy, LT.UM.09, home delivered meals are to provide “nutritionally sound meals to be delivered to the residence of the member who has difficulty shopping for or preparing appropriate, nutritious meals without assistance.” Per the LTC Policy, home delivered meals are to provide “nutritionally sound meals delivered to an enrollee’s home when the enrollee has difficulty shopping for, or preparing food, without assistance.” As shown by the record, Petitioner is approved for ten (10) hours each week of homemaker services and eight (8) hours each week of personal care services, which provides a total of eighteen (18) hours each week of services that can be used to provide meals, as well as assistance with her other ADLs and IADLs. Further, Petitioner’s friends, [REDACTED] and her husband, provide assistance for approximately five (5) and seven (7) hours each day.

24. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive home delivered meals. Dr. Carter testified that Petitioner did not need home delivered meals based on the 701B assessment. Here, Dr. Carter's opinion is supported by the fact that the only ADLs Petitioner needs assistance with are using the bathroom and bathing, and the only IADLs Petitioner needs assistance with are heavy chores, shopping, light housekeeping, and preparing meals. As discussed supra ¶ 23, Petitioner has eighteen (18) hours of combined personal care and homemaker services to assist with those, as well as help from [REDACTED] and her husband. Further, Dr. Carter's opinion is credible as he is a medical doctor. Thus, the record shows that seven (7) home delivered meals, weekly, are in excess of Petitioner's needs, and therefore not medically necessary.

25. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent's termination of seven (7) home delivered meals was correct.

#### **ADULT COMPANION CARE**

26. In the NABD, dated October 22, 2020, Respondent terminated Petitioner's adult companion care services (two hours, weekly). *Supra* ¶ 4. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessity criteria was the basis for its decision. *Id.*

27. As provided in the LTC Policy, adult companion care is to provide "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." As shown by the record, Petitioner lives alone, but talks to friends, relatives, or others at least once per day. *See* ¶ 4. Petitioner spends time with

someone who does not live with her at least once per day. *Id.* Further, Petitioner is approved to receive eighteen (18) hours of combined services each week, as well as being visited frequently by [REDACTED] and her husband. As such, the record shows that Petitioner has sufficient opportunities to socialize. Moreover, Petitioner does not need supervision. *Id.*

28. As Petitioner has opportunities to socialize and does not need supervision, the record does not show that it is medically necessary for Petitioner to have two (2) hours of adult companion care. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent's termination of two (2) hours, weekly, of adult companion care services was correct.

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

Respondent's termination of medical supplies is **REVERSED**. Petitioner's appeal based on Respondent's termination is **GRANTED**.

Respondent's termination of home delivered meals is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

Respondent's termination of adult companion care is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

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



Joseph Mabry  
21-FH [REDACTED] 21-FH [REDACTED] &  
21-FH [REDACTED]  
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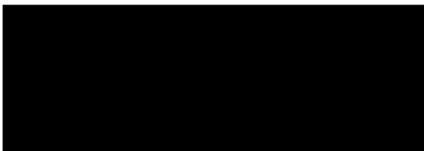
**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**

2727 Mahan Drive, Mail Stop # 11  
Tallahassee, FL 32308-5407  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**Copies Furnished To:**



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