



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

FILED

Mar 25, 2021, 12:00 pm  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 21-FH [REDACTED]  
Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on February 23, 2021, at [REDACTED]

**APPEARANCES**

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

For the Respondent: Davida Jones  
State Fair Hearings Coordinator  
UnitedHealthcare of Florida, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional fourteen (14) hours per week of personal care services per week was incorrect.

## PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and niece,

[REDACTED] appeared on behalf of Petitioner.

David Jones, State Fair Hearings Coordinator for UnitedHealthcare of Florida Inc. ("United") appeared on behalf of Respondent. Dr. Sloan Karver, ("Dr. Karver") Long Term Care Medical Director for United, attended as a witness for Respondent.

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

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and twenty-two (222)-page statement of matters packet. The statement of matters packet included: a Statement of Matters table of contents; a Notice of Adverse Benefit Decision ("NABD"), dated November 24, 2020; a CSP – General Request Form – [REDACTED] originated December 7, 2020; plan appeal acknowledgment letter, dated December 8, 2020; Print HSC History; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated [REDACTED] 2020; an Appeal Review; a Medical Director Review, dated December 11, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated December 12, 2020; Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1 in its entirety; Florida Medicaid Statewide Medicaid Managed Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"); the Florida Medicaid Authorization Requirements Policy (June 2016); the Florida Medicaid Personal Care Services Coverage Policy (November 2016); the Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); the Home Health Visit Services Fee Schedule (January 1, 2017); the Personal Care Services Fee Schedule (January 1, 2017); the

Private Duty Nursing Services Fee Schedule (January 1, 2017); the Participant Direction Option Manual; 42 C.F.R. § 441.480; the Florida Medicaid Hospice Services Coverage Policy (June 2016); 42 C.F.R. Part 418, Subpart C (Conditions of Participants: Patient Care); Fla. Stat. § 400.6105 (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from Petitioner, the undersigned admitted the two hundred and twenty-two (222)-page state of matters packet as Respondent's Composite Exhibit 1.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a nine (9)-page packet. The packet included the following: a cover email dated January 28, 2021; a physician letter, dated January 28, 2021; and a copy of the Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, dated January 19, 2021. Absent an objection from Respondent the undersigned admitted the nine (9)-page packet as Petitioner's Composite Exhibit 1. Respondent also submitted second packet numbering ten (10)-pages. The second packet included a cover email dated February 3, 2021, and a letter of medical necessity listing Petitioner's diagnoses, dated February, 2, 2021. Absent an objection from Respondent the undersigned admitted the ten (10)-page packet as Petitioner's Composite Exhibit 2.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of United. United 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 osteoarthritis, ataxic gait, type two diabetes mellitus with diabetic neuropathy, macular degeneration, and anxiety disorder. Petitioner's Composite Exhibit 2 at 9-10 and Petitioner's Composite Exhibit 1 at 2.

3. Petitioner lives alone and has no other natural supports besides [REDACTED] and [REDACTED] [REDACTED] brother. Respondent's Composite Exhibit 1 at 46. As testified to by [REDACTED] she and her brother are the only family members that assist Petitioner, but they are limited in their ability to assist Petitioner by the fact that they live approximately forty-five (45) miles from Petitioner.

4. Petitioner's current services in place include fourteen (14) hours of personal care services per week and seven (7) hours of homemaker services per week.

5. With regards to Petitioner's Activities of Daily Living ("ADLs") Petitioner needs assistance but not total assistance with bathing and dressing. *Id.* at 29. Petitioner uses assistive devices to use the bathroom, ambulate, and for transferring. *Id.* The assistive devices utilized by Petitioner include a wheelchair, cane, a shower bench, and grab bars. *Id.* at 28. Petitioner does not need assistance with eating. *Id.* at 29. Petitioner always has assistance with her ADLs except for eating where Petitioner does not require assistance. *Id.*

6. With regards to Petitioner's Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance with heavy chores, light housekeeping, and shopping. *Id.* at 30. Petitioner needs assistance but not total help with using transportation. *Id.* Petitioner needs supervision or prompt for taking medication. *Id.* Petitioner does not need assistance with using the telephone or managing money. *Id.* As established through [REDACTED] testimony, Petitioner needs total assistance with preparing meals due her degrading eyesight but always has assistance with preparing meals. Where Petitioner needs assistance with her other IADLs, she always has assistance. *Id.*

7. Petitioner requested an additional fourteen (14) hours of personal care services per week.

Respondent denied the request in the NABD, dated November 24, 2020. The NABD explained as follows:

UnitedHealthcare Community Plan has reviewed your request for 14 more hours a week of personal care, which we received on November 23, 2020. After our review, this service has been:

DENIED as of November 24, 2020

...

- 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.

...

Your assessment tells us you need some help to bathe and dress.

You are getting 14 hours a week of personal care to help you.

You get 7 hours a week of homemaker services to help you.

In my clinical opinion, your needs are being met by your current services. Your current hours can also be split so you help with your personal needs during the day.

*Id.* at 5-6.

8. Petitioner requested a plan appeal and received an NPAR dated December 12, 2020, upholding the denial of Petitioner's request for an additional fourteen (14) hours of personal care services. The NPAR explained as follows:

On December 07, 2020 we received your timely plan appeal request regarding UnitedHealthcare Community Plan's Notice of Adverse Benefit Determination dated November 24, 2020, [REDACTED] denying the Personal Care (14 more hours/week) provided to [REDACTED]

On December 11, 2020, after consideration of the information you provided to UnitedHealthcare Community Plan in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal.

As part of our review we look at information you or your provider gave us. We also look at your benefits. Based on our review of your appeal, we have determined that the service you requested will not be approved.

John Szafranski, MD, a Medical Doctor, Board Certified in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Medicaid rules: Florida Administrative Code 59G-1.010(166).

You asked for personal care. You would like 14 more hours a week. You need some help with daily activities. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving 14 hours a week. You have family who can help some. You can help yourself some. This should meet your personal care needs. Also, you have another paid service for help. This is homemaker service 7 hours a week. That is why we cannot approve what you asked for. Please talk about this with your doctor.

*Id.* at 54-55.

9. Petitioner requested a Fair Hearing on January 12, 2021. Petitioner's Composite Exhibit 1 at 3. On January 19, 2021, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 4, 2021, at [REDACTED] *Id.* On January 29, 2021, the Office of Fair Hearings received a valid Designation of Authorized Representative for Medicaid Fair Hearing Participation naming

██████████ as Petitioner's Authorized Representative. ██████████ did not appear at the hearing scheduled for February 4, 2021. On February 5, 2021, the undersigned issued the Second Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, rescheduling the hearing for February 23, 2021, at ██████████

10. On February 2, 2021, Petitioner's physician, ██████████ provided Petitioner with a letter of medical necessity stating the following:

██████████ has severe functional decline. She is incontinent and requires assistance with hygiene, toileting, meal preparation, shopping. It is vital for ██████████ to continue to receive home health aide services to prevent unnecessary hospitalization and to avoid skilled nursing facility placement.

Please take this matter in your urgent consideration and allow my patient to have HHA services for at least 5 hours per day, seven days a week.

Respondent's Composite Exhibit 2 at 9-10.

11. At the hearing, Dr. Karver reiterated Respondent's position that Petitioner's request for additional personal care services was not medically necessary after considering Petitioner's current services in place and reviewing the 701B.

#### **CONCLUSIONS OF LAW**

12. 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).

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

14. Because Petitioner is requesting new services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a

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

15. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, establishes the provision and coverage of Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following:

**1.1 Description and Program Goal**

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

...

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

ADLs include:

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

...

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

When necessary for the recipient to function independently, including:

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

...

**1.3.16 Natural Supports**

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

...

#### **4.1 General Criteria**

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

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

...

#### **4.2.1.9 Homemaker Services**

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

...

#### **4.2.2 Mixed Services**

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

#### **4.2.2.6 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.

16. 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.

17. The Florida Medicaid Definitions Policy (August 2017) (“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.

18. Respondent denied Petitioner’s request for an additional fourteen (14) hours per week of personal care services on the basis that the additional services are not medically necessary. *Supra* ¶ 7. The NABD and NPAR do not specifically identify the component of medical necessity serving as the basis for the denial. *See supra* ¶¶ 7-8.

19. The 701B shows that Petitioner always has assistance with her IADLs and ADLs. *Supra* ¶¶ 5-6. Respondent’s appeal notes show that Petitioner’s current services in place include fourteen (14) hours of personal care services and seven (7) hours of homemaker services. *Supra* ¶ 4. The evidence shows that on February 2, 2021, Petitioner’s physician, [REDACTED] provided Petitioner with a letter of medical necessity advocating for additional home health aide services for Petitioner. *Supra* ¶ 10. Respondent’s appeal notes and testimony from [REDACTED] show that Petitioner lives alone, and [REDACTED] is limited in the assistance she can provide Petitioner because she lives approximately forty-five (45) miles from Petitioner. *Supra* ¶ 3. [REDACTED] testified that the 701B was incorrect in reflecting that Petitioner requires only some assistance with preparing meals rather than total assistance. *Supra* ¶ 6. [REDACTED] added that Petitioner still always has assistance with preparing meals. *Id.*

20. The additional personal care services Petitioner is requesting 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* ¶ 17. Here, Petitioner is already receiving personal care services and homemaker services, totaling twenty-one (21) hours per week. Petitioner always has assistance with her ADLs and IDLs with the current services in place. Given Petitioner’s diagnosis of macular degeneration, [REDACTED] testimony that Petitioner’s eyesight is degrading making tasks more difficult is credible, but the evidence offered shows that Petitioner’s need for assistance with ADLs and IADLs remains met with the current services and natural supports in place. The fact that Petitioner’s physician has provided Petitioner with a letter of medical necessity does not make the additional personal care services requested medically necessary. *See supra* ¶ 17. Accordingly, Petitioner has not met the burden of proof to

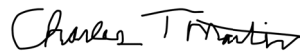
show that the Petitioner's request for an additional fourteen (14) hours of personal care services are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs."

21. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of an additional fourteen (14) hours of personal care services was incorrect.

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

Respondent's denial of an additional fourteen (14) hours per week of Personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of an additional fourteen (14) hours per week of personal care services is **DENIED**.

**DONE and ORDERED** this 25th day of March, 2021, in Tallahassee, Leon County, Florida.



Charles Martin  
21-FH [REDACTED]  
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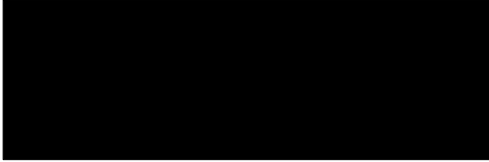
**CHARLES MARTIN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
**Office: (850) 412-3649**  
**Fax: (850) 487-1423**  
**Email: OfficeOfFairHearings@ahca.myflorida.com**

**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:**



**UnitedHealthcare of Florida, Inc.**  
**UHC\_Hearings@uhc.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**