



Kizzy Alleyne (“Ms. Alleyne”), Senior Manager of Compliance for Sunshine State Health Plan, Inc. (“Sunshine” or “Respondent”) represented Respondent at the hearing. The following individuals appeared on behalf of Respondent: Dr. Michael Gervasi (“Dr. Gervasi”), Long Term Care (“LTC”) Medical Director for Sunshine; Dr. Heather Lutz, Medical Director for Sunshine; Jessica Rodriguez (“Ms. Rodriguez”), Long Term Care Coordinator for Sunshine; Teresa Baron-Gornto, Long Term Care Supervisor for Sunshine; and Louise Jeanty, Quality Improvement Supervisor for Sunshine.

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

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 117-page evidence packet. The packet included the following documents: Medicaid Fair Hearing Table of Content; Medicaid Fair Hearing Summary, dated January 21, 2021; Notice of Adverse Benefit Determination (“NABD”), dated November 9, 2020; Long Term Care Person-Centered Care Plan (“care plan”), signed January 17, 2021; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment”), dated [REDACTED] 2020; 701B Assessment, dated [REDACTED] 2021 (the “most recent 701B Assessment”); Expedited Appeal Request Decision, dated November 17, 2020; Standard Appeal Acknowledgement, dated November 17, 2020; Notice of Plan Appeal Resolution (“NPAR”), dated December 2, 2020; Sunshine Health Policy and Procedure LT.UM.09; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent’s 117-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

## FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine’s LTC plan. *See* Respondent’s Composite Exhibit 1 at page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is a 31-year-old female who resides with her mother in a private residence. *Id.* at 49 - 50. Petitioner is a paraplegic. *Id.* at 50. Petitioner does not need supervision, and she is cognitively intact with no memory issues. *Id.* at 51 and 58.
3. With regard to Activities of Daily Living (“ADLs”), Petitioner needs total assistance (cannot do at all) with using the bathroom, transferring, and walking/mobility. *Id.* at 53. Petitioner needs assistance (but not total help) with bathing, dressing, and eating. *Id.* Petitioner has assistance most of the time with all of her ADLs. *Id.*
4. With regard to Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals and shopping. *Id.* at 54. Petitioner needs assistance (but not total help) with using transportation. *Id.* Petitioner needs no assistance with using the telephone, managing money, and managing medication. *Id.* Petitioner has assistance most of the time with heavy chores, light housekeeping, preparing meals, shopping, and using transportation. *Id.* Petitioner needs no assistance with using the telephone, managing money, and managing medication. *Id.*
5. Petitioner is currently authorized to receive the following home and community-based services (not including the 10 hours per week of adult companion care services that are at issue in this case): 17.5 hours per week of personal care services; 17.5 hours per week of homemaker services; Personal Emergency Response Services; 5 packs of wipes monthly; and 3 reusable

underpads each quarter. *Id.* at 25, 29, and 53. Petitioner self-catheterizes several times a day, and she changes her colostomy bag daily with the assistance of a paid caregiver. *Id.* at 56.

6. On November 9, 2020, Respondent issued an NABD terminating 10 hours per week of adult companion services, explaining that the requested services are not medically necessary because the services do not meet the reason(s) checked below: (See Rule)

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

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
  2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
  3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;
- and one of the following:
1. Enable the enrollee to maintain or regain functional capacity; or
  2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice

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

- 17.5 hours per week of Personal Care Services
- 17.5 hours per week of Homemaker Services
- 10 hours per week of Companion Care Services

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 10 hours per week of Companion Care Services. Companion care is provided to prevent social isolation. The member does not live alone and there is a low risk of social isolation. The updated care plan approved by Sunshine Health will include 17.5 hours per week of Personal Care Services and 17.5 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 4 -5.

7. Petitioner requested an appeal of Respondent's termination of 10 hours per week of adult companion services. *Id.* at 73. On December 2, 2020, Respondent sent Petitioner an NPAR, which stated as follows:

On November 17, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated November 9, 2020, Notice of Adverse Benefit Determination Number [REDACTED] TERMINATING the 10 hours per week of companion care services provided to [Petitioner].

On November 30, 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, [Petitioner] will not receive the 10 hours per week of companion care effective November 30, 2020.

The reason for our decision was based on the assessment of the member's care needs and household and caregiver status, the termination of the 10 hours per week of Companion Care Services (the person who helps and watches over you) is upheld (stands). The presently approved home services are enough to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 79.

8. Sunshine Health Policy LT.UM.09 provides the following:

**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.

*Id.* at 92.

9. On January 13, 2021, Petitioner requested a Fair Hearing due to the termination of adult companion services. The undersigned scheduled the Fair Hearing for February 8, 2021, at [REDACTED] and all parties were duly notified.

10. Dr. Gervasi is the LTC Medical Director for Sunshine, and he is Board Certified in family medicine. At hearing, Dr. Gervais asserted that companion care services are primarily intended to prevent social isolation. Petitioner lives in a private residence with her 70-year-old mother, but her mother is not able to assist her due to her own health issues. Petitioner receives 35 hours per week of services from paid caregivers. Petitioner has no cognitive issues. She talks on the telephone and uses the computer to communicate with friends and family. Petitioner uses a motorized wheelchair and an adapted van, which she is able to drive herself. Petitioner also attends social activities outside the home several times per month. Given the circumstances, Dr. Gervasi opined that Petitioner is not at risk of social isolation.

11. Petitioner argued that she needs the companion care hours because her mother is 70 years old and in bad health. Petitioner's mother is unable to operate Petitioner's hooyer lift and Petitioner's adapted van is currently broken. Petitioner asserted that she does not attend college classes online because the exams must be taken in-person, and she is currently unable to drive her adapted van to campus. Petitioner argued that, due to the termination of companion care services, she does not have paid caregivers on the weekends to help her get out of the bed. Petitioner expressed concern that she will get bed sores, and she stated that she experiences depression and anxiety.

## 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 section 409.285(2), Florida Statutes. This order is the final administrative decision of AHCA under section 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. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

15. Because Respondent is terminating existing companion care services in this case, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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 Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"). The Agency's LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The LTC Policy provides as follows:

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

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

...

### **1.3 Definitions**

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

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

ADLs include:

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

...

#### **1.3.5 701-B Comprehensive Assessment**

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

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

When necessary for the recipient to function independently, including:

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

...

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

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

- (a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
  
- (b) All other LTC supportive services must meet all of the following:
  - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
  - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
  - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

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

...

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

...

## **2.2 Who Can Receive**

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

## **4.0 Coverage Information**

### **4.1 General Criteria**

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

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

### **4.2 Specific Criteria**

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

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

...

#### **4.2.1.1 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.

...

### **6.0 Documentation**

...

#### **6.2 Specific Criteria**

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive

assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

LTC Policy at pages 1 - 8.

17. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “medical necessity” as follows:

**2.83 Medically Necessary or Medical Necessity**

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 severe 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.

Definitions Policy at page 7.

18. In the instant case, Respondent terminated 10 hours per week of adult companion services. See supra ¶¶ 6, 7 and 10. As established on the record by the evidence and testimony, Respondent terminated 10 hours per week of adult companion services because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. See supra ¶¶ 6 and 7.

19. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the LTC Policy; do not duplicate another service; and meet the criteria as specified in the LTC Policy. *See supra* ¶ 16.

20. Section 4.2.1.1 of the LTC Policy reflects that adult companion services are “[t]he 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.” *See supra* ¶ 16.

21. The Sunshine Health Policy LT.UM.09 states that 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.” *See supra* ¶ 8. Sunshine’s policy also states, “[t]he 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.” *See supra* ¶ 8.

22. The evidence presented in this case reflects that Respondent’s termination of 10 hours per week of adult companion services is warranted under the circumstances of this case. Specifically, regarding ADLs, Petitioner needs total assistance (cannot do at all) with using the bathroom, transferring, and walking/mobility. *See supra* ¶ 3. Petitioner needs assistance (but not total help) with bathing, dressing, and eating. *See supra* ¶ 3. Petitioner has assistance most of the time with all of her ADLs. *See supra* ¶ 3. Petitioner self-catheterizes several times a day,

and she changes her colostomy bag daily with the assistance of a paid caregiver. *See supra* ¶ 5. With regard to IADLs, Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals and shopping. *See supra* ¶ 4. Petitioner needs assistance (but not total help) with using transportation. *See supra* ¶ 4. Petitioner needs no assistance with using the telephone, managing money, and managing medication. *See supra* ¶ 4. Petitioner has assistance most of the time with heavy chores, light housekeeping, preparing meals, shopping, and using transportation. *See supra* ¶ 4. Petitioner needs no assistance with using the telephone, managing money, and managing medication. *See supra* ¶ 4. Petitioner does not need supervision, and she is cognitively intact with no memory issues. *See supra* ¶ 2. Petitioner resides with her mother. *See supra* ¶ 2. Petitioner is currently authorized to receive 17.5 hours per week of personal care services and 17.5 hours per week of homemaker services to address her need for assistance with ADLs and IADLs. *See supra* ¶ 5.

23. As stated above, adult companion care services are primarily intended to provide non-medical care, supervision, and socialization rather than hands-on care. *See supra* ¶ 20 and 21. Dr. Gervasi is Board Certified in family medicine, quality improvement, and patient safety. *See supra* ¶ 10. Consistent with Dr. Gervasi's testimony, 10 hours per week of adult companion care services are not medically necessary for purposes of socialization because Petitioner is not at risk of social isolation. *See supra* ¶ 6, 7, and 10. Petitioner lives with her 70 year-old mother. *See supra* ¶ 2. Petitioner has an opportunity to socialize with paid caregivers who assist her for 35 hours per week. *See supra* ¶ 5. Petitioner is able to independently use the telephone and computer to communicate with friends and family. *See supra* ¶ 4 and 10. Petitioner is able to independently leave the house by use of a motorized wheelchair and an adapted van, once the

van is repaired. *See supra* ¶ 10 and 11. Further, Petitioner does not need supervision and has no cognitive or memory issues. *See supra* ¶ 2 and 10. Petitioner argued that she has not socialized with friends at her house in over two years, that she is forced to lay in bed during the weekends due to the lack of paid caregivers on the weekend, and that she is concerned about getting bed sores in the future. *See supra* ¶ 11. The need that Petitioner described for assistance with getting out of bed is a need for hands-on care rather than for socialization or supervision. According to the LTC Policy, personal care services are intended to provide hands on assistance with ADLs and IADLs. *See supra* ¶ 16. As stated above, *supra* ¶ 20 - 21, the provision of companion services is for non-medical care, supervision and socialization, and it does not entail hands-on nursing care. Based upon the evidence presented by both parties, Respondent established that 10 hours per week of adult companion services are not warranted in this case.

24. Additionally, section 1.3.14 of the LTC Policy requires that “LTC supportive services must . . . [b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” *See supra* ¶ 16. Petitioner is currently authorized to receive the following home and community-based services (not including the 10 hours per week of adult companion care services that are the subject of this case): 17.5 hours per week of personal care services; 17.5 hours per week of homemaker services; Personal Emergency Response Services; 5 packs of wipes monthly; and 3 reusable underpads each quarter. *See supra* ¶ 5. Petitioner resides with her mother in a private residence and is not at risk of social isolation. *See supra* ¶ 2, 6, 7, 10, and 22. With regard to Petitioner’s need for non-medical care and supervision, the record reflects that Petitioner does not need

supervision. *See supra* ¶ 2. The record also reflects that Petitioner has assistance “most of the time” with heavy chores, light housekeeping, preparing meals, shopping, and using transportation. *See supra* ¶ 4. No evidence was introduced at the hearing indicating that Petitioner has an unmet need for supervision and, if so, the amount of assistance needed for incidental non-medical tasks such as meal preparation, laundry, and light housekeeping. Considering the LTC Policy’s definition of adult companion services, *supra* ¶ 16, Respondent demonstrated that the previously authorized amount of adult companion services are “in excess of [Petitioner’s] needs.” *See supra* ¶ 17.

25. Further, section 1.3.16 of the LTC Policy provides that natural supports are “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” *See supra* ¶ 16. Petitioner resides in a private residence with her 70-year-old mother. *See supra* ¶ 2 and 11. The record does not indicate specifically how much assistance, beyond companionship, Petitioner’s mother is able to provide. Petitioner testified that her mother is unable to operate a hooyer lift. However, Petitioner also testified that she does not have paid caregivers on the weekend. Therefore, the undersigned concludes that Petitioner has some level of natural support from her mother and is not at risk of social isolation.

26. In light of the evidence submitted, testimony provided, and applicable laws and policies, the undersigned Hearing Officer finds that Respondent demonstrated that Petitioner’s previously authorized amount of adult companion services is not medically necessary.

27. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent’s termination of 10 hours per week of adult companion services was correct.

**DECISION**

Respondent's termination of 10 hours per week of adult companion services is **AFFIRMED**.

Petitioner's appeal based on Respondent's termination in this matter is **DENIED**.

**DONE AND ORDERED** this 10th day of March, 2021, in Tallahassee, Leon County, Florida.



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**LAURA GALLAGHER, Hearing Officer**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**COPIES FURNISHED TO:**



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