



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

**FILED**

Mar 30, 2021, 11:14 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

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

vs.

AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Medicaid Fair Hearing in the above styled case on March 9, 2021, at [REDACTED]

**APPEARANCES**

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

For the Respondent: Tammy Twenhofel  
Manager of Long-Term Care  
Aetna Better Health of Florida, Inc.

**STATEMENT OF ISSUE**

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional 2 hours per week of personal care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional 13 hours per week of homemaker services was incorrect.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED]

Petitioner's Authorized Representative, appeared at the hearing and provided testimony on Petitioner's behalf. Petitioner appeared at the Fair Hearing, but did not provide testimony.

Tammy Twenhofel ("Ms. Twenhofel"), Manager of Long-Term Care ("LTC"), appeared on behalf of Respondent, Aetna Better Health of Florida, Inc. ("Aetna" or "Respondent") and provided testimony on behalf of Respondent. The following individuals also appeared on Respondent's behalf: Dr. Olunwa Ikpeazu ("Dr. Ikpeazu"), Medical Director for Aetna; Myrlene Warren, LTC Supervisor for Aetna; Elaine Bonge, Director of Operations for Aetna; and Catrina Williams, Supervisor for Appeals and Grievances for Aetna.

Shelia Gonzalez, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Prior to the hearing, Petitioner did not send to the Office of Fair Hearings and Respondent an evidence packet. During the Fair Hearing, the Hearing Officer gave Mr. Johnson a deadline of March 9, 2021, at 5:00 p.m., for Mr. Johnson to submit to the Office of Fair Hearings and Respondent a copy of a letter from Petitioner's physician. The Hearing Officer allowed Respondent an opportunity to respond to Petitioner's letter, and set a deadline of March 11, 2021, at 5:00 p.m. for Respondent to respond. The Office of Fair Hearings did not receive Petitioner's letter by the deadline of March 9, 2021, at 5:00 p.m. On March 11, 2021, Respondent timely submitted a response, stating "[w]e have reviewed the letter from [Petitioner's] physician. . . ." Given that the Office of Fair Hearings did not receive Petitioner's letter, it could not be admitted in evidence. Further, Respondent's timely response was not admitted in evidence.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 116-page evidence packet. The packet included the following: Respondent's Medicaid Fair Hearing and Appeal Document Checklist; the Acknowledgement of Medicaid Fair Hearing Request, filed January 21, 2021; the corrected Notice of Adverse Benefit Determination ("corrected NABD"), dated January 21, 2021; the NABD, dated October 7, 2020; a letter to Petitioner from Aetna, dated December 7, 2020; the corrected Notice of Plan Appeal Resolution ("corrected NPAR"), dated January 21, 2021; the NPAR, dated December 30, 2020; the Comprehensive LTSS Plan of Care ("care plan"), signed by the Case Manager on December 8, 2020; the Florida Department of Elder Affairs – 701B Comprehensive Assessment ("701B"), dated [REDACTED] 2021; Aetna's Caregiver Supplemental Assessment, completed on January 19, 2021; Petitioner's medical records, dated [REDACTED] 2021; the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("SMMC LTC Policy"); and the Florida Medicaid Home Health Visit Services Coverage Policy (November 2016) ("HHV Coverage Policy"). Absent an objection from Petitioner, Respondent's 116-page evidence packet was admitted into evidence as Respondent's Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Aetna's LTC program. See Respondent's Composite Exhibit 1, page 55. Aetna is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is 57-year-old married female who resides in a private residence. See Respondent's Composite Exhibit 1, page 60.

3. Petitioner has the following health conditions: high blood pressure; high cholesterol; diabetes; heart problems; occasional bladder incontinence; partial paralysis (left side); seizure disorder; and stroke (past). See Respondent's Composite Exhibit 1, pages 66-67. The 701B reflects that Petitioner had a stroke in November 2019, which left her left side paralyzed. See Respondent's Composite Exhibit 1, page 67.

4. The 701B reflects that Petitioner needs total assistance (cannot do at all) with bathing and dressing. See Respondent's Composite Exhibit 1, page 64. Petitioner needs assistance (but not total help) with the following activities of daily living ("ADLs"): using the bathroom, transferring, and walking/mobility. *Id.* Petitioner needs no assistance with eating. *Id.* Petitioner uses assistive devices for bathing, using the bathroom and walking/mobility. *Id.* Additionally, the 701B states the following:

ADL's and IADL's: Member is paralyzed on her left side and require total assistance with dressing and bathing. [REDACTED] husband must help her go to the bathroom, transfer from one place to another. She is unable to pick herself up from the toilet bc [sic] she is unable to grab the grab bars.

Member reports she can walk with her quad-cane but need someone next to her in case she falls. Member is very fearful of falling. Member also said when she is in bed she must be reposition [sic].

*Id.*

5. Regarding instrumental activities of daily living ("IADLs"), the 701B reflects that Petitioner requires no assistance with using the telephone. See Respondent's Composite Exhibit 1, page 65. Petitioner uses assistive devices for managing medication. *Id.* Petitioner needs assistance (but not total help) with managing medication. *Id.* Petitioner requires total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and transportation. *Id.*

6. Petitioner is currently authorized to receive the following home and community-based services: 18 hours of personal care services weekly; and 7 hours of homemaker services weekly. See Respondent's Composite Exhibit 1, page 59.

7. On January 21, 2021, Respondent issued a corrected NABD denying Petitioner's request for an 20 hours per week of personal care services and denying an 20 hours per week of homemaker services. See Respondent's Composite Exhibit 1, pages 10-11. The NABD stated the reason for Respondent's determination as follows:

We made our decision because:

....

We determined that your requested services are **not medically necessary** because the services do not meet either of 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:

- 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; and
- 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:

Your caregiver has asked Aetna Better Health of Florida to cover 20 hours of

Personal Care Services weekly and 20 hours of Homemaker Services weekly. We will not approve all of this request because you are almost receiving enough care to meet your needs. You live with your caregiver. We have records dated 09/30/2020 that shows you need total assistance with bathing and dressing; you need assistance with using the bathroom, transferring, and walking/mobility. You do not need any assistance with eating. You need total assistance with meal preparation, doing laundry, housekeeping, shopping, managing money, managing medicines, and using the telephone.

We do not see that you:

- have had any change in your condition.
- do not have enough care.
- are at risk of isolation. You live with your caregiver.
- have had a recent hospitalization.

You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. Based on the clinical records we have; your care plan will be, 18 hours of Personal Care Services weekly and 7 hours of Homemaker Services weekly, for a total of 25 hours of a Home Health Aide weekly. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-Term Care Program.

Respondent's Composite Exhibit 1, pages 10-11.

8. Petitioner requested a plan appeal regarding Respondent's denial of an 20 hours per week of personal care services and an 20 hours per week of homemaker services. See Respondent's Composite Exhibit 1, page 31. On January 21, 2021, Respondent sent Petitioner a corrected NPAR, partially denying Petitioner's plan appeal. See Respondent's Composite Exhibit 1, page 38. The NPAR stated as follows:

On December 3, 2020[,] we received your timely plan appeal request regarding Aetna Better Health of Florida's Notice of Adverse Benefit Determination dated October 6, 2020, NABD Number [REDACTED] Partially denied 20 hours of Personal Care Services weekly and 20 hours of Homemaker Services weekly, provided to [Petitioner].

On December 30, 2020, after consideration of the information you provided to Aetna Better Health of Florida in support of your plan appeal, Aetna Better Health of Florida hereby denies your plan appeal. As a result, [Petitioner] will not receive

20 hours of Personal Care Services weekly and 20 hours of Homemaker Services weekly, effective 12/30/2020.

Dr. Avril Anthony-Wilson, MD, Medical Director, Florida Board Certified in Family Medicine reviewed your appeal. Your caregiver appealed Aetna Better Health of Florida's partial denial of 20 hours of Personal Care Services weekly and 20 hours of Homemaker Services weekly. We approved 18 hours of Personal Care Services weekly and 7 hours Homemaker Services weekly, for a total of 25 hours of a Home Health Aide weekly. We still cannot approve 20 hours of Personal Care Services weekly and 20 hours of Homemaker Services weekly. This is because you are receiving enough hours to meet your needs. We have records dated 09/30/2020 that show you need total assistance with bathing and dressing; you need assistance with using the bathroom, transferring and walking/mobility. You do not need any assistance with eating. You live with your caregiver. You need total assistance meal preparation, doing laundry, housekeeping, shopping, managing medicines, managing money, and using the telephone.

We do not see that you:

- Have had any change in your condition.
- Do not have enough care.
- Are at risk of isolation. You live with your caregiver.
- Have had any recent hospitalizations.

You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. Based on the clinical records we have; your care plan will be, 18 hours of Personal Care Services weekly and 7 hours of Homemaker Services weekly, for a total of 25 hours of a Home Health Aide weekly. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-Term Care Program.

Respondent's Composite Exhibit 1, pages 38-39.

9. On January 11, 2021, [REDACTED] requested a Fair Hearing due to the denial of an additional 2 hours per week of personal care services and the denial of an additional 13 hours per week of homemaker services. The undersigned scheduled the Fair Hearing for March 9, 2021, at [REDACTED] and all parties were duly notified.

10. [REDACTED] is Petitioner's husband and primary caregiver. Petitioner resides in the home with [REDACTED] prepares Petitioner's food, does the dishes with no dishwasher,

and does Petitioner's laundry once per week. [REDACTED] believes that Petitioner cannot be left alone. [REDACTED] works outside the home. Since September 2020, [REDACTED] has been working Monday through Friday for 5 hours per day. Petitioner's daughter cares for Petitioner when [REDACTED] is at work. Petitioner's daughter quit her job to take care of Petitioner. [REDACTED] is seeking additional personal care services and homemaker services, so that he can return to work full time (40 hours per week). The requested 2 additional hours per week of personal care services and 13 additional hours per week of homemaker services are for the PDO program. Petitioner's daughter is her direct service worker under the PDO program.

11. Ms. Twenhofel is the Manager of LTC for Aetna. Ms. Twenhofel explained that regarding the hours that have been approved, they can be reallocated (with regards to the dates and times the services are provided) at Petitioner's discretion to meet her needs. Once services are authorized, Petitioner can adjust times the services are provided to meet her needs.

12. Dr. Ikpeazu is the Medical Director for Aetna. Dr. Ikpeazu reviewed all documentation submitted to Aetna in this case. Dr. Ikpeazu testified that Petitioner is currently authorized to receive 18 hours per week of personal care services and 7 hours per week of homemaker services, which is a total of 25 hours per week of aide services from the LTC Program. Regarding personal care services, Dr. Ikpeazu explained that Respondent allocated the following time for ADLs, which adds up to 18 hours per week: bathing (total asst needed) - 5 hours week per week, which is slightly more than 40 minutes per day; dressing - 3 ½ hours per week, which is 30 minutes per day; eating (eats by herself) - zero hours; using the bathroom - 3 ½ hours week, which is 30 minutes per day; transferring - 3 hours weekly, which is 25 minutes daily; and walking - 3 hours

weekly, which is 25 minutes daily. Dr. Ikpeazu testified that for Petitioner's ADLs, Respondent assessed Petitioner as if Petitioner did not have a caregiver.

13. Regarding homemaker services, Dr. Ikpeazu explained that Respondent allocated the following time for IADLs, which adds up to 7 hours per week: meal preparation – 3 hours weekly, which is 25 minutes per day; laundry 1 hour per week; housekeeping 1 ½ hours per week; shopping 1 hour per week; and managing medications ½ hour per week, as Petitioner can take her medication by herself, and she just needs someone to present it to her. Dr. Ikpeazu explained that laundry, housekeeping and shopping are usually not done every day. Dr. Ikpeazu explained that because Petitioner lives in the home with an adult, it is assumed that the adult will include Petitioner in meal preparation, shopping, laundry and cleaning – and the aide will only supplement the natural support of the adult living with Petitioner. Dr. Ikpeazu noted that 13 additional hours per week of homemaker services is excessive since Petitioner lives with her spouse.

#### **CONCLUSIONS OF LAW**

14. 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).

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

16. 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.

17. Because Petitioner is requesting additional services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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.).

18. The Florida Medicaid policy that applies to the requested services is the SMMC LTC Policy. The Agency’s SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC 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 Home and Community-Based Supportive Services**

The LTC program benefit includes coverage of the following home and community-based supportive services:

##### **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.

**4.2.1.9 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.

...

**4.2.1.15 Respite Care**

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee's natural supports on a planned or an emergency basis.

**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.

...

**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.

SMMC LTC Policy, pages 1-8.

19. 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.

20. The Agency's Florida Medicaid Personal Care Services Coverage Policy, November 2016 ("PC Policy") has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215. The PC Policy provides as follows:

**1.1 Description**

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

**1.1.2 Statewide Medicaid Managed Care Plans**

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

**4.0 Coverage Information**

**4.1 General Criteria**

Florida Medicaid reimburses for services that meet all of the following:

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

#### **4.2 Specific Criteria**

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

#### **5.1 General Non-Covered Criteria**

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

#### **5.2 Specific Non-Covered Criteria**

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act

- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
  - Hospitals
  - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
  - Prescribed pediatric extended care centers
  - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

## 7.0 Authorization

### 7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid’s General Policies on authorization requirements.

...

Personal Care Task	General Time Allowances
<b>Bathing</b>	
<b>Full-body Bath:</b> Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
<b>Partial Bath:</b> A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
<b>Dressing</b>	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes

Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
<b>Grooming and Skin Care</b>	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
<b>Positioning</b>	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
<b>Transfers</b>	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
<b>Toileting and Maintaining Continence</b>	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
<b>Eating</b>	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
<b>Delegated Medical Monitoring and Activities</b>	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy, pages 3 – 8, and 10.

21. In the instant case, Respondent denied Petitioner's request for an additional 2 hours per week of personal care services and an additional 13 hours per week of homemaker services. See supra ¶ 7 and 8. As established on the record by the evidence and testimony, Respondent denied Petitioner's request, because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. See supra ¶ 7 and 8.

22. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 18.

23. Section 4.2.2.6 of the LTC Policy reflects that personal care services are "[t]o 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." See supra ¶ 18.

24. Section 4.2.1.9 of the SMMC LTC Policy homemaker services are for the "[t]he 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. See supra ¶ 18.

25. The evidence presented in this case does not reflect that Petitioner is in need of an additional 2 hours per week of personal care services and an additional 13 hours per week of homemaker services. Specifically, regarding ADLs, Petitioner needs: needs total assistance (cannot do at all) with bathing and dressing; assistance (but not total help) with using the bathroom, transferring, and walking/mobility; and no assistance with eating. See supra ¶ 4.

Petitioner uses assistive devices for bathing, using the bathroom and walking/mobility. *Id.* Regarding IADLs, Petitioner needs: assistance (but not total help) with managing medication; no assistance with using the telephone; and total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and transportation. *See supra* ¶ 5. Petitioner uses assistive devices for managing medication. *Id.* Petitioner is paralyzed on her left side. *See supra* ¶ 4. Petitioner has multiple medical conditions, including occasional bladder incontinence. *See supra* ¶ 3.

26. However, Petitioner resides in the home with ██████████ who her husband and primary caregiver. *See supra* ¶ 10. Although ██████████ works outside the home, Monday through Friday for 5 hours per day, Petitioner's daughter cares for Petitioner when ██████████ is at work. *See supra* ¶ 10. Petitioner's daughter who is Petitioner's direct service worker under the PDO program, quit her job to take care of Petitioner. *See supra* ¶ 10. ██████████ is seeking the additional personal care services and homemaker services, so that he can return to work full time (40 hours per week). *See supra* ¶ 10. ██████████ prepares Petitioner's food, does the dishes with no dishwasher, and does Petitioner's laundry once per week. *See supra* ¶ 10. ██████████ offered no substantive testimony on how the denial of the additional personal care services and homemaker services will impact Petitioner's ability to manage her ADLs and IADLs. Further, Petitioner provided no evidence (e.g., a daily schedule, a schedule of ADLs or IADLs, the amount of time needed for *each* ADL and IADL) to justify the approval of the additional 2 hours per week of personal care services and additional 13 hours per week of homemaker services. Based upon the evidence presented by both parties, Petitioner failed to establish that the requested personal care services and homemaker services are warranted in this case.

27. Section 1.3.14 of the SMMC LTC Policy requires that the requested 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 ¶ 18. It should be noted that Petitioner is currently authorized to receive the following home and community-based services: 18 hours of personal care services weekly; and 7 hours of homemaker services weekly. See supra ¶ 6. The PC Policy sets forth general time allowances for the performance of personal care tasks. See supra ¶ 20. Regarding personal care services, Dr. Ikpeazu explained that Respondent allocated the following time for ADLs, which adds up to 18 hours per week: bathing (total asst needed) - 5 hours week per week, which is slightly more than 40 minutes per day; dressing –3 ½ hours per week, which is 30 minutes per day; eating (eats by herself) - zero hours; using the bathroom – 3 ½ hours week, which is 30 minutes per day; transferring – 3 hours weekly, which is 25 minutes daily; and walking – 3 hours weekly, which is 25 minutes daily. Dr. Ikpeazu testified that for Petitioner’s ADLs, Respondent assessed Petitioner as if Petitioner did not have a caregiver. See supra ¶ 12. Regarding homemaker services, Dr. Ikpeazu explained that Respondent allocated the following time for IADLs, which adds up to 7 hours per week: meal preparation – 3 hours weekly, which is 25 minutes per day; laundry 1 hour per week; housekeeping 1 ½ hours per week; shopping 1 hour per week; and managing medications ½ hour per week, as Petitioner can take her medication by herself, and she just needs someone to present it to her. See supra ¶ 13. Dr. Ikpeazu explained that laundry, housekeeping and shopping are usually not done every day. See supra ¶ 13. Dr. Ikpeazu explained that because Petitioner lives in the home with an adult, it is assumed that the adult will include Petitioner in meal preparation, shopping, laundry and cleaning – and the aide will only supplement the natural

support of the adult living with Petitioner. Regarding the hours that have been approved, they can be reallocated (with regards to the dates and times the services are provided) at Petitioner's discretion to meet her needs. *See supra* ¶ 11. Considering Petitioner's ADL and IADL needs, her currently authorized services, and the fact the Petitioner resides in the home with her husband, *supra* ¶ 25 and 26, Petitioner did not demonstrate that her aforementioned needs, *supra* ¶ 3, 4, 5, and 10, are not sufficiently met by her currently authorized services. Further, given that Petitioner failed to establish that the additional personal care services and homemaker services are warranted in this matter, *supra* ¶ 26, the requested personal care services and homemaker services are "in excess of [Petitioner's] needs." *See supra* ¶ 19.

28. In light of the both parties' testimony and evidence, the SMMC LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that the additional 2 hours per week of personal care services and additional 13 hours per week of homemaker services are medically necessary. Accordingly, the undersigned Hearing Officer finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the additional personal care services and homemaker services was incorrect.


### **DECISION**

Respondent's denial of an additional 2 hours per week of personal care services is **AFFIRMED**.

Respondent's denial of an additional 13 hours per week of homemaker services is **AFFIRMED**.

Petitioner's appeals based on Respondent's denial in this matter are **DENIED**.

**DONE AND ORDERED** this 30<sup>th</sup> day of March, 2021, in Tallahassee, Leon County, Florida.

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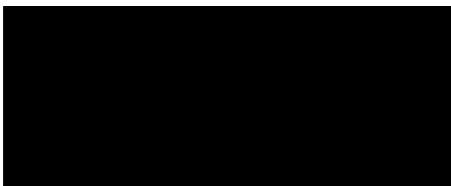
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**TRACIE HARDIN, Hearing Officer**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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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