



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

FILED

Apr 02, 2021, 11:57 am

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.

_____ /

[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 Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on March 4, 2021, at [REDACTED]

APPEARANCES

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

For the Respondent: Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional 42 hours per week of personal care services was incorrect.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's denial of an additional 10 hours per week of adult companion care services was incorrect.

The third issue is whether Respondent proved by a preponderance of the evidence that Respondent's denial of an additional 35 hours per week of homemaker services was incorrect.

The fourth issue is whether [REDACTED] proved by a preponderance of evidence that he is entitled to compensation for services that he allegedly provided to Petitioner from [REDACTED] 2020, through [REDACTED] 2020.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] Petitioner's Authorized Representative and home health aide, appeared at the hearing and provided testimony on Petitioner's behalf.

Maria Mojica (“Ms. Mojica”), Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”), appeared for the hearing and represented Respondent. Dr. Heather Lutz (“Dr. Lutz”), Long Term Care (“LTC”) Medical Director for Sunshine, and Cynthia Morisaki (“Ms. Morisaki”), Supervisor of LTC for Sunshine, provided testimony on behalf of the Respondent. The following individuals also appeared on behalf of Respondent but did not provide testimony: Louise Jeanty, Supervisor of Quality Improvement for Sunshine; and Alice Pace, LTC Care Coordinator for Sunshine.

Stephanie Lang, Registered Nurse and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a 7-page evidence packet. The packet included the following documents: an email from ██████████ to the Office of Fair Hearings, dated February 24, 2021; an unsigned and undated letter from ██████████; another undated and unsigned letter from ██████████ a handwritten service log; 2 pages from Sunshine’s LTC Person-Centered Care Plan; and a list of services provided to Petitioner from ██████████ 2020, through ██████████ 2020. Absent an objection from Respondent, the undersigned admitted Petitioner’s 7-page evidence packet into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 122-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated February 10, 2021; a Notice of Adverse Benefit Determination (“NABD”), dated October 6, 2020; Sunshine’s LTC Person-Centered Care Plan (“care plan”), signed by the Care Manager on September 29, 2020; Sunshine’s

care plan, signed by the Care Manager on December 14, 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of [REDACTED] 2020; the 701B with an assessment date of [REDACTED] 2020 (the “[REDACTED]/20 701B”); an email from [REDACTED], dated October 21, 2020; 2 copies of a partial photograph of the completed appeal request; 2 copies of Petitioner’s medical record for [REDACTED] 2020; Sunshine’s Standard Appeal Acknowledgment, dated October 28, 2020; the Notice of Plan Appeal Resolution (“NPAR”), dated November 23, 2020; the 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 122-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

Subsequent to the Fair Hearing, Respondent submitted a copy of the Patient Directed Option (“PDO”) Enrollment Agreement between Petitioner and the home health agency [REDACTED] signed by Petitioner on October 21, 2019 (“Enrollment Agreement”). The undersigned admitted Respondent’s Enrollment Agreement into evidence as Respondent’s Composite Exhibit 2. The deadline for Petitioner to respond to the Respondent’s additional document was March 5, 2021, at 5:00 p.m. EST. On March 5, 2021, Petitioner timely responded, submitting a 5-page document, which included the following documents: an email from Petitioner to Office of Fair Hearings, dated March 5, 2021; an address page, dated March 4, 2021; a copy of the Enrollment Agreement; and an email from Petitioner’s Authorized Representative, dated February 24, 2021. The undersigned admitted Petitioner’s 5-page response into evidence as Petitioner’s Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine’s LTC plan. *See* Respondent’s Composite Exhibit 1, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. As of the time of the hearing, Petitioner was an 69-year old female who lives alone in a private residence. *See* Respondent’s Composite Exhibit 1, page 50 – 51. Petitioner does not need outside assistance to evacuate, nor does she have a primary caregiver. *Id.* at 51. Petitioner has the following health conditions: acid reflux; moderate anemia; generalized arthritis; low blood pressure; past fractures of the lower spine, pelvis, and left wrist; frequent dizziness; heart problems; past head, brain, or spinal cord trauma; osteoporosis; seizure disorder; thyroid problems (hyper); “TBI, surgery on her back 7/2015, Depression, Anxiety, chronic back pain.” *See* Respondent’s Composite Exhibit 1, pages 56 – 57.
3. The [REDACTED]/20 701B, which is the most recent 701B, reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”). Petitioner needs no assistance with eating. *See* Respondent’s Composite Exhibit 1, page 54. Petitioner uses assistive devices for transferring and walking/mobility. *Id.* Petitioner needs assistance (but not total help) with bathing, dressing, and using the bathroom. *Id.*
4. Regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), the [REDACTED]/20 701B reflects that Petitioner needs no assistance with using the telephone. *See* Respondent’s Composite Exhibit 1, page 55. Petitioner needs assistance (but not total help) with preparing meals, shopping, managing medication, and using transportation. *Id.* Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, and managing money. *Id.*

Respondent's Composite Exhibit 1, page 54. "Member's daughter assists with paying bills and will at times bring her some items that member needs." *Id.* at 55.

5. Petitioner does not require supervision for her ADLs or IADLs, nor does she need supervision. *See* Respondent's Composite Exhibit 1, pages 54, 55 and 59. Petitioner does not have bowel or bladder incontinence. *Id.* at 56. Petitioner requires no "specialty care," as she does not receive intravenous ("IV") fluids, IV medications, or bladder/bowel treatment, dialysis. *Id.* at 57. Petitioner is not on oxygen. *Id.* Petitioner does not have an ostomy, nor does she receive wound care, tube feedings, or suctioning. *Id.*

6. Petitioner is currently authorized to receive the following home and community-based services: 8 hours weekly of Patient Directed Option ("PDO") adult companion care services; 28 hours weekly of PDO personal care services; 7 hours per week of PDO homemaker services. *See* Respondent's Composite Exhibit 1, pages 25 and 26.

7. On October 6, 2020, Respondent issued an NABD partially denying an additional 52 hours per week of personal care services, an additional 10 hours per week of adult companion care services, and an additional 35 hours per week of homemaker services. *See* Respondent's Composite Exhibit 1, pages 4 – 8. The NABD stated the reason for Respondent's determination as follows:

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:

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: The request for an extra 52 hours per week of Personal Care Services, an extra 35 hours per week of Homemaker Services, and an extra 10 hours per week of Companion Care Services is partially approved. The member's present care plan includes:

- 18 hours per week of Personal Care Services
- 7 hours per week of Homemaker Services
- 4 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 approve an extra 3 hours per week of Personal Care Services, and will deny the remaining requested 49 hours per week of Personal Care Services, 35 hours per week of Homemaker Services, and 10 hours per week of Companion Care Services. The updated care plan approved by Sunshine Health will include:

- 21 hours per week of Personal Care Services
- 7 hours per week of Homemaker Services
- 4 hours per week of Companion Care Services.

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Respondent's Composite Exhibit 1, pages 4 – 6.

8. Petitioner requested an appeal of Respondent's partial denial of an additional 52 hours per week of personal care services, an additional 10 hours per week of adult companion care services, and an additional 35 hours per week of homemaker services. See Respondent's Composite Exhibit 1, page 78. On November 23, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 84. The NPAR stated as follows:

On October 2, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated October 6, 2020, Notice of Adverse Benefit Determination Number [REDACTED] PARTIALLY DENYING the request for an additional 52 hours per week of personal care, an additional 35 hours per week of homemaker services ,and an additional 10 hours per week of companion care provided to [PETITIONER].

On November 20, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby PARTIALLY DENIES your plan appeal. As a result, [PETITIONER] will receive an extra 7 hours per week of personal care services and will not receive the remaining requested 42 hours per week of Personal Care Services. Member will not receive the extra 35 hours per week of Homemaker Services and the extra 10 hours per week of Companion Care Services, effective November 20, 2020.

The reason for our decision was based on the assessment of the member's care needs and household and caregiver status, the denial of the remaining requested extra services is now partially overturned. Sunshine Health will now approve an extra 7 hours per week of Personal Care Services (and will continue to deny the remaining requested 42 hours per week of Personal Care Services), and will continue to deny the extra 35 hours per week of Homemaker Services, and will continue to deny the extra 10 hours per week of Companion Care Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

This decision was made by a Medical Director who is Board Certified in Internal Medicine, Geriatric Medicine, and Hospice & Palliative Care.

Respondent's Composite Exhibit 1, page 84.

9. Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09 to make its determination in this case, which states in pertinent part, as follows:

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.

...

6. Homemaker Services

Homemaker provides assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to member's who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activities of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available supports

...

7. Personal Care Services

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- Assisting the member in following through with physician orders
The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- Assisting with food, nutrition, and diet activities, including preparing meals, when required
and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

Respondent's Composite Exhibit 1, pages 97, 102, and 108 – 109.

10. The PDO Enrollment Agreement between [REDACTED] and Petitioner, signed by

Petitioner on October 21, 2019, states as follows:

I, [Petitioner], choose to participate in the PDO Program. I know that this program is voluntary. I know that I must do certain things to participate.

As a participant in the PDO Program:

1. A plan of care will be made by my Care Manager. I will participate in making a plan of care with my Care Manager. I will have help if I need it.

2. I understand costs for [REDACTED] are paid for as part of my plan of care.

...

6. I will not allow my employees to work any unauthorized overtime (more than 40 hours per week per employee).

...

I have read and understand what my duties are as a participant in the program.

Respondent's Composite Exhibit 2, pages 1-2.

11. [REDACTED] first unsigned and undated letter stated the following:

Disputed items:

Sunshine Health care repeatedly denied additional hours after being Discharge from the hospital after surgery.

[Petitioner] fell in her kitchen on [REDACTED] 2020 and take [sic] by ambulance to Memorial Regional Hospital. While in the hospital naturally all her caregiver hours were suspended. She had back surgery on [REDACTED] 2020. In order to be released the doctors recommended she go to a rehab facility, but due to unfavorable prior experiences with these facilities she asked If she could do her rehab at her care takers [sic] home. The hospital agreed, the caretaker agreed after conferring with Medicare and Medicaid. They both agreed she was eligible for this service at The [sic] caretaker Home. After requesting additional hours through her case manager [Petitioner] was discharged from the hospital on [REDACTED] 2020. She was discharged with instructions to contact memorial Home Health Services. They were contacted and on [REDACTED] they came to the home and set up a rehab program. [Petitioner] at this time needed 24/7 care. She was literally in constant pain and unable to care for herself in anyway. After eight or 10 visits from the therapists [Petitioner] was very concerned about the coronavirus and stop [sic] the therapy with memorial home health services. We

were given Information to continue her rehab with her home health aide. [Petitioner] was returned to her home and ██████████ 2020. She still needed additional hours but was no longer under 24/7 care. During this period Sunshine Health would not Increase her hours and only returned her to the hours she was receiving prior to being hospitalized. I just want to be Reasonably compensated during this time of rehabilitation.

Petitioner's Composite Exhibit 1, page 2.

12. ██████████ second unsigned and undated letter stated the following:

Sunshine healthcare responded with 122 page [sic] response. I Just want to respond to that with this additional letter.

For Months Prior to her hospitalization [Petitioner] was receiving a total of 33 hours Of [sic] services per week. Sunshine cut those hours down to a total of 26 per week as of ██████████ 2020 for whatever reason is unknown to us. After filing appeals[,] they Increased those hours by three and On ██████████ buy [sic] another four hours per week for a total of 33 hours per week. All this is going on during [Petitioner]'s hospital stay which started on ██████████ and her rehabilitation which started on ██████████ On ██████████ her hours were increased to a total of 36 hours per week, then again by ██████████ her hours are finally increased to a total of 43 hours per week which Is where she is now. I also must mention at this time that I reported 43 hours per week on mv timesheet but was only paid for 40 hours per week due to a rule they have with the paying agency not to pay any overtime to any employees. After realizing that this last week I was told that she should've hired another employee to cover those additional three hours, this was never told to her or myself at any time. So as you can see her HHA has never been compensated for the time she was at his home during rehabilitation or the time in her own home after she returned. They finally started paying the hours needed to continue her care in ██████████ But now they're telling her she Hass [sic] to hire another employe [sic] to work those additional three hours which makes no sense to us.

I hope this explains the situation.

Petitioner's Composite Exhibit 1, page 3.

13. Petitioner requested a Fair Hearing due to the denial of an additional 42 hours per week of personal care services, an additional 10 hours per week of adult companion care services, and an additional 35 hours per week of homemaker services. The undersigned scheduled the Fair Hearing for March 4, 2021, at ██████████ and all parties were duly notified.

14. [REDACTED] is Petitioner's home health aide. He is employed by [REDACTED]. [REDACTED] currently provides Petitioner's personal care services, adult companion care services, and homemaker services. [REDACTED] explained that for the last 3 months, [REDACTED] has been underpaying him, as [REDACTED] is only paying him for 40 hours per week, while Respondent authorized 43 hours per week. [REDACTED] is seeking compensation for services that he provided to Petitioner from [REDACTED] 2020, through [REDACTED] 2020. [REDACTED] confirmed that Petitioner does not reside with him.

15. Dr. Lutz is the Long-Term Care Medical Director for Sunshine. Dr. Lutz personally reviewed all documentation submitted to Respondent for this case, including all documents admitted in evidence. Dr. Lutz explained that the requested additional services were denied due to the following: Petitioner does not require total assistance with all ADLs and IADLs; Petitioner is not bedbound; Petitioner does not require supervision; Petitioner does not have constant bladder and bowel incontinence; and Petitioner walks with assistive devices. Dr. Lutz noted that Petitioner's request for additional services not specify whether the requested services were for PDO hours.

16. Ms. Morisaki is a Supervisor of LTC for Sunshine. Ms. Morisaki confirmed that Petitioner's request for additional hours did not specify whether the requested hours were for PDO. Ms. Morisaki testified that Petitioner signed a PDO agreement with [REDACTED] which stated that she will not allow her PDO provider to work more than 40 hours per week.

17. Ms. Mojica is a Compliance Specialist for Sunshine. Ms. Mojica explained that Respondent's records reflect that [REDACTED] is Petitioner's direct service worker.

CONCLUSIONS OF LAW

18. 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).

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

20. 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.

21. Because Petitioner is requesting additional services, so in 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.).

22. Fla. Admin. Code R. 59G-1.100(18)(f) states, "[t]he Final Order may prescribe corrective action retroactively to the date the incorrect action was taken."

23. 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") ("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.

...

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.

...

4.2.1.9 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.

...

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.

24. 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.

25. 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
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath

Dressing	
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
Grooming and Skin Care	
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
Positioning	
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
Transfers	
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
Toileting and Maintaining Continence	
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
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
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,	15–30 minutes day for all monitoring tasks performed

monitoring vital signs, and measurement of intake/output.	
---	--

PC Policy, pages 3 – 8, and 10.

26. In the instant case, Respondent denied an additional 42 hours per week of personal care services, an additional 10 hours per week of adult companion care services, and an additional 35 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.

27. 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* ¶ 23.

Personal Care Services

28. Section 4.2.2.6 of the SMMC 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* ¶ 23. Further, the PC Policy provides that personal care services are to “provide medically necessary assistance, in the home or in the community, with [ADL] and age appropriate [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.” *See supra* ¶ 25. The Sunshine Health Policy and Procedure LT.UM.09 reflects that personal care services provide “assistance with eating, bathing, dressing and personal hygiene, and other activities of

daily living.” *See supra* ¶ 9.

29. The evidence presented in this case does not reflect that Petitioner needs an additional 42 hours per week of personal care services. Specifically, regarding ADLs, Petitioner needs no assistance with eating, and she uses assistive devices for transferring and walking/mobility. *See supra* ¶ 3. Petitioner needs assistance (but not total help) with bathing, dressing, and using the bathroom. *See supra* ¶ 3. Regarding IADLs, Petitioner needs: no assistance with using the telephone; needs assistance (but not total help) with preparing meals, shopping, managing medication, and using transportation; and total assistance (cannot do at all) with heavy chores, light housekeeping, and managing money. *See supra* ¶ 4. Petitioner lives alone and has multiple medical conditions. *See supra* ¶ 2.

30. However, Petitioner does not need outside assistance to evacuate, nor does she have a primary caregiver. *See supra* ¶ 2. [REDACTED] Petitioner’s home health aide, currently provides Petitioner’s personal care services, adult companion care services, and homemaker services. *See supra* ¶ 14. Petitioner does not require any supervision for ADLs or IADLs, nor does she have bowel or bladder incontinence. *See supra* ¶ 5. The record reflects that Petitioner does not receive any of the following specialty care: IV fluids, IV medications, wound care, tube feedings, suctioning, bladder/bowel treatment, dialysis, or oxygen. *See supra* ¶ 5. Although the PC Policy provides guidance for general allowances for ADLs, *supra* ¶ 25, Petitioner provided no time estimates for each ADL to explain the amount of time Petitioner requires for her ADLs. Further, Petitioner neglected to explain how the requested additional hours personal care services, will be utilized to meet Petitioner’s needs if approved in this matter. Considering the totality of Petitioner’s circumstances – including the fact that Petitioner has a daughter who assists her,

does not require total assistance with *all* ADLs and IADLs, does not require supervision, walks and transfers with assistive devices, does not have bowel or bladder incontinence, and does not require specialty care – Petitioner’s evidence fails to justify the approval of an additional 42 hours per week of personal care services. Based upon the evidence presented by both parties, Petitioner failed to establish that additional hours of personal care services are warranted in this case.

31. Fla. Admin. Code R. 59G-1.010 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* ¶ 23 – 24. Petitioner is currently authorized to receive the following home and community-based services: 8 hours weekly of PDO adult companion care services; 28 hours weekly of PDO personal care services; 7 hours per week of PDO homemaker services. See *supra* ¶ 6. Although Petitioner needs assistance (but not total help) with bathing, dressing, and using the bathroom, Petitioner offered no testimony or evidence that Petitioner’s currently authorized personal care services are not sufficient to meet these needs. Considering the natural support of Petitioner’s daughter, Petitioner’s medical condition, and Petitioner’s level of assistance required for ADLs, *supra* ¶ 29 and 30, Petitioner did not demonstrate that an additional 42 hours per week of personal care services is medically necessary. Further, given that Petitioner failed to establish that the additional hours of personal care services are warranted in this matter, *supra* ¶ 30, the requested additional services are “in excess of [Petitioner’s] needs.” See *supra* ¶ 24.

Adult Companion Care Services

32. Section 4.2.1.1 of the SMMC LTC Policy reflects that adult companion care 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* ¶ 23.

33. 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* ¶ 9. 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.” *Id.*

34. The evidence presented in this case does not reflect that Petitioner needs an additional 10 hours per week of adult companion care services. Specifically, regarding ADLs, Petitioner needs no assistance with eating, and she uses assistive devices for transferring and walking/mobility. *See supra* ¶ 3. Petitioner needs assistance (but not total help) with bathing, dressing, and using the bathroom. *See supra* ¶ 3. Regarding IADLs, Petitioner needs: no assistance with using the telephone; needs assistance (but not total help) with preparing meals, shopping, managing medication, and using transportation; and total assistance (cannot do at all) with heavy chores, light housekeeping, and managing money. *See supra* ¶ 4. Petitioner lives alone and has multiple medical conditions. *See supra* ¶ 2.

35. However, Petitioner does not need outside assistance to evacuate, nor does she have a primary caregiver. *See supra* ¶ 2. [REDACTED] Petitioner’s home health aide, currently provides

Petitioner's personal care services, adult companion care services, and homemaker services. See supra ¶ 14. Petitioner's "daughter assists with paying bills and will at times bring her some items that member needs." See supra ¶ 4. Petitioner does not require any supervision. See supra ¶ 5. Petitioner neglected to explain how the requested additional hours adult companion care services will be utilized to meet Petitioner's needs if approved in this matter. Considering the totality of Petitioner's circumstances – including the fact that Petitioner has a daughter who assists her, does not require supervision, and walks and transfers with assistive devices – Petitioner's evidence fails to justify the approval of an additional 10 hours per week of adult companion care services. Based upon the evidence presented by both parties, Petitioner failed to establish that additional hours of adult companion care services are warranted.

36. 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 ¶ 23. Petitioner is currently authorized to receive the following home and community-based services: 8 hours weekly of PDO adult companion care services; 28 hours weekly of PDO personal care services; 7 hours per week of PDO homemaker services. See supra ¶ 6. Given that Petitioner does not require supervision, and has personal care services to assist with her ADLs and homemaker services to assist with her IADLs, Petitioner has not established that her currently authorized services adult companion care services are insufficient to meet her needs, or that additional adult companion care services are "necessary to protect the health, safety, and well-being of the enrollee, or social enrichment." See supra ¶ 23. Considering Petitioner's natural support of her daughter, currently authorized services, and the lack of need for supervision, *supra* ¶ 34

and 35, Petitioner did not demonstrate that an additional 10 hours per week of adult companion care services is medically necessary. Further, given that Petitioner failed to establish that the additional hours of adult companion care services are warranted in this matter, *supra* ¶ 35, the requested additional services are “in excess of [Petitioner’s] needs.” *See supra* ¶ 24.

Homemaker Services

37. Section 4.2.1.9 of the SMMC LTC Policy reflects that homemaker services are “[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* ¶ 23. The Sunshine Health Policy and Procedure LT.UM.09 reflects that homemaker services provide “assistance with essential shopping, light housework, laundry, and meal preparation.” *See supra* ¶ 9.

38. The evidence presented in this case does not reflect that Petitioner needs an additional 35 hours per week of homemaker services. Specifically, regarding IADLs, Petitioner needs: no assistance with using the telephone; needs assistance (but not total help) with preparing meals, shopping, managing medication, and using transportation; and total assistance (cannot do at all) with heavy chores, light housekeeping, and managing money. *See supra* ¶ 4. Petitioner uses assistive devices for transferring and walking/mobility. *See supra* ¶ 3. Petitioner lives alone and has multiple medical conditions. *See supra* ¶ 2.

39. However, Petitioner does not need outside assistance to evacuate, nor does she have a primary caregiver. *See supra* ¶ 2. [REDACTED] Petitioner’s home health aide, currently provides Petitioner’s personal care services, adult companion care services, and homemaker services.

See supra ¶ 14. Petitioner’s “daughter assists with paying bills and will at times bring her some items that member needs.” See supra ¶ 4. Petitioner does not require any supervision for ADLs or IADLs. See supra ¶ 5. Petitioner did not explain how the requested additional hours homemaker services will be utilized to meet Petitioner’s needs if approved in this matter. Considering the totality of Petitioner’s circumstances – including Petitioner’s mobility, the level of assistance needed IADLs, and the fact that Petitioner has a daughter who assists her – Petitioner’s evidence fails to justify the approval of an additional 35 hours per week of homemaker services. Based upon the evidence presented by both parties, Petitioner failed to establish that additional hours of homemaker services are warranted in this case.

40. 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 ¶ 23. Petitioner is currently authorized to receive the following home and community-based services: 8 hours weekly of PDO adult companion care services; 28 hours weekly of PDO personal care services; 7 hours per week of PDO homemaker services. See supra ¶ 6. As such, Petitioner has personal care services to assist with her ADLs, and homemaker services to assist with her IADLs. Although Petitioner requires assistance (but not total help) with preparing meals, shopping, managing medication, and using transportation, and total assistance (cannot do at all) with heavy chores, light housekeeping, and managing money, Petitioner offered no testimony or evidence that Petitioner’s currently authorized homemaker services are not sufficient to provider for these needs. Given that Petitioner failed to establish that the additional hours of homemaker services are warranted in this matter, *supra* ¶ 39, the requested additional services are “in excess of

[Petitioner's] needs." See supra ¶ 24. Therefore, Petitioner did not demonstrate that an additional 35 hours per week of homemaker services is medically necessary.

Petitioner's Request for Compensation

41. [REDACTED] is seeking compensation for services that he provided to Petitioner from [REDACTED] 2020, through [REDACTED] 2020. See supra ¶ 14. Fla. Admin. Code R. 59G-1.100(18)(f) states, "[t]he Final Order may prescribe corrective action retroactively to the date the incorrect action was taken." See supra ¶ 22. [REDACTED] contends that for the last [REDACTED] [REDACTED] has been underpaying him, as [REDACTED] is only paying him for 40 hours per week, while Respondent authorized 43 hours per week. See supra ¶ 14. However, [REDACTED] did not provide receipts for services provided, a specific amount of compensation that he is seeking, his hourly/weekly salary. As explained above, Petitioner failed to establish that the additional hours of personal care services, homemaker services and adult companion care services are warranted in this matter. See supra ¶ 32. Even if Petitioner had established that the requested additional services were medically necessary, the undersigned Hearing Officer cannot make a determination regarding the amount, if any, of [REDACTED] compensation. Considering that Petitioner failed to establish that the requested services were medically necessary, and failed to provide receipts, details and specific amounts for the compensation he seeks, the undersigned Hearing Officer declines to prescribe corrective action in this matter.

Conclusion

42. In light of the both parties' testimony and evidence, the post-hearing submittals, the SMMC LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet his burden of proving that an additional 42 hours per week of

personal care services, an additional 10 hours per week of adult companion care services, and an additional 35 hours per week of homemaker services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional personal care services, adult companion care services, and homemaker services and personal care services was incorrect. Additionally, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that corrective action is warranted in this case.

DECISION

Respondent's denial of an additional 42 hour per week of personal care service is **AFFIRMED**.

Respondent's denial of an additional 10 hours per week of adult companion care services is **AFFIRMED**.

Respondent's denial of an additional 35 hours per week of homemaker services is **AFFIRMED**.

Petitioner's request for compensation (corrective action) is **DENIED**.

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

DONE AND ORDERED this 2nd day of April, 2021, in Tallahassee, Leon County, Florida.



Tracie Hardin
21-FH[REDACTED], 21-FH[REDACTED], &
21-FH[REDACTED]
2021.04.02 11:33:23 -04'00'

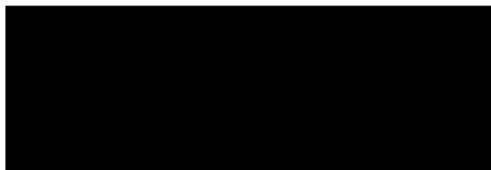
TRACIE HARDIN, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11

Tallahassee, FL 32308-5407
Office: (850) 412-3649
Fax: (850) 487-1423
E-mail: 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:



Sunshine State Health Plan, Inc.
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com