



Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”), appeared as a representative for Respondent. Dr. John Carter (“Dr. Carter”), Medical Director for Sunshine, appeared as a witness for Respondent. Carmen Guerrero, Supervisor of Case Management for Sunshine, appeared as a witness for Respondent but did not testify. Louise Jeanty, Quality Improvement Supervisor for Sunshine, appeared as a witness for Respondent but did not testify. Christina McVay, Care Coordinator for Sunshine, appeared as a witness for Respondent but did not testify.

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

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and three (103)-page hearing packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; Medicaid Fair Hearing Summary, dated February 12, 2021; Notice of Adverse Benefit Determination (“NABD”), dated December 18, 2020; Long Term Care Person-Centered Care Plan (“Care Plan”), signed December 14, 2002 [sic]; Care Plan, signed January 21, 2021; Florida Department of Elder Affairs 710B Comprehensive Assessment (“701B Assessment”), dated December 14, 2020; email from ██████████ Appeals, dated January 4, 2021; Standard Appeal Acknowledgement, dated January 5, 2021; Notice of Plan Appeal Resolution (“NPAR”), dated January 29, 2021; Revised NPAR, dated February 3, 2021; Sunshine Health, Policy and Procedure, LTC (Long Term Care) Ancillary Service Criteria, LT.UM.09; and former Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.01(166). Absent an objection, the

undersigned admitted Respondent's one hundred and three (103)-page hearing packet into evidence as Respondent's Composite Exhibit 1.

### FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine's Long-Term Care ("LTC") program. *See* Respondent's Composite Exhibit 1 at page 2. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] years old. *Id.* at 31. Petitioner is a paraplegic, and his medical conditions include: osteoarthritis, bed sores, high blood pressure, diabetes, bowel and bladder incontinence, atrial fibrillation, and anxiety. *Id.* at 37 – 38, 41. Petitioner has post-Polio syndrome, which causes severe pain and weakening. *Id.* at 24 and 49. Petitioner uses an electric wheelchair for safety and mobility. *Id.* at 24. Petitioner currently lives alone because his wife is in a rehabilitation facility awaiting a knee replacement. *Id.* at 50.

3. On December 18, 2020, Sunshine issued an NABD denying Petitioner's request for an additional 13 hours per week of homemaker services. *Id.* at 4 – 8. The NABD stated the reason for Sunshine's determination as follows:

X 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 13 hours/week of Homemaker Services is denied as not medically needed. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 11 hours/week of Personal Care Services and 7 hours/week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 4 – 5.

4. Petitioner requested a plan appeal. *Id.* at 51 - 52. On January 29, 2021, Respondent sent Petitioner an NPAR denying Petitioner's plan appeal for an additional 13 hours per week of homemaker services. *Id.* at 57 – 59. On February 3, 2021, Respondent sent Petitioner a Revised NPAR, which stated as follows:

On January 26, 2021, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby DENIES your plan appeal. As a result, [Petitioner] will not receive the extra 13 hours per week of Homemaker Services (the person who cleans for you), effective January 26, 2021.

The reason for our decision was: The appeal to overturn the denial of an extra 13 hours/week of Homemaker Services is denied as not medically needed. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 11 hours per week of Personal Care Services and 7 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 64.

5. In making its determination, Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09, which states in pertinent part, as follows:

**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

*Id.* at 83.

6. As of January 21, 2021, Petitioner's care plan included 11 hours of personal care services, and 7 hours of homemaker services, PERS monthly, one case per month of under pads, and two packs per month of wipes. *Id.* at 29.

7. Regarding Petitioner's activities of daily living ("ADLs"), Petitioner needs assistance (but not total help) with bathing, dressing, and using the bathroom; Petitioner uses an assistive device with transferring, and walking/mobility; and Petitioner needs no assistance with eating. *Id.* at 35. Petitioner has assistance most of the time with using the bathroom. *Id.* Petitioner always has assistance with bathing, dressing, transferring, and walking/mobility. *Id.* Petitioner needs no assistance with eating. *Id.*

8. Regarding Petitioner's instrumental activities of daily living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, and light housekeeping; Petitioner needs assistance (but not total help) with preparing meals, shopping, and using transportation; Petitioner needs no assistance with using the telephone, managing money, and managing medication. *Id.* at 36. Petitioner's children assist with shopping. *Id.* at 36. Petitioner rarely has assistance with heavy chores. *Id.* Petitioner has assistance most of the time with light housekeeping, shopping, and using transportation. *Id.* Petitioner always has assistance with preparing meals. *Id.*

9. Regarding Petitioner's need for homemaker services, the record indicates that Petitioner needs assistance with cleaning bed sheets, cleaning bedroom, sanitizing urinal and bathroom, meal preparation, and laundry. *Id.* at 25.

10. No cognitive concerns were indicated on Petitioner's most recent 701B Assessment. *Id.* at 33. Petitioner does not require supervision. *Id.* at 40. He is not forgetful or easily confused. *Id.*

11. On February 2, 2021, Petitioner requested a Fair Hearing due to the denial of an additional 13 hours per week of homemaker services. On February 11, 2020, the undersigned scheduled the Fair Hearing for March 3, 2021, at [REDACTED], and all parties were duly notified.

12. At the hearing, Petitioner testified that he is a paraplegic with numerous medical conditions. Petitioner's wife had 13 hours of homemaker services that were terminated when she entered a rehabilitation facility. Petitioner argued that an additional 13 hours of homemaker services are medically necessary because he is unable to care for himself. Petitioner further stated that his current living environment is "spotless."

13. Dr. Carter is Board certified in internal medicine, geriatric medicine, and hospice and palliative medicine. Dr. Carter considered all of Petitioner's disabilities due to Polio and his medical conditions, which include heart disease, stents, atrial fibrillation, diabetes, hypertension, and incontinence, as well as Petitioner's 701B Assessment and the documentation provided with Petitioner's request. Dr. Carter concluded that because Petitioner requires partial assistance for his ADLs and already receives 18 hours per week of paid services, the additional homemaker services are not medically necessary.

#### **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 section 409.285(2), Florida Statutes. This order is the final administrative decision of AHCA under section 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 homemaker 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 Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”). The Agency’s LTC Policy has been incorporated by reference into Fla. Admin. Code R. 59G-4.192.

The LTC Policy provides as follows:

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

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

...

### **1.3 Definitions**

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

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

ADLs include:

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

...

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

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

...

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

When necessary for the recipient to function independently, including:

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

...

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

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

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

And, one of the following:

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

...

## **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.

...

#### **4.2.1.9 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.

LTC Policy at pages 1-8.

19. In the instant case, Petitioner requested an additional thirteen (13) hours per week of homemaker services. *See supra* ¶ 3-4. Sunshine denied Petitioner's request, because the documentation submitted failed to establish that the requested services were medically necessary. *See supra* ¶ 3 and 4.

20. At the hearing, Petitioner testified that his wife had 13 hours of homemaker services that were terminated when she entered a rehabilitation facility. *See supra* ¶ 12. Petitioner argued that he is unable to care for himself due to his paraplegia and numerous medical conditions. *See supra* ¶ 12. Dr. Carter, board certified in internal medicine and experienced in geriatric medicine, and hospice and palliative care, considered all of Petitioner's disabilities and medical conditions, which include post-Polio syndrome, heart disease, stents, atrial fibrillation, diabetes, hypertension, and incontinence, as well as Petitioner's 701B Assessment and the documentation provided with Petitioner's request. *See supra* ¶ 13. Dr. Carter concluded that additional homemaker services are not medically necessary for Petitioner. *See supra* ¶ 13.

21. Based on the testimony and record evidence, additional homemaker services are not warranted in this case. Dr. Carter's testimony on the record was persuasive that the following care plan will meet Petitioner's medical needs: eleven (11) hours per week of personal care services and seven (7) hours per week of homemaker services, for a total of eighteen (18) hours per week of paid services. *See supra* ¶ 13.

22. As Petitioner requested the additional homemaker services, Petitioner has the burden of proof in this case. *See supra* ¶ 17. The record reflects that Petitioner needs partial assistance with his ADLs and IADLs. Regarding ADLs, Petitioner needs assistance (but not total help) with bathing,

dressing, and using the bathroom; Petitioner uses an assistive device with transferring, and walking/mobility; and Petitioner needs no assistance with eating. *See supra* ¶ 7. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with heavy chores, and light housekeeping; Petitioner needs assistance (but not total help) with preparing meals, shopping, and using transportation; Petitioner needs no assistance with using the telephone, managing money, and managing medication. *See supra* ¶ 8. The record reflects that Petitioner currently lives alone and his children assist with shopping. *See supra* ¶ 8. Further, Petitioner is neither cognitively impaired nor in need of supervision when carrying personal tasks. *See supra* ¶ 10. Petitioner characterized his current living environment as “spotless.” *See supra* ¶ 12.

23. Petitioner did not offer any testimony or evidence concerning why the currently approved amount of homemaker services are insufficient or what specific homemaker tasks he needs assistance with at this time. For example, Petitioner indicated that his wife’s homemaker services were discontinued when she entered a rehabilitation facility, and that he is unable to care for himself due to his medical conditions. *See supra* ¶ 12. However, he also indicated that his current living environment is “spotless.” *See supra* ¶ 12. Accordingly, it is unclear that Petitioner has an unmet need with regard to housekeeping at this time. Petitioner’s 701B Assessment indicates that Petitioner “rarely has assistance” with heavy chores, *supra* ¶ 8; however, Petitioner did not present evidence on this at the hearing. Petitioner also did not indicate on the record that he has an unmet need relating to shopping, laundry, or meal preparation and how much support is needed.

24. Accordingly, the undersigned concludes that Petitioner failed to demonstrate that an additional thirteen (13) hours of homemaker services per week are medically necessary and

supported by the record in this proceeding. Further, given that Petitioner failed to establish that the requested homemaker services are warranted in this matter, the requested homemaker services are “in excess of [Petitioner’s] needs.” See supra ¶ 3 and 4.

25. In light of the both parties’ testimony, Respondent’s Composite Exhibit 1, the LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to demonstrate that the requested homemaker services are medically necessary. Thus, Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of an additional thirteen (13) hours of homemaker services weekly was incorrect.

**DECISION**

Respondent’s denial of an additional thirteen (13) hours of homemaker services weekly is **AFFIRMED**. Petitioner’s request for an additional thirteen (13) hours per week of homemaker services is **DENIED**.

**DONE AND ORDERED** this 29th day of March 2021, in Tallahassee, Leon County, Florida.



Laura Gallagher  
21-FH [REDACTED]  
2021.03.29 11:03:29  
-04'00'

---

**LAURA GALLAGHER, 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**  
**SunshineHealth\_MFH@centene.com**

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