



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

FILED

May 04, 2021, 10:33 am

OFFICE OF FAIR HEARINGS

█

PETITIONER,

AHCA Case No.: 21-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

█

PETITIONER,

AHCA Case No.: 21-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 8, 2021, at █

APPEARANCES

For the Petitioner:

█

Petitioner

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUES

The first issue (21-FH[REDACTED]) is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's homemaker services from 20 hours per week to 13 hours per week's was correct.

The second issue (21-FH[REDACTED]) is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's 6 hours per week of adult companion care service was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared on her own behalf.

Maria Mojica ("Ms. Mojica"), Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. John Carter ("Dr. Carter"), Long Term Medical Director for Sunshine; Alshenetha Williams, Care Coordinator Supervisor for Sunshine; Louise Jeanty, Quality Improvement Supervisor for Sunshine; and Danyelle Small, Care Coordinator for Sunshine.

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration, ("Agency" or "AHCA"), Fair Hearing liaison, appeared as an observer.

Petitioner did not provide any documents prior to the hearing. At the Fair Hearing, the undersigned left the record open for a certain time to allow Petitioner to submit a copy of a Fair Hearing Final Order she said she received two or three years ago addressing the same issues as in this matter. Petitioner did not submit a copy of an Order but did supply a case number. The format of that case number indicates that the previous Order was rendered before the Office of

Fair Hearings was established under the AHCA, and as such that Order is not a part of this Office's records and thus not accessible.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Respondent two evidence packets; the first, for case No. 21-FH [REDACTED], was a ninety-four (94)-page packet; and the second, for case No. 21-FH [REDACTED], was a one hundred and three (103)-page packet.

The first, ninety-four (94)-page evidence packet, included copies of the following: a table of contents; a Medicaid Fair Hearing Summary, dated March 11, 2021; a Notice of Adverse Benefit Determination ("NABD-HM"), dated January 27, 2021; a Plan of Care ("POC"), dated October 19, 2020; a POC, dated February 15, 2021; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated January 14, 2021; an Expedited Appeal Acknowledgement, dated February 5, 2021; a Notice of Plan Expedited Appeal Resolution ("NPAR-HM"), dated February 6, 2021; a Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010(166). Absent an objection from the Petitioner, the undersigned admitted the ninety-four (94)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE1").

The second, one hundred and three (103)-page evidence packet, included copies of the following: a table of contents; a Medicaid Fair Hearing Summary, dated March 11, 2021; a Notice of Adverse Benefit Determination ("NABD-ACC"), dated January 27, 2021; a POC, dated October 19, 2020; a POC, dated February 15, 2021; a 701B, dated January 14, 2021; an Expedited Appeal Acknowledgement, dated February 5, 2021; a Notice of Plan Expedited Appeal Resolution ("NPAR-ACC"), dated February 6, 2021; a Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Fla. Admin. Code R. 59G-1.010(166). Absent an objection from the

Petitioner, the undersigned admitted the one hundred and nineteen (119)-page packet into evidence as Respondent's Composite Exhibit 2 ("RCE2").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. RCE1 at 2. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. RCE2 at 101.

2. Petitioner is eighty-three (83)-years old. RCE1 at 22. Petitioner lives alone in a rural area (*see Id.* at 23), but on property adjacent to her son. *Id.* at 32.

3. Petitioner is presently diagnosed with Acid reflux/GERD, photosensitivity, food allergies, lactose intolerance, osteo and rheumatoid arthritis, high blood pressure, high cholesterol, frequent dizziness, fibromyalgia, frequent incontinence of bladder and bowel, asthma, osteoporosis, partial left leg paralysis, hypothyroidism, diverticulosis, hiatal hernia, and lower leg and fingertip neuropathy. RCE1 at 37-38. Petitioner has a past history of bedsores, myocardial infarction, left breast lumpectomy, gastric ulcers, and urinary tract infection. *Id.* Petitioner is legally blind and attends the [REDACTED] weekly for classes for her low vision. *Id.* at 15, 34.

4. Petitioner's current medications include: Nitostat, Nexium, Singulair, Vitamin B12, Levothyroxin, and Vitamin D-3. RCE1 at 43.

5. In regards to her activities of daily living ("ADLs"), Petitioner needs assistance, but not total help, with bathing and dressing; needs no assistance with eating; and uses assistive devices with using the bathroom and transferring, and an electric wheelchair for mobility. *Id.* at 35.

6. Regarding her instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) with heavy chores and light housekeeping; needs no assistance using the telephone; and needs assistance, but not total help, with managing medication, managing money, preparing meals, shopping, and using transportation. *Id.* at 36. Petitioner has informal, family, supports that are available to assist her with her needs and care. *Id.* at 23. Petitioner can be safely left alone. *Id.* at 23 and 40. Petitioner’s son manages Petitioner’s finances and provides companion services. *Id.* at 23.

7. Petitioner’s POC includes 9 hours weekly of personal care services, 13 hours weekly of homemaker care services, and seven home delivered meals weekly. *Id.* at 29.

8. Regarding Case No. 21-FH [REDACTED], Respondent reduced Petitioner’s previously approved 20 hours per week of Homemaker Services to 13 hours per week. The reduction was announced in the NABD-HM dated January 27, 2021. *Id.* at 4 - 12. The NABD-HM explained the basis of the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (See Rule)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or

2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services. The member's present care plan includes 20 hours/week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status. Sunshine Health will reduce the Homemaker Services from 20 hours/week to 13 hours/week. This decision was made with Sunshine Health Policy Lt.UM.09 Long Term Care Ancillary Service Criteria.

RCE1 at 4 – 5.

9. Petitioner requested a plan appeal and received an NPAR-HM dated February 6, 2021, denying the plan appeal. *Id.* at 56-62. The NPAR-HM explained as follows:

The reason for our decision was:

The appeal to overturn the reduction of 7 hours per week of Homemaker Services, from 20 hours per week to 13 hours per week, is denied for lack of medical necessity. 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 9 hours per week of Personal Care Services, 13 hours per week of Homemaker Services, and 7 meals per week of Home Delivered Meals. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

RCE1 at 56.

10. Regarding Case No. 21-FH[REDACTED], Respondent terminated Petitioner's previously approved 6 hour per week of Adult Companion Care. The termination was announced in the NABD-ACC, dated January 27, 2021. The NABD-ACC explained the basis of the termination as follows:

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

4. 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;
5. 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
6. 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:

3. Enable the enrollee to maintain or regain functional capacity; or
4. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...

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

- 6 hours/week of Companion Care Services

...

Based on the assessment of the member's care needs and household and caregiver status, Sunshine will terminate:

- 6 hours/week of Companion Care Services

...

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

RCE2 at 4 – 5.

11. Petitioner requested a plan appeal and received an NPAR-ACC dated February 6, 2021,

denying the plan appeal. *Id.* at 56-62. The NPAR-ACC explained as follows:

The reason for our decision was:

The appeal to overturn the termination of 7 meals of Home Delivered meals and 6 hours per week of Companion Care Services is partially approved. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will overturn the termination of 7 meals per week of Home Delivered Meals but will deny the request for the 6 hours per week of Companion Care Services. Companion Care is provided to prevent social isolation. Companion Care is not hands on care. The member has regular contact with family and there is low risk of social isolation. The updated care plan approved by Sunshine Health

will include 7 meals per week of Home Delivered Meals. This was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

RCE2 at 56.

12. On February 11, 2021, Petitioner requested a Fair Hearing due to the reduction of 7 hours per week of Homemaker Services and termination of 6 hours per week of Adult Companion Care. On March 10, 2021, the undersigned issued an Order Consolidating [with Case No. 21-FH [REDACTED]] and Scheduling Hearing by Telephone and Prehearing Instructions (“Scheduling Order”), setting the hearing for April 8, 2021, at [REDACTED]

13. Petitioner’s testimony established that she lives alone in a rural area. Her son lives on an adjacent property. He works 10 hours per day, six days and week and is too busy with his family to offer much assistance. Petitioner’s grandson is her direct services worker. Petitioner concedes that her grandson carries her garbage to the dump, does some yard work, and changes her air conditioning filters. Petitioner points out that her rural living situation requires more shopping travel time to make a round trip.

14. Dr. John Carter testified for Respondent. Dr. Carter is a long term care medical director for Sunshine, and possesses board certifications in internal medicine, geriatric medicine, and hospice and palliative care medicine. Dr. Carter’s testimony established the process that resulted in the reduction of the Homemaker Services (21-FH [REDACTED]) and termination of the Adult Companion Care Service (21-FH [REDACTED]). Petitioner was approved for and receiving 20 hours per week of Homemaker Services and 6 hours per week of Adult Companion Care. A routine review and assessment by a case manager and a Sunshine medical director determined that 20 hours per week of Homemaker Services was excessive and that 13 hour per week was sufficient. The decision included consideration of the availability of Petitioner’s son and grandson living close

by, and that fact that some of the approved services were being used for excluded services (yard work and general home maintenance). The Sunshine medical director determined that the 6 hours per week of Adult Companion Care was not medically necessary because Petitioner did not meet a categorical qualification of having a “triggering diagnosis” as required under the criteria set forth in Sunshine’s Long Term Ancillary Service Criteria LT.UM.09 (“the Criteria”) and had other available supports as described in the Criteria’s Four Dimensions of Determination. See RCE1 at 63-93 [21-FH █████]; RCE2 at 63-102 [21-FH █████]. Employing the Homemaker Service Determination Tables (see RCE1 at 76 et seq.), the reviewing medical director in this case calculated that 13 hours per week of Homemaker Service were sufficient to provide essential support to Petitioner. Employing the Criteria’s Adult Companion Care criteria, the medical director determined that Petitioner did not qualify for Adult Companion Care and thus terminated that service.

CONCLUSIONS OF LAW

15. 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)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

17. Because Respondent is reducing a previously approved service (21-FH █████ Homemaker Service) and is terminating a previously approved service (21-FH █████ Adult Companion Care), Respondent bears the burden of proof as to both cases. Fla. Admin Code R. 59G-1.100(17)(g). 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.)The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to homemaker and adult companion care services:

1.1 Description and Program Goal

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

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

...

4.1 General Criteria

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

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

...

4.2.1.9 Homemaker Services

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

...

4.2.1.1 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.

...

18. The LTC Policy also addresses medical necessity:

1.3.14 Medically Necessary or Medical Necessity

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

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

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

19. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

20. LT.UM.09 provides as follows in regards to homemaker care services:

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

Covered Homemaker service may include:

a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Housekeeping Considerations:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member
- For members living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area.
- The entire size of the home may be considered if cleaning of specific areas not used by the member is needed to maintain sanitary living conditions.
- For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.

...

Exclusions and Limitations for Homemaker include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.
4. Homemaker services shall not be provided overnight.
5. Homemaker services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Member/member's representative must be able to provide direction to aid when aid is in the home.
7. Care, grooming, or feeding of pets and animals
8. Yard work, gardening, or home maintenance work
9. Escort Services
10. Day care or afterschool care
11. Assistance with homework
12. Meal preparation does not include the cost of meals

RCE1 76-80.

21. LT.UM.09 provides as follows in regards to adult companion care:

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.

Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental illness requiring supervision
- Parkinson's disease
- Multiple sclerosis
- ALS
- Congestive Heart Failure
- COPD
- Cancer
- End State Renal Disease
- TBI
- Other diagnosis as deemed medically necessary by Medical Director

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
 - See Section C.1.c for more details
- Informal supports
 - None
 - Few friends/family in area
 - Family nearby
- Living Situation
 - Lives alone
 - Lives with other but is alone for extended periods of time due to the necessary absence of a caregiver
 - Lives with caregiver and others
- Services in Place
 - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations Adult Companion Care include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.

5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

...
RCE2 at 69-70.

A. Homemaker Care Services – 21-FH [REDACTED]

22. In the NABD-HM dated January 27, 2021, Respondent reduced Petitioner’s homemaker services from twenty (20) hours per week to thirteen (13) hours per week. *Supra* ¶18. In the NABD-HM, Respondent explained that twenty (20) hours per week of homemaker services were not medically necessary, and that the reduction in homemaker services was “[b]ased on the assessment of the member’s care needs and household and caregiver status” *Id.*

23. As provided in Respondent’s policy, LT.UM.09, homemaker services are to provide “assistance with essential shopping, light housework, laundry, and meal preparation.” As discussed in LT.UM.09, homemaker services are determined, in part, based on: IADL limitations; the recipient’s living situation; supervision needs; and available supports. Moreover, as provided in the LTC Policy, homemaker services is 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.”

24. As provided in the record, Petitioner 83 years old, is legally blind, lives alone in a rural area, and requires an electric wheelchair for mobility. *Supra* ¶¶ 2-6 and 13. Petitioner requires total assistance with the IADLs homemaker services were intended to address, such as heavy chores and light housekeeping. Here, the Respondent argued that the availability of family supports in the near vicinity, together with evidence that some of the approved services were being used to carry Petitioner’s garbage to the dump, to do unspecified yard work, and replace the filters on Petitioner’s air conditioner, indicate that 20 hours per week of Homemaker were in excess of Petitioner’s needs and thus the 13 hours per week of approved services are sufficient to meet her needs. *Supra* ¶14. However, Respondent did not provide evidence of the specific calculations of how it arrived at that conclusion, such as by providing evidence of how long it takes to provide care for Petitioner’s ADLs and IADLs, or by showing how much time Petitioner’s caregiver has to provide assistance to the Petitioner. Without evidence of the specific component calculations, the undersigned cannot make an independent determination of whether the plan’s action was correct. Moreover, while the Criteria for Homemaker Services generally exclude “yard work, gardening, and home maintenance work” (*see* RCE1 at 78), the Criteria allow for chores to “maintain the member in a home that is clean and sanitary” (*see* RCE1 at 80). Without evidence of the character of the yard work it cannot be said that the subject chores were excluded. Likewise, without evidence of the intensity of the activity required, it cannot be said that changing an air conditioning filter is not an ordinary housekeeping task as opposed to home maintenance. Removing household garbage to the dump in a rural area is the functional

equivalent of leaving the garbage at the curb in a city settling, the place where the garbage collection officials gather it. Without removal, the accumulation of garbage for Petitioner could adversely implicate the sanitary nature of her home.

25. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's reduction of Petitioner's homemaker services was correct.

B. Adult Companion Care – 21-FH [REDACTED]

26. In the NABD-ACC dated January 27, 2021, Respondent terminated Petitioner's six (6) hours per week adult companion care services. *Supra* ¶10. In the NABD-ACC, Respondent explained that six (6) per week of adult companion care services were not medically necessary, and that the termination of the adult companion care services was "[b]ased on the assessment of the member's care needs and household and caregiver status" *Id.*

27. As provided in Respondent's policy, LT.UM.09, adult companion care services are to "provide non-medical care, supervision, and socialization to a functionally impaired adult." As discussed in LT.UM.09, adult companion care services are determined, in part, based on: the recipient's need for supervision; the recipient's informal supports; the recipient's living situation; and the services in place for the recipient. Moreover, as provided in the LTC Policy, adult companion care is to provide "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." As provided in the record, Petitioner lives alone but adjacent to her son and his family. Her grandson is her direct services worker and she receives nine (9) hours per week of personal care services, and as a result of the undersigned's decision *supra*, she will again receive twenty


(20) hours per week of Homemaker Services. The undersigned finds that Petitioner is not at risk of social isolation and Petitioner feels safe living on her own with supports. *And see* RCE2 at 40 and 45; questions 110-114. Moreover, a categorical qualification for adult companion care services is a “trigger diagnosis”. *Supra* ¶122. The record shows that Petitioner has not been diagnosed with one of the enumerated trigger diagnoses. RCE2 at 37-38 and *supra* ¶14.

28. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent’s termination of adult companion care was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of homemaker care services is **REVERSED**. Petitioner’s appeal based on Respondent’s reduction is **GRANTED**. Respondent’s termination of adult companion care **AFFIRMED**. Petitioner’s appeal based on Respondent’s termination is **DENIED**.

DONE AND ORDERED this 4th day of May, 2021, in Tallahassee, Leon County, Florida.

Michael J. Hauversburk
21FH [REDACTED] & 21FH [REDACTED]
 2021.05.04 08:59:40
-04'00'

MICHAEL HAUVERSBURK, 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