



FILED

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OFFICE OF FAIR HEARINGS

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

[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 undersigned Hearing Officer convened a telephonic Fair Hearing in the above-styled case on March 17, 2021, at [REDACTED]

APPEARANCES

For the Petitioner: [REDACTED]
Authorized Representative

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

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of Personal Care services from thirty-six (36) hours per week to fourteen (14) hours per week was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the Fair Hearing telephonically. Petitioner appeared for the Fair Hearing. [REDACTED] (“Petitioner’s Authorized Representative”), Petitioner’s wife and primary caregiver, appeared for the Fair Hearing to provide testimony and did not call any witnesses.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine Health”), appeared for the Fair Hearing as a representative for Respondent. The following persons appeared for the Fair Hearing as witnesses for Respondent: Melissa Layne, Senior Manager for Member Appeals for Sunshine Health; Lakisha Hughes, Care Coordinator Supervisor for Sunshine Health; Alshenetha Williams, Care Coordinator Supervisor for Sunshine Health; Dr. Michael Gervasi (“Dr. Gervasi”), Medical Director for Sunshine Health; and Catherine Rodriguez, Care Coordinator for Sunshine Health.

Marielisa Amador, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as an observer.

Petitioner did not introduce any exhibits at the Fair Hearing. Respondent introduced an evidence packet containing one hundred and five (105) pages, which was admitted into evidence as Respondent’s Composite Exhibit 1. Respondent’s Composite Exhibit 1 includes the following: a Table of Contents; the Medicaid Fair Hearing Summary (dated February 24, 2021); a Notice of Adverse Benefit Determination (“NABD”) (dated December 29, 2020); a Long Term Care Person-Centered Plan (“Plan of Care”) (signed by Care Manager on December 22, 2020); a Plan of Care (signed by Care Manager on February 22, 2021); a Florida Department of Elder Affairs: 701B

Comprehensive Assessment (“701B Comprehensive Assessment”) (dated December 22, 2020); an email from Petitioner’s Authorized Representative (dated January 7, 2021); a letter from Petitioner’s Authorized Representative (dated January 6, 2021); a copy of the NABD; a Request for an Appeal or Grievance Form (signed on January 6, 2021); ██████████ records (undated); a Standard Appeal Acknowledgment letter (dated January 11, 2021); a Notice of Plan Appeal Resolution (“NPAR”) (dated February 5, 2021); Sunshine Health Policy and Procedure: Long Term Care (“LTC”) Ancillary Service Criteria (LT.UM.09) (“LTC Ancillary Service Criteria”); and the Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010 (166).

FINDINGS OF FACT

1. As of September 1, 2018, Petitioner is an enrolled member of Sunshine Health’s LTC Program. See Respondent’s Composite Exhibit 1, page 2. Sunshine Health is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.
2. Petitioner is 48 years old, married to Petitioner’s Authorized Representative, and resides in the community with Petitioner’s Authorized Representative and his 5 children. *Id.* at 31-32, 45. Petitioner uses a scooter, a seated walker, and a CPAP machine. *Id.* at 34, 38. As testified to by Petitioner’s Authorized Representative at the hearing, their children are the following ages: 18, 17, 14, 8, and 8 (twins). Petitioner cannot support his own bodyweight. Petitioner experiences the following health conditions: allergies; high blood pressure; high cholesterol; frequent dizziness; kidney problems; thyroid problems/graves/myxedema; syncope; forgetfulness; chronic fatigue; CPT2 (genetic condition); sleep apnea; osteoarthritis; iron deficiency; dyslipidemia; disorder of fatty acid oxidation; microalbuminuria; lactose intolerance; muscle

carnitine palmitoyltransferase deficiency; and unspecified chronic gastritis without bleeding. *Id.* at 37-38, 60. Petitioner has been diagnosed with the following mental health conditions: depression; anxiety; and insomnia. *Id.* at 39-40, 60. As testified to by the Petitioner at the hearing, Petitioner's health has not improved since the initial authorization of LTC services. As testified to by Dr. Gervasi at the hearing, Petitioner has a rare genetic condition that causes significant muscle weakness and chronic pain.

3. Petitioner needs assistance (but not total help) with activities of daily living ("ADLs") such as bathing, dressing, eating, using the bathroom, transferring, and walking/mobility. *Id.* at 35. Petitioner uses an assistive device for walking/mobility. *Id.* Petitioner needs total assistance with instrumental activities of daily living ("IADLs") such as heavy chores, light housekeeping, shopping, and using transportation. *Id.* at 36. Petitioner needs assistance (but not total help) with managing money, preparing meals and managing medication. *Id.* Petitioner needs no assistance with using the telephone. *Id.* As testified to by the Petitioner at the hearing, Petitioner's Authorized Representative provides assistance with ADLs and IADLs.

4. Prior to the instant action, Petitioner was authorized to receive the following LTC services: Personal Care services (36 hours per week); Homemaker services (4 hours per week); and Personal Emergency Response System ("PERS") services (monthly subscription). *Id.* at 25.

5. Petitioner's primary caregiver is Petitioner's Authorized Representative. *Id.* at 45. Petitioner's Authorized Representative works part-time outside of the home. *Id.* Petitioner's Authorized Representative does not have anyone to assist in providing care. *Id.* Petitioner's Authorized Representative is Petitioner's Direct Service Worker ("DSW") in the Participant Direction Option ("PDO") Program. *Id.* at 52. As testified to by Dr. Gervasi at the hearing,

Petitioner's Authorized Representative does not work outside of the home. Petitioner is never left alone between Petitioner's Authorized Representative and the children. As testified to by Petitioner's Authorized Representative at the hearing, she has a part-time job where she works from home. Petitioner's Authorized Representative provides care for the Petitioner when she is available and not caring for their children.

6. On December 29, 2020, Sunshine Health issued an NABD reducing Petitioner's Personal Care services from 36 hours per week to 14 hours per week. *Id.* at 4-8. The NABD states as follows:

Sunshine Health has reviewed your request for 36 hours weekly of Personal Care (the person who helps bathe and dress you), which we received on 12/22/2020. After our review, this service has been:

REDUCED as of 01/11/2021.

We made our decision because:
(Check all boxes that apply)

We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (*See Rule*)

...

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

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

and one of the following:

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

...

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services. The member's present care plan includes 36 hours/week of Personal Care Services and 4 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 Personal Care Services from 36 hours/week to 14 hours/week, which is a reduction of 22 hours/week of Personal Care Services.** The updated care plan approved by Sunshine Health will include 14 hours/week of Personal Care Services and 4 hours/week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Sincerely,
John M. Carter, MD ["Dr. Carter"]
Medical Director

Id. at 4-8. (Emphasis added).

7. On February 5, 2021, Sunshine issued an NPAR denying Petitioner's plan appeal. *Id.* at 67-

68. The NPAR states as follows:

On January 7, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated January 11, 2021, Notice of Adverse Benefit Determination Number [REDACTED] **REDUCING** the 36 hours per week of Personal care (the person who helps bathe and dress you) provided to [Petitioner].

On February 3, 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 36 hours per week of Personal care (the person who helps bathe and dress you), effective February 3, 2021.

The reason for our decision was: The reconsideration request to resume previous level of Personal Care hours is denied and the original determination is upheld. **Sunshine Health looked at the member's present care needs and provided home services.** The member's present care plan includes 36 hours/week of Personal Care Services + 4 hours/week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health reduced the Personal Care Services from 36 hours/week to 14 hours/week, which is a reduction of 22 hours/week of Personal Care Services. The updated care plan approved by Sunshine Health remains 14 hours/week of Personal Care Services + 4 hours/week of Homemaker 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 Family Medicine.

...

Sincerely,
Andrew Russell, MD ["Dr. Russell"]
Medical Director

Respondent's Composite Exhibit 1, pages 74-76.(Emphasis added).

8. In making a medical necessity determination in the NABD and in the NPAR, Sunshine Health relied upon the LTC Ancillary Service Criteria. *Id.* at 74-104. The LTC Ancillary Service Criteria states as follows regarding Personal Care services:

1. Determinants for Services

When considering the level of support the member requires and which of the ancillary services may support the member's cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member's support needed due to ADL deficits, living situation, and supervision needs.

- a) Activities of Daily Living (ADL's)/Instrumental Activities of Daily Living (IADL's)
- Independent where member is able to provide the task without support, with or without assistive devices
 - Minimal functional impairment where the ADL's require one of the following:
 - Supervision
 - At least minimum assistance
 - Member ambulates with assistance of a person or a device
 - Member transfers require at least minimum assistance
 - Moderate functional impairment where two of the follow apply
 - Member has ADLs requiring at least minimal assistance
 - Member ambulates with assistance of a person or device
 - Member transfers require at least minimum assistance
 - Maximum and persistent functional impairment without available caregiver support where all of the following exist:
 - Member has ADLs requiring total assistance
 - Member is non-ambulatory

- Member transfers require one (1) to two (2) person assist
- Member's treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone.
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member). Lives with non-family (with consideration of the number of days and hours that nonfamily members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

The criteria for each ancillary service is described below:

...

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:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. 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
- d. 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
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

Personal Care workers must be supervised by a registered nurse, licensed to practice nursing in Florida and who conducts a supervisory home visit every 60 days to observe the personal care worker. The services may be provided in the member's home or other location.

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

See Section C.1 for more detail

Covered Personal Care services may include:

- a) Bathing - Assistance with bathing, including washing, rinsing, and drying the body or body parts.
 - Member's ability to transfer in and out of the tub or shower
 - Amount of time it takes the member to transfer in and out of the tub or shower
 - Ability of member to prepare the shower or run the bath water
 - Ability of member to use any assistive devices, such as a grab-bar or shower chair
 - Ability of member to use a sponge or wash cloth to clean himself/herself

- How many times per week does the member bathe, consider that:
 - Incontinence episodes resulting in the need for a bath
 - Daily bathing of the elderly is not recommended due to damage that occurs to the skin from the water and the soap
 - Bathing more than once per day is a personal preference and not a necessity.
 - Full bath (bathtub, shower, or bed bath) or partial sponge bath (washing of face, underarms, and private areas).
 - A bed bath for members who are bed bound and cannot get out of the bed to be bathed in a shower or tub
- b) Dressing and Grooming - Dressing assistance includes the laying out, taking off, putting on, and fastening of clothing and footwear, and includes:
- Member's ability to choose their own clothes, put them on, and put on socks and shoes
 - Ability to put clothes, socks and shoes on if someone lays out the clothes
 - Ability to button, zipper, tie, or buckle clothes or shoes
 - Ability to successfully use assistive devices in dressing, such as reachers, sock pullers, or shoehorns
 - Ability to dress self in the morning or evening to get ready for bed

Grooming includes assessment of member's ability to:

- Comb or brush hair
- Shave
- Complete oral hygiene, including brushing teeth, remove dentures/partials, clean dentures/partials, and replace dentures/partials
- Trim and clean fingernails and toenails
-

- c) Eating and Feeding Considerations – Eating/Feeding is the process of a member getting oral nourishment from a receptacle (dish, plate, cup, glass, bottle, etc.) into their body after it is cooked or prepared for eating. (This does not include tube feeding as that is considered a skilled task.)

Includes an assessment of the member's ability to:

- Cut foods into appropriate size pieces
- Move food or drink from the serving receptacle to their mouth

Support for eating considers the number of meals per day that the member eats.

Note: Assistance with the preparation of meals is considered as part of Meal Preparation

- d) Toileting Considerations

- Taking off and putting on of clothing and/or diapers,
 - Post-toilet hygiene
 - Use of equipment, such as a urinal or bedpan
 - Emptying of urinal or bedpan
 - Cleaning of a catheter or ostomy bag
 - Reminders or a toileting schedule
- e) Transferring Considerations - Transferring is the member's ability to move horizontally and/or vertically between the bed, chair, wheelchair, commode, etc. It includes an assessment of the member's:
- Ability to use any mechanical devices such as a walker, cane, handrails, or wheelchair to assist with transfers
 - Ability to safely transfer without the assistance of another person
 - Ability to physically participate in the transfer by pivoting, holding on, or bracing themselves to assist the caregiver
- f) Mobility Considerations – Mobility is the extent of the member's purposeful movement within their residence. It includes an assessment of the member's:
- Ability to purposely move about his/her residence independently with or without the use of assistive devices, this includes the ability of a member to move around in a wheelchair
 - Movements being unsafe without the assistance of another person in ambulating
 - Muscle weakness, unstable gait or unstable balance

...

Exclusions and Limitations for Personal Care services 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. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
 - a. Member requires frequent repositioning due to wounds
 - b. Severe incontinence requiring multiple overnight changes and cleaning
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort Services

Respondent's Composite Exhibit 1, pages 74-104.

9. On February 12, 2021, Petitioner's Authorized Representative timely requested a Fair Hearing to contest Respondent's reduction of Personal Care services. On February 24, 2021, the undersigned scheduled the Fair Hearing to be conducted by telephone on March 17, 2021, at [REDACTED]

10. As confirmed on the record at the hearing, Dr. Gervasi is board-certified in Family Medicine. Respondent determined that Petitioner's needs are met and not excessive with natural support of his family and the currently approved LTC services. Respondent reduced Petitioner's Personal Care services from 36 hours per week to 14 hours per week based on medical necessity. Thus, 22 hours per week of Personal Care services were no longer medically necessary based on Respondent's determination. Respondent used the 701-B Comprehensive Assessment and their internal criteria, *supra* ¶ 8, to make a medical necessity determination.

CONCLUSIONS OF LAW

11. Pursuant to Florida Statute ("Fla. Stat.") § 409.285(2) (2019), the Agency's Office has jurisdiction over the subject matter of this proceeding and the parties. This Final Order is the final administrative decision of AHCA. *See* Fla. Stat. § 409.285(2)(a).

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

13. Because Respondent reduced an existing service, the burden of proof is on the Respondent. *See* Fla. Admin. Code R. 59G-1.100(17)(g). The standard of proof in an administrative hearing is a preponderance of the evidence. *Id.* The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

14. Pursuant to Fla. Admin Code R. 59G-1.100(17)(g), the burden of proof is 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.

(Emphasis added).

15. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“LTC Policy”) (March 2017), incorporated by reference in Fla. Admin. Code R. 59G-4.192, establishes the provision and coverage for LTC services available under the Florida Medicaid program. The LTC Policy provides as follows:

1.1 Description and Program Goal

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

...

1.3 Definitions

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

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

1.3.5 701-B Comprehensive Assessment

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

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

1.3.14 Medically Necessary or Medical Necessity

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

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

And, one of the following:

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

1.3.16 Natural Supports

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

...

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary;
- Do not duplicate another service; and
- Meet the criteria as specified in the 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 restrictive setting

...

4.2.1 Home and Community-Based Supportive Services

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

4.2.1.9 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.

4.2.1.14 Personal Emergency Response Systems ["PERS"]

For installation and service monitoring of an electronic device connected to an enrollee's phone that includes a portable "help" button, when provided to an enrollee at high risk of institutionalization to secure help in an emergency.

...

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.

16. The Florida Medicaid Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines the commonly used terms, Medical Necessity and Medically Necessary, 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.

(Emphasis added).

17. Based on the NABD and the NPAR, Respondent reduced Petitioner's Personal Care services from 36 hours per week to 14 hours per week, based on medical necessity. See supra ¶¶ 6-7. Thus, Respondent ultimately determined that 22 hours per week of Personal Care services are no longer medically necessary. See supra ¶ 10. Specifically, Respondent based their decision on "the assessment of the member's care needs and household and caregiver status." See supra ¶¶ 6-7.

18. Both the NABD and the NPAR disclosed that the adverse action taken against Petitioner's Personal Care services were made with the LTC Ancillary Service Criteria. *See supra* ¶ 6-7. As for the LTC Ancillary Service Criteria criteria at issue, Dr. Gervasi provided no testimony with respect to the whether Petitioner met the criteria or not. The LTC Ancillary Service Criteria for Personal Care services weighs four (4) criteria: (a) ADL limitations; (b) Living situation; (c) Supervision needs; and (d) Available Support. *See supra* ¶ 8. Petitioner needs assistance (but not total help) with ADLs. *See supra* ¶ 3. Dr. Gervasi referenced the 701-B Comprehensive Assessment regarding Petitioner's need for assistance with ADLs. Petitioner resides with his wife and five children. *See supra* ¶ 2. Dr. Gervasi did not present any evidence or testimony regarding any natural support provided by Petitioner's five children. Dr. Gervasi referenced that although Petitioner's Authorized Representative is employed, she does not work outside of the home. Respondent provided no evidence regarding Petitioner's Authorized Representative's work schedule and her ability to provide care for the Petitioner while attending to her employment responsibilities. With respect to Supervision needs, the record indicates that Petitioner is not a wandering risk, confused/disoriented, at risk to themselves, has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services, or that Petitioner is unable to call for help, even with a personal emergency response unit. With respect to Petitioner's available support, the record indicates that Petitioner has assistance most of the time from his wife, when she is not working. Respondent presented no evidence that Petitioner has available support of 22 hours per week when his wife is working and not available to assist in care. Lastly, Respondent did not present any evidence that the Personal

Care services at issue were being used in a manner that violated the LTC Ancillary Service Criteria's exclusions and limitations. *See supra* ¶ 8.

19. Personal Care services "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* ¶ 15. Personal Care services are covered if they are determined to be medically necessary. Because Personal Care services are classified as mixed services, the Definition Policy's definition of medical necessity applies. *See supra* ¶ 15. To be medically necessary, a service must meet the criteria set forth in the section 2.83 of the Definitions Policy. Based on the record, *supra* ¶ 5-6, 9, Respondent reduced Petitioner's Personal Care services for not meeting the following medical necessity standard: Services must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs. This criterion is stated in section 2.83 of the Definitions Policy. *See supra* ¶ 15.

20. With respect to Medical Necessity, the record indicates that Respondent did not prove by a preponderance of the evidence that 22 hours per week of Personal Care services are in excess of the Petitioner's needs at this time. Dr. Gervasi and Respondent relied upon the information that Petitioner's wife is his primary caregiver and does not work outside of the home. However, Petitioner's wife is still employed and still has the responsibility of parental caregiving for their five children. The record indicates that Petitioner is not able to assist in parental caregiving at this time. Furthermore, Respondent presented no evidence that Petitioner has any other natural support to assist in Petitioner's care. Petitioner and Petitioner's Authorized Representative argued that Petitioner's needs have not changed and Petitioner's health has not improved.

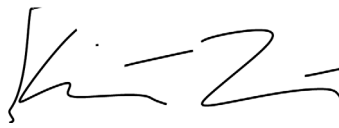
Respondent did not address either of these positions with respect to how this information affects a recipient's needs for services. In light of Petitioner's health and ADL needs has not changed, Respondent failed to present an evidentiary connection that Petitioner's available supports have increased to the extent that 22 hours per week of Personal Care services are no longer needed. Respondent did not address how Petitioner's needs could be met with less services in light of unchanged ADLs and available natural support. Here, Respondent failed to establish the the specific quantity of Personal Care services, 22 hours per week, are no longer medically necessary. Based on the record, Respondent has not demonstrated that 22 hours per week of Personal Care services were now in excess of Petitioner's needs at this time. Thus, the Petitioner still meets criterion number two for medical necessity.

21. Accordingly, upon consideration of Respondent's Composite Exhibit 1, the parties' sworn testimony, and the aforementioned applicable laws and policies, the undersigned concludes that Respondent failed to prove that 22 hours per week of Personal Care services, at issue, are no longer medically necessary. The undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's reduction of 22 hours per week of Personal Care services was correct.

DECISION

Respondent's reduction of Personal Care services from thirty-six (36) hours per week to fourteen (14) hours per week is **REVERSED**. Petitioner's request for relief is hereby **GRANTED**.

DONE and ORDERED this 12th day of April, 2021, in Tallahassee, Leon County, Florida.



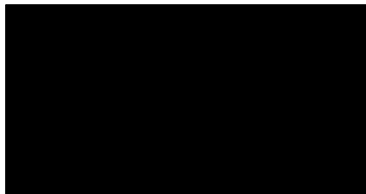
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León
Reason: 21-FH [REDACTED]
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KRISTOPHER LEÓN, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649
Fax: (850) 487-1423
Email: 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:



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