



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

FILED

May 03, 2021, 12:12 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 21-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 21-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 12, 2021, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Deborah Havey-Levy
State Fair Hearing Coordinator
UnitedHealthcare of Florida, Inc.

STATEMENT OF ISSUES

The first issue (AHCA Case Number 21-FH [REDACTED]) is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional two (2) hours per week of personal care services was incorrect.

The second issue (AHCA Case Number 20-FH [REDACTED]) is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of thirty (30) hours per week of adult companion care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] Petitioner's Authorized Representative and daughter, appeared at the Fair Hearing and provided testimony on behalf of Petitioner.

Deborah Havey-Levy, State Fair Hearing Coordinator for UnitedHealthcare of Florida, Inc. ("United" or "Respondent"), represented Respondent at the hearing. Dr. Sloan ("Dr. Karver"), Long Term Care ("LTC") Medical Director for United, appeared as a witness for Respondent.

Sheila Broderick, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Interpreter Ernesto, identification number 249076 with Language Line Solutions, provided translation services for Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a five (5)-page evidence packet. The packet included the following documents: fax cover page, dated February 18, 2021; first page of the Notice of Plan Appeal Resolution ("NPAR"), dated January 21, 2021; letter from [REDACTED] dated February 17, 2021; letter from [REDACTED]

██████████ dated February 15, 2021; and letter from ██████████ dated February 9, 2021.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eleven (211)-page evidence packet. The packet included the following documents: a Medicaid Fair Hearing Statement of Matters; an address page; a blank page; a Notice of Adverse Benefit Determination (“NABD”), dated December 16, 2020; the CSP - General Request Form – ██████████ a letter from United to Petitioner, dated December 22, 2020 in Spanish; Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B Assessment”), dated December 14, 2020; Respondent’s internal records for Petitioner; three sets of Appeal Review notes; Appeal review notes from ██████████; NPAR, dated January 21, 2021; Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1; Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”); Florida Medicaid Authorization Requirements Policy (June 2016); Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Policy”); Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); Home Health Visit Services Fee Schedule, dated January 1, 2017; Personal Care Services Fee Schedule, dated January 1, 2017; Private Duty Nursing Services Fee Schedule, dated January 1, 2017; the Agency’s Participant Direction Option Manual; 42 C.F.R. § 441.480; 42 C.F.R. § 418, Hospice Care, Subpart C – Conditions of Participation: Patient Care; and sections 400.6105, 400.609, 400.462, and 409.910, Florida Statutes (2018). Absent an objection from Petitioner, the undersigned admitted Respondent’s 211-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of United's LTC plan. See Respondent's Composite Exhibit 1 at page 41. United is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

2. Petitioner is 85-years old with diagnoses of high blood pressure, high cholesterol, diabetes, frequent dizziness, hypothyroidism, cirrhosis of liver, sleep apnea, atrial fibrillation, and senile dementia. *Id.* at 28-29, 30, 41 and 55. Petitioner lives alone and next door to her son. *Id.* at 23 and 42. Petitioner's daughter [REDACTED], who works as a teacher, visits several times per week and assists Petitioner with groceries and occasionally cooks for Petitioner. *Id.* at 42-43 and 55.

3. Regarding Activities of Daily Living ("ADLs"), Petitioner needs assistance (but not total help) with bathing and dressing. *Id.* at 26. Petitioner needs supervision or prompt with eating. *Id.* Petitioner uses an assistive device when using the bathroom. *Id.* Petitioner needs no assistance with transferring or walking/mobility. *Id.* Petitioner has assistance most of the time with eating. *Id.* Petitioner always has assistance with bathing and dressing. *Id.*

4. Regarding Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores. *Id.* at 27. Petitioner needs assistance (but not total help) with light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. *Id.* Petitioner needs no assistance using the telephone. *Id.* Petitioner always has assistance with heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication and using transportation. *Id.* Petitioner talks and spends time with friends, relatives, or others once a day. *Id.* at 36. Petitioner participates in activities outside the home that interest her two to six times per week. *Id.*

5. Petitioner is forgetful or easily confused approximately once per month. *Id.* at 31. She does not need supervision, *Id.*, and she can be left alone. *Id.* at 43 and 60. Petitioner has not fallen in the past six months. *Id.* at 25. She has visited the hospital once in the last year. *Id.*

6. Petitioner is currently approved for twelve (12) hours per week of personal care services, and seven (7) hours per week of homemaker services. *Id.* at 60-61. Petitioner attended an adult day care but stopped attending due to COVID-19 concerns. *Id.* at 49. On December 14, 2020, Petitioner requested an additional two (2) hours per week of personal care services and thirty (30) hours per week of adult companion care services to be received at home rather than at adult day care. *Id.* at 13, 49 and 54.

7. On December 16, 2020, Respondent issued an NABD denying Petitioner's request for additional services. *Id.* at 5 – 9. The NABD stated the reason for the denial as follows:

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

...

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

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

And one of the following:

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

...

The facts that we used to make our decision are: Your assessment tells us you need help with bathing, dressing, grooming and toileting.
You are getting personal care 12 hours a week to help you.
You can split these hours during the day to meet your needs.
You are also getting homemaking services 7 hours a week. The homemaker can clean the bathroom and bedroom after use, giving the personal care aide more time to help you.
You also have family who helps you.

Your assessment tells us you can be left alone.
You live near family who visit you.
You have 19 hours of services provided by the health plan

In my clinical opinion, your needs are being met by your current services and supports.

Id. at 5-6. Petitioner's request was initially reviewed by Dr. Albenah Baharieva ("Dr. Baharieva"), a Medical Director with United, *Id.* at 49, who signed the NABD. *Id.* at 10.

8. Petitioner requested a plan appeal and received an NPAR, dated January 21, 2021, upholding the denial. *Id.* at 68-70. The NPAR explained as follows:

Part 1 of 2: You asked for personal care 14 hours a week. You asked for help with bathing and dressing. We cannot approve 14 hours because it is not medically necessary. Based on my professional judgment, some of these hours are in excess of your need. Twelve hours a week can meet your needs and is approved by the health plan. You also have approved homemaker help 7 hours a week. This is why we cannot approve what you asked for.

Part 2 of 2: You asked for companion care 30 hours a week. You asked for help with bathing and dressing. We cannot approve this because it is not medically necessary. Based on my professional judgment, they are more than you need. 12 hours of personal care a week and 7 hours of homemaker a week were approved. This should meet your needs.

Id. at 68-69.

9. On appeal, Petitioner's request for services was reviewed by Dr. Lisa Herbert ("Dr. Herbert"), Board Certified in Family Medicine and Appeals and Grievances Medical Director for

United, who upheld the denial. *Id.* at 58. Petitioner's request was further reviewed by Dr. Robert Wayner ("Dr. Wayner"), a Board Certified Neurosurgeon and Clinical Appeals and Grievances Medical Director for United, *Id.* at 65, who signed the NPAR. *Id.* at 70.

10. Petitioner's primary care physician, [REDACTED] provided a letter, dated February 9, 2021, which states in pertinent part as follows:

I am writing in regards to [Petitioner] to support her family's request for home health care. I am her treating neurologist . . . I see her for cognitive impairment. Her cognitive impairment has caused her to unreliably take her medications, not be able to care for her basic needs such as cooking, and she has been unsafe alone such as leaving the stove on.

Petitioner's Composite Exhibit 1 at page 5.

11. Petitioner's neurologist, [REDACTED], provided a letter, dated February 15, 2021, which states in pertinent part as follows:

I am writing this letter to support family in regards need to home health Services. I am [Petitioner's] PCP since 2013.

She has multiple medical problems . . .
She has cognitive impairment.

. . .

She has unsteady gait, and multiple falls.

For all the above reasons I consider mandatory that she is under supervision, and I will appreciate if you consider to cover Home Health Services to support patient, and her family.

Petitioner's Composite Exhibit 1 at page 4.

12. [REDACTED] letter, dated February 17, 2021, states in pertinent part as follows:

The reason for my appeal of your decision is that my mother's health is extremely delicate which requires additional supervision for most of the day, while she realizes her activities. My mother lives alone and needs additional hours for supervision for even the simplest of tasks such as making doctor's appointments requires as a result of her delicate condition.

My mother is 86 years old, has had 2 open heart surgeries, has been diagnosed with various illnesses/conditions, including but not limited to, Cognitive Impairment, 2 different types of arthritis which causes weakness of the legs and unbearable pain to her knees. The weakness of the legs has resulted in many falls in her own house . . . my mother has also left the stove on resulting in burnt pots and burnt microwave. She no longer has the ability to remember what's on, how long it's been on and to know when to seek help from others. She also suffers from incontinence.

. . .

[I]n addition to the 30 hours weekly, we are requesting an additional 15 hours per week be approved . . . so that my mother can remain accompanied and assisted as she is not able to do for so many reasons, some of which are mentioned above.

Petitioner's Composite Exhibit 1 at page 3.

13. Dr. Karver is an internal medicine and home care physician. Dr. Karver testified that she reviewed Petitioner's case and the letters from Petitioner's primary care physician and neurologist. Dr. Karver argued that the approved hours are adequate to meet Petitioner's needs. She asserted that Petitioner has the natural supports of her son and daughter to prevent social isolation and to provide supervision.

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 (2019). This order is the final administrative decision of the Agency 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. Because Petitioner is requesting additional personal care services and new adult companion care services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to 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.)

17. The 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 adult companion care and homemaker 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)

...

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 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

...

4.2.1.1. Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.9 Homemaker Services

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

...

4.2.2 Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

4.2.2.4 Intermittent Skilled Nursing

In accordance with Rule 59G-4.130, F.A.C. This service includes the provision of skilled nursing services at intervals of more than one hour apart, and for the length of time necessary to complete the service, for enrollees who do not require continuous nursing care (see attendant nursing care 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.

18. The PC Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, states as follows:

1.1 Description

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

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services

to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

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.

...

1.3.6 Home Health Services

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

...

4.2 Specific Criteria

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

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

PC Policy at pages 3 - 5.

19. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

2.83 Medically Necessary or Medical Necessity

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate 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.

Personal Care Services

20. In the instant case, Petitioner is currently approved for 12 hours per week of personal care services 7 hours per week of homemaker services. *See supra* ¶ 6-8. As established on the record by the evidence and testimony, Respondent denied Petitioner's request, because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. *See supra* ¶ 7-8.

21. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 17.

22. Section 4.2.2.6 of the LTC Policy reflects that personal care services are "[t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." *See supra* ¶ 17.

23. The evidence presented in this case does not demonstrate that Petitioner needs an additional 2 hours per week of personal care services. Specifically, section 1.3.14 of the LTC Policy requires that a service "[b]e individualized, specific, and consistent with symptoms or confirmed

diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." See supra ¶ 17. Petitioner has multiple medical conditions including high blood pressure, diabetes, frequent dizziness, hypothyroidism, cirrhosis of liver, sleep apnea, atrial fibrillation, and senile dementia. See supra ¶ 2. With regard to ADLs, Petitioner needs assistance (but not total help) with bathing and dressing, and she always has assistance with bathing and dressing. See supra ¶ 3. Petitioner needs supervision or prompt with eating, and she has assistance most of the time with eating. See supra ¶ 3. Petitioner needs no assistance with transferring or walking/mobility. See supra ¶ 3. With regard to IADLs, Petitioner needs total assistance (cannot do at all) with heavy chores, and Petitioner needs assistance (but not total help) with light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. See supra ¶ 4. Petitioner needs no assistance using the telephone. See supra ¶ 4. Petitioner always has assistance with heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication and using transportation. See supra ¶ 4.

24. The record reflects that Petitioner has natural supports available to assist with her care and needs. Section 1.3.16 of the LTC Policy provides that natural supports are "[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports." See supra ¶ 17. Petitioner resides alone but next door to her son. See supra ¶ 2. Petitioner's daughter visits several times per week and assists with groceries and occasionally cooks for Petitioner. See supra ¶ 2.

25. Petitioner is currently authorized to receive 12 hours per week of personal care services. See supra ¶ 6, 7 and 8. [REDACTED] indicated that Petitioner needs additional hours of supervision due to weakness in the legs, pain in the knees, falls, and incontinence. See supra ¶

12. However, no testimony or evidence was introduced concerning what specific ADLs and IADLs Petitioner's needs additional assistance with other than maintaining continence, the amount of time needed to complete the additional ADL or IADL, and the frequency and type of Petitioner's incontinence. Petitioner's primary care physician concluded that it is "mandatory that [Petitioner] is under supervision." See supra ¶ 11. Petitioner's neurologist stated Petitioner's cognitive impairment caused her "to unreliably take her medications, not be able to care for her basic needs such as cooking, and she has been unsafe alone such as leaving the stove on." See supra ¶ 10. The letters primarily focused on Petitioner's need for supervision rather than addressing what hands on, personal care needs, if any, are not met by the currently approved amount of personal care services or the appropriate mix of home and community based services and hours Petitioner should receive.

26. Therefore, considering Petitioner's currently authorized services, along with the LTC Policy definition for personal care services, Petitioner did not demonstrate that her aforementioned needs, *supra* ¶ 2-4, are not sufficiently met by her currently authorized personal care services. Given that Petitioner failed to establish that the requested personal care services are warranted in this matter, the requested personal care services are "in excess of [Petitioner's] needs." See supra ¶ 17.

27. In light of the both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, the LTC Policy, and the PC Policy, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that the additional 2 hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer finds that

Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional personal care services was incorrect.

Adult Companion Care Services

28. As provided in the LTC Policy, the purpose of adult companion care services 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." See supra ¶ 17. Adult companion care is designed to prevent social isolation or to provide supervision. See supra ¶ 13.

29. Petitioner resides next door to her son, and her daughter visits several times per week. See supra ¶ 2. Petitioner talks and spends time with friends, relatives, or others once a day. See supra ¶ 4. Petitioner participates in activities outside the home that interest her two to six times per week. See supra ¶ 4. Thus, Petitioner has the opportunity to socialize with other people, and Petitioner is not at risk for social isolation. See supra ¶ 13.

30. With regard to a medical need for companion care supervision, [REDACTED] and Petitioner's physicians asserted that Petitioner needs supervision due to her cognitive impairment and risk for falls. See supra ¶ 10-12. As for the basis of Petitioner's request for 30 hours, it appears that Petitioner requested the adult companion care services to replace the hours that Petitioner previously spent at adult day care prior to COVID-19. See supra ¶ 6. Petitioner did not present a justification for 30 hours specifically, nor did she demonstrate that Petitioner is left alone for extended periods of time. In contrast, the record reflects that Petitioner is forgetful or easily confused approximately once per month, does not need supervision, can be left alone, and has not fallen in the past 6 months. See supra ¶ 5. Further, with regard to [REDACTED] assertions concerning Petitioner's need for supervision relative to

medication management and use of kitchen appliances, *supra* ¶ 12, the records reflects that Petitioner always has assistance with medication management and meal preparation. *See supra* ¶ 4. Petitioner is currently approved for 12 hours per week of personal care services and 7 hours per week of homemaker services. As Dr. Karver testified, Petitioner's son and daughter also provide natural support and supervision. *See supra* ¶ 13. Dr. Karver concluded that the approved hours are adequate to meet Petitioner's needs. *See supra* ¶ 13. Dr. Karver's testimony is consistent with the conclusions of Dr. Herbert, Board Certified in Family Medicine and Medical Director for United, as well as Dr. Wayner, a Board Certified Neurosurgeon and Medical Director for United. *See supra* ¶ 9.

31. Based on the foregoing, the Petitioner is not at risk of social isolation, and Petitioner does not require supervision beyond the natural supports provided by her son and daughter. As such, Petitioner failed to demonstrate that the requested adult companion care service hours are individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment and are not in excess of the Petitioner's needs.

32. Therefore, upon consideration of both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, and the LTC Policy, and the undersigned finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of adult companion care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of two (2) additional hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's denial of thirty (30) hours per week of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and ORDERED this 3rd day of May, 2021, Tallahassee, Leon County, Florida.



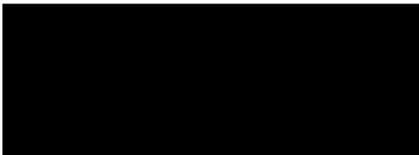
Laura Gallagher
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LAURA GALLAGHER Hearing Officer
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:



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