



**FILED**

Jun 16, 2021, 9:33 am  
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 convened a telephonic Fair Hearing on the instant case on May 19, 2021, at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Craig Smith, Esq.  
Counsel for Respondent

**STATEMENT OF ISSUE**

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional fifteen (15) hours per week of personal care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional thirteen (13) hours per week of homemaker services was incorrect.

## PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and wife, [REDACTED] [REDACTED] appeared on behalf of the Petitioner. Petitioner appeared to offer testimony.

Craig Smith, Esq., Counsel for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. Jon Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine; Kendra Smolen, Long Term Care Coordinator for Sunshine; Melissa Layne, Senior Manager for Member Appeals for Sunshine; and Katherine Calonje, Long Term Care Supervisor for Sunshine.

Stephanie Lang, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a seven (7)-page evidence packet. The packet included: a letter from Petitioner, dated April 20, 2021; a Designation of Authorized Representative for Medicaid Fair Hearing Participation (Sample) form, dated April 20, 2021; a letter from [REDACTED], dated February 22, 2021; and a letter from [REDACTED], undated. Absent an objection from the Respondent, the undersigned admitted the seven (7)-page evidence packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and seventeen (117)-page evidence packet. The evidence packet included: a Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated May 3, 2021; a Notice of Adverse Benefit Determination ("NABD"), dated November 11, 2020; Long Term Care Person-Centered Care Plan ("POC"), signed November 16, 2020; a POC, dated April 26, 2021; a Florida

Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated November 5, 2020; a 701B, dated April 26, 2021; an Expedited Appeal Request Decision, dated November 19, 2020; a Standard Appeal Acknowledgement, dated November 19, 2021; a Notice of Plan Appeal Resolution (“NPAR”), dated December 16, 2020; a Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09 (“LT.UM.09”); and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner undersigned admitted the one hundred and seventeen (117)-page packet into evidence as Respondent’s Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine. *See* page 2 of Respondent’s Composite Exhibit 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.* at 113.
2. Petitioner is eighty (80)-years old. *Id.* at 13. Petitioner lives with his spouse, [REDACTED]. *Id.* at 50. [REDACTED] is “unable to assist [Petitioner] with most ADLs and IADLs due to change in CG health conditions.” *Id.* at 23. [REDACTED] prepares meals for Petitioner, assists with using the telephone, assists with financial matters, manages Petitioner’s medications, and makes transportation arrangements. *Id.* at 53 and 54. As testified to by [REDACTED], Petitioner has no family or friends that can assist with his care, besides [REDACTED].
3. Petitioner’s needs for activities of daily living (“ADLs”) are as follows: for bathing and dressing, Petitioner needs assistance (but not total help); and for eating and using the bathroom, Petitioner needs supervision or prompting. *Id.* at 53. Petitioner’s needs for instrumental activities of daily living are as follows: for heavy chores, Petitioner needs total assistance (cannot do at all);

for light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation, Petitioner needs assistance (but not total help); and for using the telephone and managing money, Petitioner needs supervision or prompting. *Id.* at 54. Petitioner is able to feed himself, brush his own teeth, and make a cup of coffee when he has enough physical strength. *Id.* at 13.

4. Petitioner is diagnosed with the following: high blood pressure; bladder cancer; frequent bowel and bladder incontinence; unspecified seizure disorder; and enlarged prostate. *Id.* at 55 – 56. Petitioner is paralyzed on his left side. *Id.* at Petitioner is receiving chemotherapy treatment for bladder cancer. *Id.* at 56.

5. Petitioner's current plan of care includes the following: fifty-six (56) hours of personal care services, weekly; three (3) hours of homemaker services, weekly; five (5) hours of in home respite care services, weekly; and seven (7) home delivered meals, weekly. *Id.* at 29. As testified to by ██████████, Petitioner's plan-provided caregiver assists Petitioner from 7:00 p.m. until 6:30 a.m., Monday through Friday. As testified to by ██████████, Petitioner's caregiver washes Petitioner, changes him, changes his bed linens, and watches him in the night.

6. Petitioner requested an additional fifteen (15) hours per week of personal care services, additional twenty (20) hours per week of homemaker care services, and twelve (12) hours per week of in home respite care services. In the NABD, dated November 11, 2020, Respondent denied Petitioner's request. *Id.* at 4 – 8. The NABD 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: The request for an extra 15 hours per week of Personal Care Services, an extra 20 hours per week of Homemaker Services, and the addition of 12 hours per week of In Home Respite Care Services 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:

- 56 hours per week of Personal Care Services
- 3 hours per week of Homemaker Services
- 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.

Page 5 of Respondent's Composite Exhibit 1.

7. Petitioner requested a plan appeal and received an NPAR dated December 16, 2020, upholding the denial of an additional fifteen (15) hours per week of personal care services, additional twenty (20) hours per week of homemaker care services, and twelve (12) hours per week of in home respite care services. *Id.* at 79 – 83. The NPAR explained that the “presently approved services are enough to meet the member’s care needs.” *Id.* at 79.

8. In a letter dated February 22, 2021, ██████████ requested a Fair Hearing on the denial of long term care services. See page 5 of Petitioner’s Composite Exhibit 1. In that letter, ██████

████████ explained that she was requesting twenty-eight (28) hours of care for Petitioner. *Id.* On April 30, 2021, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 19, 2021, at ██████████

9. At the Fair Hearing, ██████████ clarified that she did not want to a Fair Hearing on the entirety of the services contained in the NPAR, dated December 16, 2020, but rather wanted to limit the scope to the denial of fifteen (15) hours of personal care, weekly, and thirteen (13) hours of homemaker services, weekly. The parties then stipulated that the homemaker issue would be limited to thirteen (13) hours of services, weekly.

10. Dr. Carter is the Long Term Care Medical Director for Sunshine. Dr. Carter testified that it was his opinion that the approved services were sufficient to meet Petitioner's needs.

11. LT.UM.09 provides as follows in regards to homemaker and personal 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

...

**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 administer any medications, but may bring medications to the member and remind the member to take the medications 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.

...

#### 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

...

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:
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort services

Pages 97 – 109 of Respondent's Composite Exhibit 1.

### **CONCLUSIONS OF LAW**

12. 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).

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

14. Because Petitioner is requesting new 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.)

15. 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 personal 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)

...

#### **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.

...

#### **4.2.2.6 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 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.

17. 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.

### **PERSONAL CARE SERVICES**

18. Petitioner requested fifteen (15) hours per week of additional personal care services. In the NABD, dated November 11, 2020, Respondent denied Petitioner's request. See ¶ 5.

Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessary criteria was the basis for its decision. *Id.* In the NABD, Respondent further explained that Petitioner's "currently approved services are adequate to meet the member's care needs." *Id.*

19. As provided in Respondent's policy, LT.UM.09, personal care services are to "provide assistance with eating, bathing, dressing, and personal hygiene, and other activities of daily living." Further, the policy provides that personal care provides with "preparation of meals" and "housekeeping tasks". As discussed in LT.UM.09, personal care services are determined, in part, based on: the recipient's ADL limitations; the recipient's living situation; the recipient's supervision needs; and the available supports. Moreover, as provided in the LTC Policy, personal care is 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." As provided in the record, in regards to his needs for his ADLs, for bathing and dressing, Petitioner needs assistance (but not total help); and for eating and using the bathroom, Petitioner needs supervision or prompting. *See* ¶ 3. In regards to his needs for IADLs, for heavy chores, Petitioner needs total assistance (cannot do at all); for light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation, Petitioner needs assistance (but not total help); and for using the telephone and managing money, Petitioner needs supervision or prompting. *Id.* Petitioner currently receives fifty-six (56) hours of personal care services, three (3) hours of homemaker services, and five (5) hours in home respite care services. *Id.*

20. As Petitioner bears the burden of proof, Petitioner must show that it is medically necessary for him to receive an additional fifteen (15) hours of personal care services each week. As shown by the record, Petitioner's personal care services average out to eight (8) hours each day. ██████████ testified, *supra* ¶ 5, that Petitioner's services are provided Monday through Friday, from 7:00 p.m. until 6:30 a.m. Petitioner's personal care aide washes him, changes his linens, and watches him. *Id.* It was not shown by Petitioner why supervision was needed in the night, or why other tasks could not be accomplished while Petitioner is asleep, such as meal preparation, cleaning, and so forth. Furthermore, it was not shown which tasks were not completed without the additional hours nor why the supervisory aspect of Petitioner's care could not be accomplished with a lower level of service. Further, Dr. Carter provided credible testimony that the approved services were sufficient to meet Petitioner's needs. See ¶ 10. Thus, Petitioner did not show that an additional fifteen (15) hours of personal care services was medically necessary.

21. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of fifteen (15) hours, weekly, of personal care services was incorrect.

#### **HOMEMAKER SERVICES**

22. Petitioner requested twenty (20) hours per week of additional homemaker services. In the NABD, dated November 11, 2020, Respondent denied Petitioner's request. See ¶ 5. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessary criteria was the basis for its decision. *Id.*

In the NABD, Respondent further explained that Petitioner's "currently approved services are adequate to meet the member's care needs." *Id.* Notwithstanding the initial request of twenty (20) hours of homemaker services, weekly, Petitioner requested to only challenge the denial of thirteen (13) of those hours. *See* ¶ 9.

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 are for 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." As shown by the record, Petitioner's needs for IADLs include the following: for heavy chores, Petitioner needs total assistance (cannot do at all); and for light housekeeping and for preparing meals, Petitioner needs assistance (but not total help); *See* ¶ 3. Petitioner currently receives fifty-six (56) hours of personal care services, three (3) hours of homemaker services, and five (5) hours in home respite care services. *See* ¶ 6.

24. As Petitioner bears the burden of proof, Petitioner must show that it is medically necessary for him to receive an additional thirteen (13) hours of homemaker services each week. As discussed, *supra* ¶ 20, Petitioner did not establish why the services already approved services were insufficient to care for his needs. Again, Dr. Carter provided credible testimony that Petitioner's approved services were sufficient to meet his needs. *See* ¶ 10. Thus, Petitioner did not show that an additional thirteen (13) hours of homemaker services were medically necessary.


25. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional thirteen (13) hours of homemaker services was incorrect.

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

Respondent's denial of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's denial of homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE and ORDERED** this 16<sup>th</sup> day of June, 2021, in Tallahassee, Leon County, Florida.

Joseph Mabry  
 21-FH [REDACTED]  
2021.06.16  
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**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
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**2727 Mahan Drive, Mail Stop # 11**  
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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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**AHCA Medicaid Hearing Unit**  
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