

JUN 04 2021

Agency for Health
Care Administration

**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 Medicaid Fair Hearing in the above styled case on May 11, 2021, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner's 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 adult companion services from 12 hours per week to 5 hours per week was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED]

[REDACTED] Petitioner's Authorized Representative and daughter, appeared at the Fair Hearing

and provided testimony on Petitioner's behalf. Petitioner also appeared at the Fair Hearing, but did not provide testimony.

Maria Mojica ("Ms. Mojica"), Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine" or "Respondent") represented Respondent at the hearing. The following individuals appeared on behalf of Respondent: Dr. Michael Gervasi ("Dr. Gervasi"), Medical Director for Sunshine; Louise Jeanty ("Ms. Jeanty"), Supervisor of Quality Improvement for Sunshine; Sylvia Liro, Supervisor of Case Management for Sunshine; Galicell Rodriguez-Negron, Care Coordinator for Sunshine; and Andrea Hoffman, Care Coordinator for Sunshine.

Shelia Gonzalez, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Prior to the hearing, Petitioner sent a 6-page evidence packet to the Office of Fair Hearings and Respondent. The packet included the following documents: a facsimile transmission ("fax") cover sheet, dated April 19, 2021; and a 5-page fax. Absent an objection from Respondent, the undersigned admitted Petitioner's 6-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 122-page evidence packet.¹ The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated April 15, 2021; a Notice of Adverse Benefit Determination ("NABD"), dated February 24, 2021; Sunshine's care plan, signed February

¹ During the Fair Hearing, ██████████ noted that she did not receive Respondent's 122-page evidence packet. Respondent noted that its evidence packet was sent to Petitioner via Federal Express ("FedEx"), and delivered on April 22, 2021, at 2:42 p.m. ██████████ elected to proceed with the Fair Hearing as scheduled and without the Respondent's 122-page evidence packet.

15, 2021; the care plan, signed March 29, 2021; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of February 15, 2021 (the “2/15/21 701B”); the 701B with an assessment date of March 15, 2021 (the “3/15/21 701B”); a 4-page fax, dated March 4, 2021; Sunshine’s Expedited Appeal Request Decision, dated March 5, 2021; Sunshine’s Standard Appeal Acknowledgment, dated March 5, 2021; Sunshine’s Notice of Plan Appeal Resolution (“NPAR”), dated, March 23, 2021; the Sunshine Health Policy and Procedure LT.UM.09; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent’s 122-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine’s LTC plan. See Respondent’s Composite Exhibit 1, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is an 87-year-old widowed, adult female who resides alone in a private residence. See Respondent’s Composite Exhibit 1, page 50. The 3/15/21 701B, which is the most recent 701B, reflects that Petitioner’s “daughter [REDACTED] and son[,] [REDACTED] assist member with tasks when they are not working.” *Id.* at 51. Petitioner does not need outside assistance to evacuate. *Id.* Petitioner “is able to manage her finances with daughter's assistance.” *Id.* at 55. Petitioner’s meals are prepared by the aide and the daughter.” *Id.* Petitioner’s “daughter does all the shopping” for Petitioner. *Id.*

3. Petitioner has the following health conditions: arthritis (hands, back, and knees); high blood pressure; broken bones/fractures (back); high cholesterol; non-insulin dependent diabetes mellitus; frequent bladder incontinence; lung problems (chronic obstructive pulmonary disease); stroke (past); urinary tract infection; and “chronic anxiety, major depression, severe sciatica pain, hx of falls.” See Respondent’s Composite Exhibit 1, pages 56 – 57. Petitioner “has a history of falls,” and “lives everyday with the fear of falling.” *Id.* at 57. Petitioner “needs supervision due to her history of falls and her diagnoses.” *Id.* at 59.

4. The 3/15/21 701B reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”). Petitioner needs no assistance with eating. See Respondent’s Composite Exhibit 1, page 54. Petitioner uses assistive devices for using the bathroom, transferring, and walking/mobility. *Id.* Petitioner needs total assistance (cannot do at all) with bathing and dressing. *Id.*

5. Regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), the 3/15/21 701B reflects that Petitioner needs no assistance with using the telephone and managing money. See Respondent’s Composite Exhibit 1, page 55. Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, shopping, managing medication, and using transportation. *Id.*

6. The 3/15/21 701B reflects that Petitioner does not receive any of the following specialty care: IV fluids, IV medications, wound care, tube feedings, suctioning, bladder/bowel treatment, dialysis, or oxygen. *Id.* at 57. Petitioner talks to “friends, relatives, or others (by phone, computer, or other means)” once a day. *Id.* at 64.

7. Aside from the adult companion care services at issue in this case, Petitioner is currently authorized to receive the following home and community-based services: 18 hours weekly of

personal care services; 10 hours weekly of homemaker services; 2 packs monthly of wipes; and 1 case monthly of pull-ups. See Respondent's Composite Exhibit 1, page 30.

8. The letter from [REDACTED] dated March 8, 2021, states in pertinent part as follows:

[Petitioner] has been under my care for diagnoses of major depression, panic disorder, generalized anxiety disorder and short term [sic] memory impairment. It is therapeutically beneficial for her to have someone with her, as her panic attacks can be very impairing.

Petitioner's Composite Exhibit 1, page 5.

9. The letter from [REDACTED] dated April 9, 2021, states in pertinent part as follows:

[Petitioner] requires a home health companion for assistance with her care. She cannot walk without assistance from walker and occasionally requires a companion to assist her with this. She has significant dyspnea on exertion, fatigues easily and has decompensation. Please assist her with this request.

Petitioner's Composite Exhibit 1, page 6.

10. On February 24, 2021, Respondent issued an NABD reducing Petitioner's adult companion services from 12 hours weekly to 5 hours weekly. See Respondent's Composite Exhibit 1, pages 4 - 5. The NABD stated the reason for Respondent's determination 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: Sunshine Health has looked at the member's present care needs and provided home services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Adult Companion Care services from 12 hours/week to 5 hours/week (which is a reduction of 7 hours/week of Companion Care services). Companion Care is provided to prevent social isolation. It is not hands on care. The member has contact with family regularly and is at low risk of social isolation. Member's updated services are:

- Personal Care 18 hours per week;
- Homemaker 10 hours per week; and
- Adult Companion Care 5 hours per week.

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

Respondent's Composite Exhibit 1, pages 4 – 5.

11. Petitioner requested an appeal of Respondent's reduction. See Respondent's Composite Exhibit 1, page 69. On March 23, 2021, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 84. The NPAR stated as follows:

On March 4, 2021 we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated February 24, 2021, Notice of Adverse Benefit Determination Number [REDACTED] REDUCING the 12 hours per week of Adult Companion Care (the person who helps and watches over you), provided to [Petitioner].

On March 18, 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 12 hours per week of

Adult Companion Care (the person who helps and watches over you), effective March 18, 2021.

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the reduction of Companion Care Services from 12 hours/week to 5 hours/week is upheld (not approved). The presently approved services are enough to meet the member's care needs. 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 Internal Medicine, Geriatric Medicine, and Hospice & Palliative Care.

Respondent's Composite Exhibit 1, page 84.

12. Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09 to make its determination in this case, which states in pertinent part, as follows:

2. Adult Companion Care

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

...

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:

- Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- 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
- 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
- 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

Respondent's Composite Exhibit 1, pages 97, 102, and 108 – 109.

13. On April 1, 2021, [REDACTED] requested a Fair Hearing due to the reduction of adult companion services. The undersigned scheduled the Fair Hearing for May 10, 2021, at [REDACTED] and all parties were duly notified.

14. Dr. Gervasi is a Medical Director for Sunshine. He is Board certified in Family Medicine, Quality Improvement, and Patient Safety. Discussing the rationale for the reduction in this case, Dr. Gervasi explained that Respondent reduced Petitioner's adult companion care services, because Petitioner: is at low risk of isolation; can use her phone independently; is transported to

medical appointments by her daughter; sees her family regularly; and is already authorized to receive 18 hours per week of personal care services and 10 hours per week of homemaker services. Dr. Gervasi personally reviewed all documentation submitted to Respondent for this case, including all documents admitted in evidence, and he agrees with the determination in this case.

15. [REDACTED] is Petitioner's daughter. Petitioner resides alone, takes medication for depression and anxiety, cannot walk on her own, and uses a walker. [REDACTED] talks to Petitioner on the phone every day, and goes to Petitioner's home twice a week. [REDACTED] brother visits Petitioner once or twice per week, and talks to Petitioner on the phone twice per week. A home health aide comes into the home to assist Petitioner during the following hours: Monday through Friday, 8:00 a.m. – 2:00 p.m.; and Saturday, 8:00 a.m. – 11:00 a.m.

CONCLUSIONS OF LAW

16. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Florida Statute § 409.285(2). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

18. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its

position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

19. Because Respondent is reducing existing services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. 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.).

20. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“SMMC LTC Policy”). The Agency’s SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC 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.

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

4.0 Coverage Information

4.1 General Criteria

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

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

4.2 Specific Criteria

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

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

...

4.2.1.1 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.

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

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.

...

4.2.1.15 Respite Care

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee's natural supports on a planned or an emergency basis.

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:

...

4.2.2.5 Medical Equipment and Supplies

In accordance with Rule 59G-4.070, F.A.C. This service includes the provision of medical equipment and supplies specified in the plan of care, including: devices, controls, or appliances that enable the enrollee to increase the ability to perform activities of daily living; devices, controls, or appliances that enable the enrollee to perceive, control, or communicate with the environment in which he or she lives; items necessary for life support or to address an enrollee's physical conditions, along with ancillary supplies and equipment necessary to the proper functioning of such items; such other durable and non-durable medical equipment not available under the State Plan that is necessary to address enrollee needs, including consumable medical supplies, such as adult diapers; and repair of such items or replacement parts.

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.

See SMMC LTC Policy, pages 1-8.

21. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “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 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.

Medically necessary or medical necessity for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

22. In the instant case, Respondent reduced Petitioner’s adult companion services from 12 hours per week to 5 hours per week. See supra ¶ 10 and 11. As established on the record by the evidence and testimony, Respondent reduced adult companion services, because the

documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. *Id.*

23. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 20. Section 4.2.1.1 of the LTC Policy reflects that adult companion services are “[t]he 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.” *See supra* ¶ 20.

24. The Sunshine Health Policy LT.UM.09 states that adult companion care services “provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services.” *See supra* ¶ 12. Sunshine's policy also states, “[t]he provision of companion services **does not entail hands-on nursing care**. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.” *Id.* (Emphasis added.)

25. The evidence presented in this case reflects that Respondent's reduction of adult companion services from 12 hours per week to 5 hours per week is warranted under the circumstances of this case. Specifically, regarding ADLs, Petitioner needs: no assistance with eating; and total assistance (cannot do at all) with bathing and dressing. *See supra* ¶ 4.

Petitioner cannot walk on her own, *supra* ¶ 15, and uses assistive devices for using the bathroom, transferring, and walking/mobility. *See supra* ¶ 4. Regarding IADLs, Petitioner needs: no assistance with using the telephone and managing money; and total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, shopping, managing medication, and using transportation. *See supra* ¶ 5. Petitioner has chronic anxiety, major depression, chronic obstructive pulmonary disease, and other medical conditions. *See supra* ¶ 3. Petitioner “has a history of falls,” and “lives everyday with the fear of falling.” *See supra* ¶ 3. Petitioner “needs supervision due to her history of falls and her diagnoses.” *See supra* ¶ 3.

26. However, [REDACTED] Petitioner’s daughter, talks to Petitioner on the phone every day, and goes to Petitioner’s home twice a week. *See supra* ¶ 15. Additionally, [REDACTED] brother visits Petitioner once or twice per week, and talks to Petitioner on the phone twice per week. *Id.* Although Petitioner lives alone, *supra* ¶ 2, a home health aide comes into the home to assist Petitioner during the following hours: Monday through Friday, 8:00 a.m. – 2:00 p.m.; and Saturday, 8:00 a.m. – 11:00 a.m. *See supra* ¶ 15. Petitioner does not receive any of the following specialty care: IV fluids, IV medications, wound care, tube feedings, suctioning, bladder/bowel treatment, dialysis, or oxygen. *See supra* ¶ 6. Petitioner does not need outside assistance to evacuate. *See supra* ¶ 2. Petitioner “is able to manage her finances with daughter’s assistance.” *See supra* ¶ 2. Petitioner’s meals are prepared by the aide and the daughter.” *See supra* ¶ 2. Petitioner’s “daughter does all the shopping” for Petitioner. *See supra* ¶ 2. Considering the totality of Petitioner’s circumstances – including Petitioner’s need for supervision, Petitioner’s current medical conditions and mental health diagnoses, and the fact that [REDACTED] and [REDACTED] [REDACTED] brother visit Petitioner during the week and talk with Petitioner on the phone

frequently – the evidence fails to justify the need for 12 hours per week of adult companion care services. Based upon the evidence presented by both parties, Respondent established that the reduction of adult companion services is warranted in this case.

27. Section 1.3.14 of the SMMC LTC Policy requires that the requested services must “[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* ¶ 20. Petitioner is currently authorized to receive the following home and community-based supportive services: 18 hours weekly of personal care services; 10 hours weekly of homemaker services; 2 packs monthly of wipes; and 1 case monthly of pull-ups. See *supra* ¶ 7. Considering that a home health aide is in Petitioner’s home for 6 days per week, *supra* ¶ 15, and Petitioner talks to “friends, relatives, or others (by phone, computer, or other means)” once a day, *supra* ¶ 6, the record does not indicate that Petitioner is at risk of social isolation. Given that Petitioner has daily contact with [REDACTED] personal care services to assist with her ADLs and homemaker services to assist with her IADLs, *supra* ¶ 7, Respondent demonstrated that Petitioner’s aforementioned needs, *supra* ¶ 2 – 6, 8, 9, and 15, will still be sufficiently met by the reduction to 5 hours of adult companion care services. Further, given that Respondent established that the requested adult companion services are not warranted in this matter, *supra* ¶ 26, the requested 12 hours per week of adult companion services is “in excess of [Petitioner’s] needs.” See *supra* ¶ 20.

28. Appurtenant to this matter, section 1.3.16 of the SMMC 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* ¶ 20. As stated above, *supra* ¶ 26, [REDACTED]

█ talks to Petitioner on the phone every day, and goes to Petitioner's home twice a week. See supra ¶ 15. Additionally, █ brother visits Petitioner once or twice per week and talks to Petitioner on the phone twice per week. *Id.* There is nothing in the record to indicate that █ and █ brother are incapable of supervising/assisting Petitioner, or providing social enrichment to Petitioner, when they are present in the home with Petitioner. Therefore, Petitioner also has natural supports available to assist with her care and needs.

29. In support of Petitioner's position, █ submitted letters from two (2) of Petitioner's physicians. Specifically, the letter from █ states, "[i]t is therapeutically beneficial for her to have someone with her, as her panic attacks can be very impairing." See supra ¶ 8. Additionally, the letter from █ states that Petitioner "requires a home health companion for assistance with her care," and that Petitioner "cannot walk without assistance from walker and occasionally requires a companion to assist her with this." See supra ¶ 9. However, "[t]he 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." See supra ¶ 21. Therefore, the letters from █ and █ do not, in themselves, make the requested services medically necessary or a medical necessity.

30. In light of both parties' testimony and evidence, the SMMC LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent demonstrated that Petitioner's previously authorized amount of adult companion services is not medically necessary.

31. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent's reduction of adult companion services was correct.

DECISION

Respondent's reduction of adult companion services from 12 hours per week to 5 hours per week is **AFFIRMED**.

Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

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



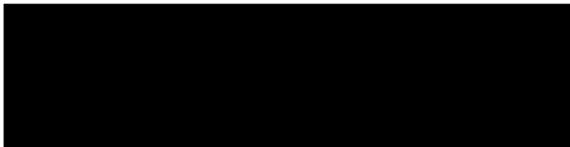
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21-FH [REDACTED]
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TRACIE HARDIN, Hearing Officer
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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