



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

FILED

Jun 29, 2021, 10:01 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 21-FH [REDACTED]  
Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED]

PETITIONER,

AHCA Case No.: 21-FH [REDACTED]  
Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[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 Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on June 3, 2021, at [REDACTED]

**APPEARANCES**

For the Petitioner: [REDACTED]  
Petitioner's Authorized Representative

For the Respondent: Paige Comparato, Esquire  
Hogan Lovells, LLP  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 2 packs per month of wipes was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 3 hours per week of in-home respite care services was correct.

The third issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 4 hours per week of adult companion care services was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] [REDACTED] Petitioner's son and Authorized Representative, appeared at the hearing and provided testimony on Petitioner's behalf.

Paige Comparato, Esquire, Hogan Lovells, LLP, appeared for the hearing and represented Respondent. Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine, provided testimony on behalf of the Respondent. The following individuals also appeared on behalf of Respondent: Melissa Layne ("Ms. Layne"), Senior Manager for Member Appeals for Sunshine; Denise Edwards ("Ms. Edwards"), Care Coordinator for Sunshine; Andrea Hoffman, LTC Care Coordinator for Sunshine; and Elizabeth Robinson, Care Coordinator Supervisor for Sunshine.

Suzanne Chillari, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Prior to the hearing, Petitioner did not send to the Office of Fair Hearings and Respondent an evidence packet. Petitioner did not offer any exhibits in evidence.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 85-page evidence packet.<sup>1</sup> The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated May 24, 2021; a Notice of Adverse Benefit Determination (“NABD”), dated March 31, 2021; Sunshine’s LTC Person-Centered Care Plan (“care plan”), signed by the Care Manager on March 18, 2021; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of March 18, 2021; an email from ██████████ to Respondent, dated April 6, 2021; the completed authorized representative form, dated April 6, 2021; the completed Request for an Appeal or Grievance Form, dated April 6, 2021; a 2-page facsimile transmission (“fax”), dated April 12, 2021; Sunshine’s Standard Appeal Acknowledgment, dated April 8, 2021; the Notice of Plan Appeal Resolution (“NPAR”), dated May 3, 2021; the Sunshine Health Policy and Procedure LT.UM.09; the Sunshine Health Policy and Procedure LT.UM.10; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent’s 85-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

### **FINDINGS OF FACT**

---

<sup>1</sup> ██████████ noted that he did not receive Respondent’s 85-page evidence packet. After the Hearing Officer explained that any information in the evidence packet could be used to make a determination in this matter if the packet is admitted in evidence, ██████████ elected to proceed with the hearing without the evidence packet.

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. See Respondent's Composite Exhibit 1, page 73.
2. As of the time of the hearing, Petitioner was an 88-year old widowed female who lives in a private residence. See Respondent's Composite Exhibit 1, page 22. Petitioner has the following health conditions: acid reflux; mild anemia (past); arthritis (osteo); low blood pressure; diabetes; rare dizziness; frequent bladder incontinence; and "glaucoma, equilibrium imbalance, curved spine, immune disorder." See Respondent's Composite Exhibit 1, pages 28 – 29. The 701B states, "[m]ember's diabetes is stable." *Id.* at 29.
3. The 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 26. Petitioner needs assistance (but not total help) with bathing, dressing, using the bathroom, transferring, and walking/mobility. *Id.* Petitioner does not require total assistance with any of her ADLs. *Id.* Additionally, the 701B states, "[h]ome health aid [sic] and son assist with ADLs." *Id.*
4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the 701B reflects that Petitioner needs supervision or prompting with using the telephone. See Respondent's Composite Exhibit 1, page 27. Petitioner needs assistance (but not total help) with light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. *Id.* Petitioner needs total assistance (cannot do at all) with heavy chores. *Id.*
5. The 701B reflects that Petitioner talks to friends, relatives, or others (by phone, computer, or other means) several times per month, spends time with someone who does not live with her

once a week, and participates in activities outside the home that interests her every few months. See Respondent's Composite Exhibit 1, page 36. Additionally, the 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 29.

6. The letter from [REDACTED] dated April 9, 2021, states, "[i]t is medically necessary for the above named patient to receive the maximum amount of hours for home health weekly due to her multiple co-morbidities that decrease her ability to take care of herself and manage her ADL's safely." See Respondent's Composite Exhibit 1, page 44.

7. Petitioner is currently authorized to receive the following home and community-based services, excluding the wipes, in-home respite care services, and adult companion care services at issue in this case: 4.5 hours per week of homemaker services; 28.5 hours per week of personal care services; the Personal Emergency Response System monthly; 1 box of gloves; 1 case of "Liner or Shield or Pads"; and 1 case of underpads. See Respondent's Composite Exhibit 1, page 20.

8. On March 31, 2021, Respondent issued an NABD terminating 2 packs per month of wipes, 3 hours per week of in-home respite care services, and 4 hours per week of adult companion care services. 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 looked at the member's present care needs and provided home services and supplies. The member's present care plan includes:

- 3 hours/week of In-Home Respite Care Services
- 4 hours/week of Companion Care Services
- 2 packs/month of Incontinence Wipes

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 3 hours/week of In-Home Respite Care Services, and will terminate the 4 hours/week of Companion Care Services, and will terminate the 2 packs/month of Wipes. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

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

9. Petitioner requested an appeal of Respondent's termination of wipes, in-home respite care services, and adult companion care services. See Respondent's Composite Exhibit 1, pages 42 and 45. On May 3, 2021, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 51 - 52. The NPAR stated as follows:

On April 14, 2021 we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated 03/31/2021, Notice of Adverse Benefit Determination Number [REDACTED] terminating the 3 hours/week of In-Home Respite Care Services, terminating the 4 hours/week of Companion Care Services, and terminating the 2 packs/month of Wipes provided to [Petitioner].

On April 30, 2021, after consideration of the information you provided to Sunshine Health in support of your expedited plan appeal, Sunshine Health hereby DENIES, your plan appeal. As a result, [Petitioner] will not receive the 3 hours/week of In-Home Respite Care Services, terminating the 4 hours/week of Companion Care Services, and terminating the 2 packs/month of Wipes, effective April 30, 2021.

The reason for our decision was The [sic] reason for [sic] our decision was The [sic] appeal to overturn the termination of 3 hours per week of In Home Respite Care Services, 4 hours per week of Companion Care Services, and 2 packs per month of Wipes 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 28.5 hours per week of Personal Care Services and 4.5 hours per week of Homemaker Services. Respite Care is provided on a short term [sic] basis to relieve the caregiver and is not meant to be an ongoing weekly service. The member's caregiver should get adequate relief during the 33 hours per week of Personal Care and Homemaker Services. Companion Care is provided to prevent social isolation and is not hands on care. The member lives with family and sees her Home Health Aides regularly and there is a low risk of social isolation. The use of Wipes is intended for incontinence of bowel, and is considered a convenience when used for incontinence of the bladder or for general hygiene. The member is not reported to be incontinent of bowel. The member may use her OTC (over the counter) benefit to obtain Wipes, if desired. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

Respondent's Composite Exhibit 1, pages 51 – 52.

10. 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 members 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 not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

### 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

...

### 9. Respite Care

In-home Respite Care services are to provide short-term, temporary relief to the informal, unpaid caregiver in order to support and preserve the primary caregiving relationship. The service provides general supervision, meal preparation, and hands-on assistance with personal care that are incidental to supervision during the period of service delivery. Respite services can be provided on a planned or emergency basis and shall only be furnished in the member's home. The provider must be awake during the provision of respite services and the services shall not be provided overnight. Member must reside in a non-facility based setting with his or her informal, unpaid primary caregiver.

Respondent's Composite Exhibit 1, pages 61, 64, 67 – 68, and 71.

11. Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.10 to make its determination in this case, which states in pertinent part, as follows:

**Medical Equipment and Supplies Referred to in this policy as DME** – Medical equipment and supplies specified in the member's plan of are, include: a) devices, controls, or appliances that enable the member to increase the ability to perform activities of daily living; b) devices, controls or appliances that enable the member to perceive, control or communicate the environment in which he or she lives; c) items necessary for life support or to address physical conditions along with ancillary supplies and equipment necessary to the proper functioning of such items; d) such other durable and non-durable medical equipment that is necessary to address member functional limitations; e) necessary medical supplies not available under the State Plan f) consumable medical supplies listed on the Florida Medicaid Fee Schedule such as adult disposable diapers and pull-ups. This service included the durable medical equipment under the state plan service as well as expanded medical equipment and supplies coverage under the ACHA contract and applicable waiver. All items shall meet applicable standards of manufacture, design and installation. The service also includes repair of such items as well as replacement parts.

- **Consumable Supplies** – Are absorbent products such as diapers or brief-like garments, underpads or liners used to contain incontinence. **These supplies include wipes, gloves and emollients.**

...

### 2. Incontinence Supplies

...

Sunshine Health does not require a physician’s prescription to review, approve or deny a request for standard incontinence supplies found on the Florida Medicaid Fee Schedule. Sunshine Health covers items for LTC members listed on the fee schedules for Medicaid Recipients “ Under the Age of 21 Years” and “All Medicaid Recipients”, even when the member is over the age of 21. Diapers, gloves, **perineal wipes**, emollients and absorbent products **may be considered medically necessary in the management of incontinence associated with a broad range of medical conditions** including, but not limited to neurological conditions, congenital anomalies, injuries to the pelvic region, injuries to the spinal cord, fistula, bowel prolapse and infections. Consideration is always given to the unique needs of a given individual.

**Criteria to support need for incontinence products**

Upon review of the 701B assessment, Sunshine Health will consider but is not limited to the following:

- Member must have current incontinence of the bladder and/or bowel; and/or
- Member must have one of the following limitations in their Activities of Daily living:  
Using the bathroom (toileting, hygiene, cleaning) and/or Walking/Mobility and/or Transferring:
  - Needs supervision or prompt
  - Needs assistance without a caregiver
  - Needs assistance with a caregiver
  - Needs total assistance without a caregiver
  - Needs total assistance with a caregiver

Sunshine Health may approve up to the amount allowed on the Medicaid fee schedule depending on the member’s level of incontinence.

...

Limitations:

Brand name supplies generally are not covered. Requests for brand name supplies must be accompanied by a prescription and supporting clinical information from the ordering provider.

...

- **Incontinence wipes — only covered for times when member is away from home.** This supply is limited to the benefit limit under the Florida Medicaid Fee Schedule.

12. Petitioner requested a Fair Hearing due to the termination of wipes, in-home respite care services, and adult companion care services. The undersigned scheduled the Fair Hearing for June 3, 2021, at [REDACTED] and all parties were duly notified.

13. Dr. Carter is the Long-Term Care Medical Director for Sunshine. Dr. Carter is board-certified in internal medicine, geriatric medicine, and hospice and palliative medicine. Dr. Carter explained that Respondent terminated 2 packs per month of wipes, as Petitioner is incontinent of bladder, but not bowel. Using his clinical judgement, Dr. Carter noted that: incontinence is taken care of by general cleansing methods such as wash cloths; the use of throwaway wipes have become accepted for bowel incontinence; general skin care and hygiene is medically appropriate to take care of urinary incontinence; and wipes for urinary incontinence is more of a convenience and not medically needed. Discussing Respondent's reason for terminating 3 hours per week of in-home respite care services, Dr. Carter explained that: 3 hours of in-home respite care services are not medically needed, because Petitioner lives with her caregiver who does not work outside the home; and respite is usually meant for specific periods of time to provide relief/rest for a caregiver. Addressing Respondent's rationale for the termination of adult companion care services, Dr. Carter testified that Petitioner lives with a family member who does not work outside the home, so the 4 hours of adult companion care services are not medically needed.

14. [REDACTED] is Petitioner's son. Petitioner resides in the home with [REDACTED], and they are the only 2 people in the home. [REDACTED] does not work outside the home. [REDACTED] is with Petitioner most of the time, but cannot be with her at all times, as he needs time to get things done. The home health aide comes into the home during the following hours: Monday through

Saturday, 9:30 a.m. – 1:30 p.m., and 7:00 p.m. – 9:00 p.m.; and Sunday, 9:30 a.m. – 1:30 p.m.

██████ believes that Petitioner needs the wipes for urinary incontinence and to help with itching associated with hives (on the breasts, arms, neck, and entire body.) Petitioner uses the wipes on her entire body. ██████ contends that Petitioner has rare bowel incontinence. ██████ believes that Petitioner does not have enough personal care services or homemaker services.

### CONCLUSIONS OF LAW

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

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

17. 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.

18. Because Respondent terminated 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.).

19. 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 Home and Community-Based Supportive Services**

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

##### **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.

...

##### **4.2.1.15 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.

SMMC LTC Policy, pages 1-8.

20. 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.

Definitions Policy, page 7.

21. In the instant case, Respondent terminated 2 packs per month of wipes, 3 hours per week of in-home respite care services, and 4 hours per week of adult companion care services. See supra ¶ 8 and 9. As established on the record by the evidence and testimony, Respondent terminated Petitioner's wipes, in-home respite care services, and adult companion care services, because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. See supra ¶ 8 and 9.

22. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 19.

23. Section 1.3.14 of the SMMC LTC Policy requires that "LTC supportive 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," "[b]e 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," "[b]e furnished in a manner not primarily

intended for the convenience of the recipient, the recipient's caretaker, or the provider,” and “[e]nable the enrollee to maintain or regain functional capacity; or [e]nable 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.” *See supra* ¶ 19.

24. The letter from ██████████, dated April 9, 2021, states, “[i]t is medically necessary for the above named patient to receive the maximum amount of hours for home health weekly due to her multiple co-morbidities that decrease her ability to take care of herself and manage her ADL’s safely.” *See supra* ¶ 6. The letter does not prescribe the amount of wipes, in-home respite care services, and adult companion care services warranted to address Petitioner’s medical condition. Section 2.83 of the Definitions Policy mandates that “[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* ¶ 20. Therefore, the letter from ██████████ does not, in itself, make the wipes, in-home respite care services, and adult companion care services medically necessary.

### **Wipes**

25. Section 4.2.2.5 of the SMMC LTC Policy reflects that medical equipment and supplies “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.” *See supra* ¶ 19.

26. The evidence presented in this case reflects that Respondent established that the termination of 2 packs per month of incontinence wipes was warranted in this case. Petitioner has frequent bladder incontinence. *See supra* ¶ 2. Although ██████ contends that Petitioner has rare bowel incontinence, *supra* ¶ 14, neither the 701B nor the documentation in the record reflects such. Petitioner needs assistance (but not total help) with using the bathroom. *See supra* ¶ 3. Respondent provides incontinence wipes for bowel incontinence. *See supra* ¶ 13. Respondent terminated 2 packs per month of incontinence wipes, because the 701B reflects that Petitioner has bladder incontinence, but not bowel incontinence. *See supra* ¶ 13. Although Respondent’s policy on incontinence products does not specifically state that Respondent only provides wipes for bowel incontinence, Dr. Carter relied on his clinical judgement and noted that: incontinence is taken care of by general cleansing methods such as wash cloths; the use of throwaway wipes have become accepted for bowel incontinence; general skin care and hygiene is medically appropriate to take care of urinary incontinence; and wipes for urinary incontinence is more of a convenience and not medically needed. *See supra* ¶ 13. Although ██████ believes that Petitioner needs the wipes, Dr. Carter is the Long-Term Care Medical Director for Sunshine, and he is board-certified in internal medicine, geriatric medicine, and hospice and palliative medicine. *See supra* ¶ 13. As such, Dr. Carter’s testimony is given greater weight.

27. It should be noted that the Sunshine Health Policy and Procedure LT.UM.10 also reflects that incontinence wipes are “only covered for times when member is away from home.” See supra ¶ 11. Although ██████ believes that Petitioner needs the wipes for urinary incontinence and to help with itching associated with hives (on the breasts, arms, neck, and entire body), *supra* ¶ 14, the record does not specify that the wipes will only be utilized when he “is away from home.” See supra ¶ 11. Therefore, as established through Dr. Carter’s testimony, there is no medical need for the amount of wipes that were previously approved. See supra ¶ 13.

28. Due to the above facts, *supra* ¶ 25 and 26, Respondent established that the previously authorized 2 packs per month of incontinence wipes are “in excess of the patient’s needs,” and for the “convenience of the recipient, the recipient's caretaker, or the provider.” See supra ¶ 20.

#### **In-Home Respite Care Services**

29. Section 4.2.1.15 of the SMMC LTC Policy provides that respite care services are 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.” See supra ¶ 19.

30. Sunshine’s Policy and Procedure LT.UM.09 reflects that in-home respite care services “are to provide short-term, temporary relief to the informal, unpaid caregiver in order to support and preserve the primary caregiving relationship. The service provides general supervision, meal preparation, and hands-on assistance with personal care that are incidental to supervision during the period of service delivery.” See supra ¶ 10.

31. The evidence presented in this case reflects that Respondent established that the termination of 3 hours per week of in-home respite care services was warranted under the circumstances of this case. Specifically, Petitioner needs: no assistance with eating; and

assistance (but not total help) with bathing, dressing, using the bathroom, transferring, and walking/mobility. *See supra* ¶ 3. Petitioner uses assistive devices for bathing, transferring, and walking/mobility. *Id.* Regarding IADLs, Petitioner needs: supervision or prompting with using the telephone; total assistance (cannot do at all) with heavy chores; and assistance (but not total help) with light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. *See supra* ¶ 4. Petitioner has multiple medical conditions, including glaucoma, equilibrium imbalance, and frequent bladder incontinence. *See supra* ¶ 2.

32. However, Petitioner resides in the home with her son, ██████████, who does not work outside the home. *See supra* ¶ 14. Petitioner does not require total assistance with any of her ADLs. *See supra* ¶ 3. 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* ¶ 5. Although ██████████ cannot be with Petitioner at all times, as he needs time to get things done, *supra* ¶ 14, a home health aide comes into the home during the following hours: Monday through Saturday, 9:30 a.m. – 1:30 p.m., and 7:00 p.m. – 9:00 p.m.; and Sunday, 9:30 a.m. – 1:30 p.m. *See supra* ¶ 14. Additionally, it should be noted that Petitioner is currently authorized to receive the following home and community-based services (excluding the in-home respite care services, wipes, and adult companion care services that are the subject of this case): 4.5 hours per week of homemaker services; 28.5 hours per week of personal care services; the Personal Emergency Response System monthly; 1 box of gloves; 1 case of “Liner or Shield or Pads”; and 1 case of underpads. *See supra* ¶ 5. The record reflects that “[h]ome health aid [sic] and son assist with ADLs.” *See supra* ¶ 3. The NPAR states, “Respite Care is provided on a short term [sic] basis to relieve the caregiver and is not meant to be an ongoing weekly service.”

See supra ¶ 9. Further, the Sunshine Health Policy and Procedure LT.UM.09 specifies that “[i]n-home Respite Care services are to provide short-term, temporary relief to the informal, unpaid caregiver in order to support and preserve the primary caregiving relationship.” See supra ¶ 10.

33. Given Petitioner’s current living situation with her adult son who is unable to assist her, Petitioner’s currently authorized home and community-based services, and the fact that a home health aide comes into the home 7 days per week, Respondent demonstrated that Petitioner’s aforementioned needs, *supra* ¶ 2 – 5, are met without the 3 hours per week of in-home respite care services. Accordingly, Respondent established that the 3 hours per week of in-home respite care services are “in excess of [Petitioner’s] needs.” See supra ¶ 19.

#### **Adult Companion Care Services**

34. Section 4.2.1.1 of the SMMC 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 ¶ 19.

35. 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 ¶ 10. 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*

36. The evidence presented in this case reflects that Respondent's termination of 4 hours per week of adult companion services is warranted under the circumstances of this case. Specifically, Petitioner needs: no assistance with eating; and assistance (but not total help) with bathing, dressing, using the bathroom, transferring, and walking/mobility. *See supra* ¶ 3. Petitioner uses assistive devices for bathing, transferring, and walking/mobility. *Id.* Regarding IADLs, Petitioner needs: supervision or prompting with using the telephone; total assistance (cannot do at all) with heavy chores; and assistance (but not total help) with light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. *See supra* ¶ 4. Petitioner has multiple medical conditions, including arthritis (osteo), diabetes, and glaucoma. *See supra* ¶ 2.

37. However, Petitioner resides in the home with her son, ██████████, who does not work outside the home. *See supra* ¶ 14. Petitioner talks to friends, relatives, or others (by phone, computer, or other means) several times per month, spends time with someone who does not live with her once a week, and participates in activities outside the home that interests her every few months. *See supra* ¶ 5. Further, the home health aide comes into the home during the following hours: Monday through Saturday, 9:30 a.m. – 1:30 p.m., and 7:00 p.m. – 9:00 p.m.; and Sunday, 9:30 a.m. – 1:30 p.m. *See supra* ¶ 14. Although ██████████ believes that Petitioner does not have enough personal care services or homemaker services, *supra* ¶ 14, it should be noted that personal care services and homemaker services are a separate category of services, which are not the subject of the Respondent's terminations in this case.

38. 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 ¶ 19. Petitioner resides in the home [REDACTED]. See supra ¶ 14. The record does not indicate that [REDACTED] is incapable of assisting Petitioner when he is present in the home with Petitioner. In fact, the 701B states, “[h]ome health aid [sic] and son assist with ADLs.” See supra ¶ 3. Therefore, Petitioner also has natural supports available to assist with her care and needs.

39. Additionally, Petitioner is currently authorized to receive the following home and community-based services, excluding the in-home respite care services, wipes, and adult companion care services that are at issue in this case, Petitioner is currently authorized to receive the following home and community-based services: 4.5 hours per week of homemaker services; 28.5 hours per week of personal care services; the Personal Emergency Response System monthly; 1 box of gloves; 1 case of “Liner or Shield or Pads”; and 1 case of underpads. See supra ¶ 5. The 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 ¶ 19. The homemaker services are “[t]he provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker.” See supra ¶ 19.

40. Given that Petitioner resides with [REDACTED] who does not work outside the home, and has personal care services to assist with her ADLs and homemaker services to assist with her homemaking needs, Respondent proved by a preponderance of the evidence that the 4 hours of adult companion care services “in excess of [Petitioner’s] needs.” See supra ¶ 19. Accordingly, Respondent demonstrated that it correctly terminated Petitioner’s adult

companion care services.

### **Conclusion**

41. In light of the evidence submitted, testimony provided, and applicable laws and policies, the undersigned Hearing Officer finds that Respondent met its burden of proving by a preponderance of the evidence that Respondent's termination of wipes, in-home respite care services, and adult companion care services was correct.

### **DECISION**

Respondent's termination of 2 packs per month of wipes is **AFFIRMED**.

Respondent's termination of 3 hours per week of in-home respite care services is **AFFIRMED**.

Respondent's termination of 4 hours per week of adult companion care services is **AFFIRMED**.

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

**DONE AND ORDERED** this 29th day of June, 2021, in Tallahassee, Leon County, Florida.



Tracie Hardin  
21-FH [REDACTED], 21-FH [REDACTED]  
21-FH [REDACTED]  
2021.06.29 07:40:57 -04'00'

---

**TRACIE HARDIN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
**Office: (850) 412-3649**  
**Fax: (850) 487-1423**  
**E-mail: [OfficeOfFairHearings@ahca.myflorida.com](mailto:OfficeOfFairHearings@ahca.myflorida.com)**

### **NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**COPIES FURNISHED TO:**



**Paige Comparato, Esquire  
Counsel for Respondent  
Paige.Comparato@hoganlovells.com**

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