



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

FILED

Mar 16, 2023, 9:06 am

OFFICE OF FAIR HEARINGS

PETITIONER,

AHCA CASE NO.: 23-FH0021

PLAN ID NO.:

VS.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

PETITIONER,

AHCA CASE NO.: 23-FH0022

PLAN ID NO.:

VS.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, Hearing Officer Jaquetta Johnson of the Office of Fair Hearings undersigned convened a telephonic Fair Hearing on the instant case on February 10, 2023, at 1:30 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

Petitioner

For the Respondent:

Michael Moens  
Grievance and Appeals Fair Hearing Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's homemaker services hours from twenty-one (21) to fourteen (14) hours, weekly, was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's personal care services hours from forty-nine (49) to thirty-eight (38) hours, weekly, was correct.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. The Petitioner appeared on  own behalf.   
 the Petitioner's  and  Petitioner's  
, appeared on behalf of the Petitioner.

Michael Moens, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana") appeared on behalf of Respondent. Dr. Anne Brandy ("Dr. Brandy"), Medical Director for Humana, attended as a witness for Respondent. Joshua Mitchell appeared as an observer on behalf of Respondent.

Suzanne Chillari, Medical/Health Care Program Analyst 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 hundred and seven (107)-page evidence packet (including table of contents and coversheet). The hundred and seven (107)-page evidence packet appears in the Office of Fair Hearings' document management system as file title "23-FH0021 & 23-FH0022 Petitioner's Evidence.pdf" and "23-FH0021 & 23-FH0022 Petitioner's Evidence (Continued).pdf." Absent an objection from the

Respondent, the Hearing Officer admitted the hundred and seven (107)-page evidence packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and sixty-two (362)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH0021 23-FH0022\_Part1.pdf,” “Evidence Packet 23-FH0021 23-FH0022\_\_Part2.pdf,” “Evidence Packet 23-FH0021 23-FH0022\_\_Part3.pdf,” and “Evidence Packet 23-FH0021 23-FH0022\_\_Part4.pdf.” Absent an objection from the Petitioner, the hearing officer admitted the three hundred and sixty-two (362)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana. See page 1 of RCE 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. At the time of the hearing, Petitioner is  *Id.* at 1, 127.  lives in an  at the home of  and . *Id.* at 138. Petitioner’s diagnoses stated on the Florida Department of Elder Affairs 701B Comprehensive Assessment, dated October 26, 2022, (“701B Assessment”) include: ,

. *Id.* at 133. Medical records indicate that Petitioner has a medical history of the following: ,

[redacted]

[redacted] *Id.* at 51 and 60-61.

A nurse visits the Petitioner’s home 3 times per week to perform a [redacted].

*Id.* at 134. Petitioner receives the following specialty care: [redacted]

[redacted]. *Id.*

3. Petitioner’s needs for activities of daily living (“ADLs”) are as follows: for using the

[redacted] Petitioner needs total assistance (cannot do at all). *Id.* at 131. For

[redacted] Petitioner needs assistance (but not total help). *Id.*

Petitioner needs no assistance with [redacted] *Id.* Petitioner uses a [redacted]

a [redacted]. *Id.* Petitioner always has [redacted]. *Id.*

4. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: for

[redacted],

Petitioner needs total assistance (cannot do at all); for [redacted]

[redacted], Petitioner needs assistance (but not total help). *Id.* at 132. Petitioner always has

assistance with [redacted],

[redacted]. *Id.*

5. Petitioner’s Plan of Care included the following services: 49 hours per week of personal

care services, 18 hours per week of intermittent/skilled nursing, 21 hours per week of

homemaker services, Personal Emergency Response System, and [redacted]. *Id.* at

146.

6. In Notices of Adverse Benefit Determination (“NABD”), dated November 16, 2022,

Respondent reduced Petitioner’s personal care services from forty-nine (49) hours per week to

thirty-eight (38) hours per week, and Respondent reduced Petitioner’s homemaker services from twenty-one (21) hours to fourteen (14) hours per week. *Id.* at 3 – 7 and 11 - 15. The NABDs explained the basis of the reduction 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.

...

You currently receive 21 hours homemaker service weekly, 49 hours personal care service weekly, 18 hours skilled nursing weekly, personal emergency response monthly, [redacted]. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. You have [redacted] You are able to [redacted] [redacted] You do not have trouble [redacted] [redacted]. You do not leave [redacted]). You have not had any [redacted]. You have not recently [redacted]. You [redacted]. You use a [redacted]. You need [redacted]. You need total help [redacted]. You need total help with [redacted]. You sometimes have [redacted] sometimes have [redacted]. We are reducing to 14 hours homemaker service weekly, 38 hours personal service weekly. The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs.

*Id.* at 3 – 4 and 11-12.

7. Petitioner requested a plan appeal and received Notices of Plan Appeal Resolution (“NPAR”), dated December 8, 2022, upholding the reductions. *Id.* at 27 – 28, 34-35. The NPARs explained the basis of the decision as follows:

The member currently receives 14 hours homemaker service weekly, 38 hours personal care service weekly, 18 hours skilled nursing service weekly, personal emergency response monthly, and [redacted]. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. You have [redacted]. You are [redacted]. You do not have [redacted]. [redacted]. You have not had any [redacted]. You have not recently [redacted]. You [redacted]. A [redacted] [redacted] care for you. Your [redacted]. You use a [redacted]. You need total help [redacted]. [redacted] You need total help with [redacted]. You have 42 hours of home health services and 18 hours of skilled nursing services to meet your needs.

*Id.* at 27 – 28, and 34-35.

8. On January 3, 2023, Petitioner requested a Fair Hearing to challenge the reduction of personal care and homemaker services. On January 13, 2023, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 10, 2023, at 1:30 p.m. EST.

9. At the Fair Hearing, Dr. Brandy testified to the following:

- a. It is Dr. Brandy’s opinion that the approved hours are sufficient to meet Petitioner’s needs. Yearly, Humana reviews cases and calculate service hours based on the medical needs of the members. To determine the hours that are necessary for daily living an algorithm is used. This includes evaluating natural supports and needs. Petitioner has [redacted] to assist with [redacted] needs.

- b. After the reduction, Petitioner is receiving a total of seventy (70) hours per week of the following combined services: homemaker (14), skilled nursing (18), and personal care services (38).

10. [ ] testified to the following:

- a. She has been caring for the Petitioner for over 20 years. She does everything in her power to meet [ ] needs but needs more help. When staff is not there during the night, she has to be up with [ ] if [ ]. This process can last for [ ].
- b. She goes with Petitioner to all of [ ] appointments and stays during the appointments. In the past, staff have not communicated well regarding Petitioner's [ ], *Id.* at 133, and [ ]. She needs all the help she can get to assist Petitioner. Her own [ ], and she is exhausted both physically, and emotionally.

11. [ ] testified to the following:

- a. When I would go check on [ ] would say [ ] is okay but then when a worker gets there [ ]

12. Petitioner testified to the following:

- a. Petitioner's health has been in a lot of [ ]. [ ] has been in [ ] and has required [ ] but the 701B, NABD, and NPAR did not reflect this. [ ] has been [ ] and [ ].

- b. [ ] is [ ]. Although, [ ] has a [ ], Petitioner is unable to use them without the help of [ ] attendant or nurse. [ ] is not able to [ ] without assistance.
- c. The 701(B) Assessment was inaccurate as [ ] was not interviewed or present during the last 4 meetings with [ ] care coach. Additionally, [ ] has had a [ ] and is experiencing her own [ ] so she will not be able to care for [ ] like she once has. Petitioner has [ ] [ ] to the point of [ ].
- d. [ ] provides minimal assistance like getting [ ] something to drink. Without the hours at issue, Petitioner believes [ ] will not be able to live [ ] as it would be unsafe.
- e. The Petitioner's family has been paying for and using Alexa to help communicate [ ]. Recently [ ] family was unable to hear or see [ ]. [ ] was [ ].
- f. Petitioner's skilled nurse primarily uses her eighteen (18) approved hours to meet [ ].
- g. Since [ ] hours were reduced in November, Petitioner has unmet needs. [ ] [ ] has tried to help by increasing the time she spends [ ] from 30 hours to 48 hours weekly, but she is [ ] to do so safely.

**CONCLUSIONS OF LAW**

13. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

14. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.100(17)(b).

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

16. The Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“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 homemakers:

**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.

...

### **6.2 Specific Criteria**

In order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

LTC Policy at pages 1 – 8. Id. 179-186 of RCE.

17. 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.

LTC Policy at pages 2 – 3. Id. at 180-181 RCE.

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

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.

#### **A. Personal Care Services**

19. At the Fair Hearing, Dr. Brady testified that the reduction of forty-nine (49) to thirty-five (38) hours weekly of personal care services was correct and that the reduced hours can meet the member's needs. See ¶ 9. However, this was not substantiated in the record and testimony for the following reasons: the 701B, NABD, and NPAR relied on did not accurately reflect the member's current medical needs or availability of natural support. Petitioner's  is no longer able to provide the wraparound care the Petitioner needs, and the Petitioner's medical conditions and functional abilities do not warrant a reduction in personal care service hours. See ¶ 2-12.

20. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides general guidance as to the time allotted for personal care tasks. The time allotted for a full body bath is up to 30 minutes; dressing is allotted up to 15 minutes; grooming and skin care is allotted between 30 and 45 minutes; eating is allotted up to 30 minutes per meal; toileting is allotted up between 15 – 45 minutes, positioning is allotted up to 10 minutes every 2 hours when medically indicated, and transfers are allotted 15 minutes every two hours when medically indicated.

21. Here, the Petitioner is [redacted] and [redacted] Petitioner needs [redacted] See ¶ 3. For [redacted], [redacted], Petitioner needs assistance (but not total help). See ¶ 3. The record reflects that Petitioner has [redacted] and difficulty with [redacted], [redacted]. See ¶ 10-12. The Petitioner also has serious medical illnesses, such as [redacted] and the [redacted], that make caring for [redacted] exceed the general time allowances. See ¶ 2, 3, and 10-12. [redacted] provided credible testimony that in the middle of the night after the nurse and attendant have left, she spent 3-4 hours with [redacted] with [redacted] See ¶ 10. The Petitioner is unable to use [redacted] devices without a caregiver, nurse, or attendant [redacted]. See ¶ 2, 3. [redacted] is not able to rely on [redacted] or [redacted] to provide the support necessary to keep [redacted] safe. See ¶ 10-12. As such, assuming Petitioner is bathed, dressed, and redressed each day, and Petitioner has three (3) meals per day, Petitioner requires approximately five and a half (5.5) hours each day, just for [redacted]. This does not include the additional time needed for assistance [redacted] and [redacted], preparation of meals, and housekeeping chores which are incidental to the care furnished or essential to the health and welfare of the Petitioner. See ¶ 2-10, 14. Thus, the record is clear the Petitioner needs all [redacted] previously approved personal care service hours to meet [redacted] needs. See ¶ 2-12.

22. As Respondent bears the burden of proof, Respondent must show that the previously approved forty-nine (49) hours of personal care services are no longer medically necessary. As discussed, supra ¶ 20, based on the general guidelines for personal care services, Petitioner's medical condition, and Petitioner's functional abilities, more than the thirty-five (35) hours are

medically necessary. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent did not prove by a preponderance of the evidence that the reduction from forty-nine (49) hours per week to thirty-five (35) hours per week of personal care services was correct.

### **B. Homemaker Services**

23. Respondent reduced the Petitioner's homemaker services by seven (7) hours per week from twenty-one (21) to fourteen (14) hours. See ¶ 4. As provided in the LTC policy, homemaker services are 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."

24. Regarding his IADLs, Petitioner needs total assistance (cannot do at all) for , . See ¶ 4. As shown by the record, the Petitioner does not have  to assist with household chores or housekeeping. See ¶ 10-12.  is unable to assist with  on others for his IADs. See ¶ 2- 4, 12.

25. As Respondent bears the burden of proof, Respondent must show that the reduction of services is medically necessary. Here, Dr. Brandy opined the approved services were sufficient to meet the Petitioner's needs but otherwise provided no other evidence for consideration.

26. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has not proved by a preponderance

of the evidence that Respondent's reduction of seven (7) hours of homemaker services was correct.

Based on the foregoing,


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

Respondent's reduction of personal care services is **REVERSED**. Petitioner's appeal based on Respondent's reduction is **GRANTED**.

Respondent's reduction of homemaker services is **REVERSED**. Petitioner's appeal based on Respondent's reduction is **GRANTED**.

**DONE AND ORDERED** this 16th day of March 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher  
23-FH0021 23-FH0022  
2023.03.16 07:42:25  
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**LARUA GALLAGHER, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**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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**MedicaidHearingUnit@ahca.myflorida.com**