

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



FILED

Mar 07, 2023, 2:39 pm
OFFICE OF FAIR HEARINGS

██████████

PETITIONER,

AHCA Case No.: 23-FH0025

Plan ID No.: ██████████

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings (“OFH”) convened a telephonic Medicaid Fair Hearing in the above styled case on February 3, 2023, at 2:30 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

██████████
Petitioner

For the Respondent:

Markeshi Lee
Compliance Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether the Respondent proved by a preponderance of the evidence that a reduction of 19 hours per week of personal care services for the Petitioner was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner appeared at the hearing and provided testimony on ██████████ own behalf.

Markeshi Lee (“Ms. Lee”), Compliance Specialist for Humana Medical Plan, Inc. (“Humana”), appeared for the hearing and represented Respondent. Dr. Avra Carpousis-Bowers (“Dr. Bowers”), Long Term Care Medical Director for Humana, provided testimony on behalf of the Respondent. Dr. Wayne Sherman also appeared on behalf of Respondent but did not provide testimony.

Maria Lisa Amador (“Ms. Amador”), Registered Nurse and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

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

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 288-page evidence packet. The evidence packet has been recorded in the OFH document management system and designated as file “Evidence packet 22-FH0025_Part 1.pdf”, “Evidence packet 22-FH0025_Part 2.pdf”, “Evidence packet 22-FH0025_Part 3.pdf”, “Evidence packet 22-FH0025_Part 4.pdf”, “Evidence packet 22-FH0025_Part 5.pdf”, and “Evidence packet 22-FH0025_Part 6.pdf”. Without objection, the Respondent’s 288-page evidence packet was admitted into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

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

2. At the time of the hearing, Petitioner was a [REDACTED] who lives in a [REDACTED]. See Respondent's Composite Exhibit 1, page 26.

3. Petitioner has the following health conditions: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED];
[REDACTED]
[REDACTED]. See Respondent's Composite Exhibit 1, page 31-32.

4. The Petitioner does not currently experience any [REDACTED]. See Respondent's Composite Exhibit 1, page 27.

5. The Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated December 1, 2023 (the "12/1/22 701B"), which is the most recent 701B on the record, reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner needs no assistance with [REDACTED]. See Respondent's Composite Exhibit 1, page 29. Petitioner uses assistive devices and needs assistance (but not total help) with [REDACTED]. *Id.* The Petitioner needs total assistance with [REDACTED] Respondent's Composite Exhibit 1, page 29.

6. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the 12/1/22 701B reflects that Petitioner needs no assistance with using the [REDACTED]. See Respondent's Composite Exhibit 1, page 30. Petitioner uses assistive devices for [REDACTED]. *Id.* Petitioner needs assistance (but not total help) with [REDACTED].

██████████ *Id.* Petitioner needs total assistance (cannot do at all) with ██████████
██████████. *Id.*

7. Petitioner was authorized to receive 40 hours of Participant Directed Option (“PDO”) personal care services weekly by ██████████ who lives with ██████. See Respondent’s Composite Exhibit 1, pages 8 – 15. On November 15, 2022, Humana, after conducting a periodic review of the Petitioner’s case, issued a Notice of Adverse Benefit Determination (“NABD”) and reduced the PDO personal care services received by the Petitioner by 19 hours per week, citing that those hours were not medically necessary under the Petitioner’s current circumstances. *Id.*

8. 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.

...

You currently receive 40 hours PDO personal care service weekly, ██████████ ██████████ monthly. 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]. You do not have [REDACTED]
or [REDACTED]. You do not [REDACTED]
([REDACTED] You have had recent changes in your health. You have [REDACTED]
[REDACTED]. You live [REDACTED]. A friend help care for you. Your
caregiver does not work. You are [REDACTED]. You need some help with [REDACTED].
You need some help [REDACTED] You need total help with
[REDACTED]. You never [REDACTED]
[REDACTED] We are reducing to 21 hours PDO personal
care 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.

Respondent's Composite Exhibit 1, page 9.

9. Petitioner requested an appeal of Respondent's decision to reduce the [PDO] personal care hours. On December 9, 2022, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 17. The NPAR stated as follows:

On November 18, 2022, we received your timely plan appeal request regarding Humana Healthy Horizons Long-Term Care Plan's Notice of Adverse Benefit Determination dated November 15, 2022, 158298483, reducing the 40 Personal Care Participant Direction Option (PDO) hours weekly provided to you.

On December 5, 2022, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is a MD and board certified in Internal Medicine hereby denies your plan appeal.

The reason for the decision was based on the information received. You have requested the termination of 19 hours of Personal Care PDO services be reconsidered(appeal).

You currently receive 21 hours PDO Personal Care service weekly, [REDACTED]
[REDACTED] monthly. You have [REDACTED]
[REDACTED]. You are able to [REDACTED].
You do not have [REDACTED]. You do not l [REDACTED]
[REDACTED] You have had recent changes in your
health. You have [REDACTED]. You live [REDACTED]. A friend
helps care for you. Your caregiver does not work. You are [REDACTED] You need
some help with [REDACTED] You need some help [REDACTED]. You
need total help with [REDACTED]. You never have
[REDACTED]

After thorough review of your chart, we have decided to uphold the termination of 19 hours of Personal Care PDO services.

The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law - specifically see checked box above) and reflects the application of the Plan's approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

Respondent's Composite Exhibit 1, pages 17 - 18.

10. Petitioner requested a Fair Hearing due to the reduction of 19 hours per week of PDO personal care services. The undersigned scheduled the Fair Hearing for February 3, 2023, at 2:30 p.m., and all parties were duly notified.

11. During the Fair Hearing, Petitioner testified [REDACTED] since [REDACTED], medications for [REDACTED] are not an option. The Petitioner stated [REDACTED] continues to worsen and now [REDACTED], requiring [REDACTED] to see a [REDACTED]. The Petitioner further testified that if [REDACTED] PDO personal care hours are reduced, [REDACTED] will be forced to seek outside employment, which may necessitate the Petitioner's admission to a nursing home since [REDACTED].

12. Within the record, there is a letter from Carmen Cabrera, MD, one of the Petitioner's physicians recommending [REDACTED] continue to receive 40 hours of "[REDACTED]".

Respondent's Composite Exhibit 1, page 94.

13. Dr. Bowers is the Long-Term Care Medical Director for Humana and personally reviewed all documentation submitted to Respondent in this case, including all the documents admitted in

evidence. Dr. Bowers testified that the decision to reduce the Petitioner's PDO personal care hours in this case was made after the completion of a periodic review by Humana of the Medicaid benefits received by the Petitioner, including the most recent Form 701B, and the conclusion that 19 of the previously approved 40 personal care hours were not medically necessary. Dr. Bowers further testified that the remaining 21 hours of PDO personal care hours weekly, or 3 hours per day were sufficient to meet the Petitioner's needs.

CONCLUSIONS OF LAW

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

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

16. 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.

17. Because the Respondent is unilaterally reducing the PDO personal care hours after a periodic review of the Petitioner's case, 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.).

18. The Florida Medicaid policy that applies to the reduction of the Petitioner’s PDO Personal Care Hours in this matter 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.

...

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:

...

4.2.1.9 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.

...

4.2.1.14 Personal Emergency Response Systems

For installation and service monitoring of an electronic device connected to an enrollee’s phone that includes a portable “help” button, when provided to an enrollee at high risk of institutionalization to secure help in an emergency.

...

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:

...

4.2.2.6 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.

19. 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.

20. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“PC Policy”) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215. The PC Policy provides as follows:

1.1 Description

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

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

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

4.2 Specific Criteria

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

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

...

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient's place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

7.0 Authorization

7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid's General Policies on authorization requirements.

...

Personal Care Task	General Time Allowances
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient's needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
Grooming and Skin Care	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
Positioning	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
Transfers	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated

Toileting and Maintaining Continence	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy, pages 3 – 8, and 10.

21. In the instant case, Respondent reduced the Petitioner’s PDO personal care hours by 19 hours per week from a previously approved 40 hours per week based on a periodic review by the Respondent of Petitioner’s case. See supra ¶ 8 and 9. As established on the record by the evidence and testimony, Respondent reduced the Petitioner’s PDO personal care hours based on the conclusion that the 19 reduced hours were not 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 ¶ 20.

23. The evidence presented in this case does not reflect that Petitioner needs an additional 19 hours per week of personal care services. Specifically, Petitioner resides with ██████████ in

██████████. See supra ¶ 2 and ¶ 7. Regarding ADLs, the Petitioner needs no assistance with ██████████ uses assistive devices and needs assistance (but not total help) with ██████████, and needs total assistance with ██████████. See supra ¶ 5. Regarding Petitioner's IADLs, the Petitioner needs no assistance with using the ██████████ uses assistive devices for ██████████, needs assistance (but not total help) with ██████████, and needs total assistance (cannot do at all) with ██████████. See supra ¶ 6.

24. Section 1.3.14 of the SMMC LTC Policy mandates 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 ¶ 18.

25. Here, Petitioner is currently authorized to receive 21 hours per week of PDO personal care services. See supra ¶ 7.

26. Petitioner’s currently authorized personal care services are “[t]o provide assistance with ADLs and IADLs, which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” See supra ¶ 19. Although the PC Policy provides guidance for general allowances for ADLs, *supra* ¶ 20, the time frames stated by the Petitioner in her testimony at the hearing reflect that 21 hours of personal care per week or 3 hours per day are sufficient to meet the performance of the daily ADLs and IADLs.

27. Considering the totality of Petitioner’s circumstances, including ██████ medical condition and diagnoses, level of need for ADLs and IADLs, and the amount of currently approved services, the Respondent has proven by a preponderance of the evidence that the reduction of 19 hours of PDO personal care services per week are sufficient to meet the Petitioner’s needs. See supra

¶ 19 and 20.

28. Within the record, there is a letter from Carmen Cabrera, MD, one of the Petitioners' physicians recommending ■■■ continue to receive 40 hours of "■■■■■■■■■■". Respondent's Composite Exhibit 1, page 94. However, 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 ¶ 19. Therefore, the letter from Dr. Carbera does not, in itself, make the requested additional services medically necessary.

29. In light of the testimony and evidence, the SMMC LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent has satisfied their burden of proving that the 19 hours of PDO personal care hours per week are not medically necessary. Accordingly, the undersigned Hearing Officer concludes that Respondent's reduction of the Petitioner's PDO personal care hours was correct.

DECISION

Respondent's reduction of 19 hours of PDO personal care hours per week is **AFFIRMED**.

Petitioner's appeal based on Respondent's reduction of the PDO personal care hours matter is **DENIED**.

DONE AND ORDERED this 7th day of March 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer

Alan J. Leifer
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ALAN LEIFER, 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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██

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