



FILED

Jun 07, 2023, 1:03 pm
OFFICE OF FAIR HEARINGS

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

████████████████████,

PETITIONER,

AHCA Case No.: 23-FH0027

Plan ID No.: ██████████

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

████████████████████,

PETITIONER,

AHCA Case No.: 23-FH0028

Plan ID No.: ██████████

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /



FILED

Jun 07, 2023, 1:04 pm
OFFICE OF FAIR HEARINGS

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on April 5, 2023, at 9:00 a.m. and April 28, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

████████████████████

Petitioner’s Authorized Representative

For the Respondent:

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

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of additional personal care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of additional homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED] ("Ms. [REDACTED]"), Petitioner's Authorized Representative and [REDACTED], appeared for the Fair Hearing to provide testimony on behalf of Petitioner, and did not call any witnesses.

Michael Moens, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana"), appeared for the Fair Hearing as representative for Respondent. Dr. Manohar K. Chenchugalla ("Dr. Chenchugalla"), Medical Director for Humana, appeared for the Fair Hearing as a witness for Respondent.

Marielisa Amador, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the Fair Hearing as an observer.

Prior to the Fair Hearing, the Office of Fair Hearings received a 2-page evidence packet from Petitioner. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH0027 & 23-FH0028 Additional Information.pdf." Absent an objection from Respondent, the evidence packet was admitted 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 fifteen (315)-page evidence packet. The evidence packet appears in the Office

document management system as the file titles “Evidence Packet 23-FH0027 23-FH0028_Part1.pdf,” “Evidence Packet 23-FH0027 23-FH0028_Part2.pdf,” “Evidence Packet 23-FH0027 23-FH0028_Part3.pdf,” “Evidence Packet 23-FH0027 23-FH0028_Part4.pdf,” “Evidence Packet 23-FH0027 23-FH0028_Part5.pdf,” “Evidence Packet 23-FH0027 23-FH0028_Part6.pdf,” “Evidence Packet 23-FH0027 23-FH0028_Part7.pdf,” “Evidence Packet 23-FH0027 23-FH0028_Part8.pdf,” “Evidence Packet 23-FH0027 23-FH0028_Part9.pdf,” and “Evidence Packet 23-FH0027 23-FH0028_Part10.pdf.” Absent an objection from the Petitioner, the three hundred and fifteen (315)-page packet was admitted into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

At the Fair Hearing, ██████████ stated she mailed an evidence packet with medical records to the Office of Fair Hearings to be included in the evidence record. No record of the evidence packet was found in the Office of Fair Hearings’ case management system at that time. Under oath and on the record, Petitioner stated the Fair Hearing may proceed without the inclusion of this evidence packet. After the Fair Hearing, the Office of Fair Hearings discovered the evidence packet upon further investigation. Subsequent to the Fair Hearing, ██████████ requested that the record be re-opened to include the evidence packet. The undersigned Hearing Officer issued an Order on Petitioner’s Motion to Re-Open Evidence Record Post-Fair Hearing (“Motion”) requesting Petitioner to submit to the Office of Fair Hearings, on or before May 11, 2023, documentation showing Petitioner conferred with the Respondent and stating whether Respondent has any objection to the Motion. To date, the Office of Fair Hearings has not received from Petitioner a statement of conferral with Respondent and Respondent’s response to

Petitioner's Motion. Therefore, Petitioner's Motion is denied, and the evidence packet at issue is not included in this Fair Hearing's evidence record.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana's Long-term Care ("LTC") program. See RCE 1 at pages 1, 44-51. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. *Id.* at 62. Petitioner resides in the community with [REDACTED]. *Id.* at 62-63. Petitioner's primary caregiver and [REDACTED], does not work outside of the home. *Id.* at 76-78. As [REDACTED] testified, Petitioner's [REDACTED] works full time outside the home. According to Petitioner's Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B"), dated December 5, 2022, Petitioner has the following health conditions: [REDACTED];

[REDACTED]
[REDACTED]. *Id.* at 68-69. Petitioner uses a [REDACTED] for [REDACTED].
Id. at 69.

3. By letter dated December 27, 2022, Petitioner's provider, Russell Smith, PA-C, stated that Petitioner is under his care for [REDACTED]. Mr. Smith stated,

Patient needs assistance with: [h]ome health care due to [REDACTED] and [REDACTED]. [REDACTED] is having increased difficulty [REDACTED] and is having increased episodes of [REDACTED].

PCE 1 at page 2.

4. As provided in the 701B, Petitioner needs total assistance (cannot do at all) with the following Activities of Daily Living ("ADLs"): [REDACTED],

and [REDACTED]. See RCE 1 at 66. Petitioner needs assistance (but not total help) with [REDACTED].
Id. Petitioner's 701B is consistent with Petitioner's Fall Risk Assessment, dated September 7, 2022, which states that Petitioner needs total assistance with [REDACTED] and is [REDACTED].
Id. at 119. Petitioner visited the [REDACTED] and has been [REDACTED] in the [REDACTED]. *Id.* With regard to Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with [REDACTED], [REDACTED]. *Id.* at 67. Petitioner needs assistance (but not total help) with [REDACTED]. *Id.*

5. Petitioner initially requested an additional thirty-three (33) hours per week of personal care services and an additional seven (7) hours per week of homemaker services. Petitioner's requests were denied in Notice of Adverse Determinations ("NABDs"), dated September 28, 2022. *Id.* at 3-7, 11-15. The NABDs contained identical rationale and explained the basis of the denials as follows, in pertinent part:

We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010)

...

- ✓ 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 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.

...
✓ **Other authority.**

The facts that we used to make our decision are:

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.

You have requested additional 33 hours of personal care (PC) PDO and additional 7 hours homemaker (HMK) PDO services weekly. You currently receive 28 hours of PC PDO and 12 hours of HMK PDO services per week. You are a [REDACTED] who lives with [REDACTED] who does not work outside the home and your [REDACTED] who works outside the home. You have multiple medical problems including [REDACTED]. You were [REDACTED] ([REDACTED]) [REDACTED] and [REDACTED]. You use an [REDACTED] for mobility. You are [REDACTED], and [REDACTED] and can [REDACTED]. Your caregiver requested the increase in hours for the afternoon/evening care. You live with [REDACTED] where house chores and meals are completed for the benefit of the household and not as an additional task for you. You also currently receive 12 hours of HMK PDO and your PDO/DSW can help prepare additional meals for you along with light housekeeping of your room and doing laundry for you. Therefore, we are denying your request for additional 7 hours of HMK service weekly. We are denying additional 33 hours of PC PDO as the current 28 hours are sufficient to meet your PC needs and also, as you [REDACTED] and can [REDACTED] and you live with [REDACTED].

Id. at 3-4, 11-12.

6. On November 14, 2022, Petitioner requested a plan appeal. *Id.* at 20-24. On December 27, 2022, Respondent issued a Notice of Plan Appeal Resolution ("NPAR") denying Petitioner's request for additional personal care services. *Id.* at 27-33. The NPAR states the following, in pertinent part:

[Petitioner] has several (multiple) medical problems. ■ does not have trouble ■. ■ sometimes has ■ or ■.

[Petitioner] lives with ■. ■ uses an ■ to move around (walk). ■ needs help ■. ■ needs help ■, and ■.

The denial of the additional 33 hours of direct service worker (PDO) personal care service each week is being upheld. The hours ■ is receiving should be enough to meet ■ medical needs and can be divided into shifts to better meet ■ needs.

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

Id. at 27-36.

7. On December 27, 2022, Respondent also issued an NPAR denying Petitioner's request for additional homemaker services. *Id.* at 27-33. The NPAR states the following, in pertinent part:

[Petitioner] has several (multiple) medical problems. ■ does not have ■. ■ sometimes has ■ or ■.

[Petitioner] lives with ■. ■ uses a ■ to move around (walk). ■ needs help ■. ■ needs help ■. ■ needs help with ■.

The denial of the additional 7 hours of direct service worker (PDO) homemaker service each week is being upheld. [Petitioner] lives with ■ who share in household responsibilities. The hours ■ is receiving should be enough to meet ■ medical needs and can be divided into shifts to better meet ■ needs.

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

Id. at 27-28.

8. On January 5, 2023, ██████ requested a Fair Hearing on behalf of Petitioner regarding the denial of additional personal care services in AHCA Case Number 23-FH0027 and the denial of additional homemaker services in AHCA Case Number 23-FH0028. *Id.* at 41. On January 13, 2023, the Office issued a notice, to all parties of record, consolidating both cases and scheduling the consolidated Fair Hearing to be convened by telephone on February 8, 2023, at 1:30 p.m. EST. Petitioner did not appear for the Fair Hearing. On March 8, 2023, the Office issued a notice, to all parties of record, rescheduling the consolidated Fair Hearing to be convened by telephone on April 5, 2023, at 9:00 a.m. EST. On April 6, 2023, the undersigned Hearing Officer issued a notice, to all parties of record, rescheduling the consolidated Fair Hearing to be reconvened by telephone on April 28, 2023, at 1:00 p.m. EST.

9. As Dr. Chenchugalla testified, subsequent to the NPAR and prior to the Fair Hearing, Humana approved Petitioner to receive an additional twelve (12) hours per week of personal care services and an additional four (4) hours per week of homemaker services. Accordingly, as of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: forty (40) hours per week of personal care services; sixteen (16) hours per week of homemaker services; as well as monthly incontinence supplies. *Id.* at 109-110, 116-117.

10. ██████ testified at the Fair Hearing as follows:

- a. Petitioner is requesting “full-time” care due to ██████, including ██████. Petitioner is a ██████ and is only able ██████.
- b. A day of care for Petitioner begins around 8 a.m. and ends around 10 p.m. ██████ asserts that the Petitioner requires 24-hour care due to an increased need for assistance with ██████.

- c. [REDACTED] lives with the Petitioner and does not have employment outside of the home. [REDACTED] husband also provides natural support to the Petitioner since they all live together, but [REDACTED] works full-time outside of the home.

11. Dr. Chenchugalla testified at the Fair Hearing as follows:

- a. Dr. Chenchugalla reviewed all of the documentation provided by Petitioner in this case. Based on his review, Dr. Chenchugalla confirmed that an additional twelve (12) hours per week of personal care services and an additional four (4) hours per week of homemaker services have been approved due to Petitioner's worsening [REDACTED]. In total, Dr. Chenchugalla authorized forty (40) hours per week of personal care services and sixteen (16) hours per week of homemaker services, which amounts to eight (8) hours per day of combined services.
- b. Dr. Chenchugalla opined that Petitioner's currently authorized services are sufficient to meet Petitioner's needs based on the 701B and natural support in the home. With the increase, Petitioner now has a total of fifty-six (56) hours per week of services, which amounts to eight (8) hours per day of combined services. Dr. Chenchugalla asserted that the additional homemaker services and personal care services at issue are in excess of Petitioner's needs.

CONCLUSIONS OF LAW

12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

14. Because Petitioner is requesting new services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

15. The Florida Medicaid Statewide 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. *Id. at* 125 – 146. The Florida Medicaid LTC Policy provides the following, in pertinent part:

1.0 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.

...

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 restrictive setting

...

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.

4.2.2 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.

Id. at 125 – 146. (Emphasis added).

16. 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:

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 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 at page 7. (Emphasis added).

17. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“PC Policy”) has been incorporated, by reference, into Rule 59G-4.215, F.A.C. 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 at pages 3 – 8, and 10.

Personal Care Services

18. In the instant case, Petitioner initially requested an additional thirty-three (33) hours per week of personal care services. *See supra* ¶ 5-6. As of the date of the Fair Hearing, Humana authorized an additional twelve (12) hours per week of personal care services. *See supra* ¶ 11. Accordingly, a total of eleven (11) additional hours per week of personal care services are in dispute. As established on the record by the evidence and testimony, Respondent denied the additional personal care services because the documentation submitted in support of Petitioner’s request failed to establish that the requested additional services are medically necessary. *See supra* ¶ 5-6, 11.

19. 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 ¶ 15.

20. The evidence presented in this case does not reflect that Petitioner needs an additional eleven (11) hours per week of personal care services. Specifically, regarding ADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED], and [REDACTED]. See supra ¶ 4. Petitioner needs assistance (but not total help) [REDACTED]. See supra ¶ 4. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED], [REDACTED], and [REDACTED]. See supra ¶ 4. Petitioner needs assistance (but not total help) with using [REDACTED]. See supra ¶ 4. Petitioner has multiple [REDACTED], [REDACTED], and [REDACTED]. See supra ¶ 2. Petitioner uses a [REDACTED] for [REDACTED]. See supra ¶ 2. Petitioner uses a [REDACTED]. See supra ¶ 6,7.

21. Petitioner resides in the [REDACTED]. See supra ¶ 2. Petitioner's primary caregiver, [REDACTED], does not work outside of the home. See supra ¶ 2. However, Petitioner's [REDACTED] works full time outside the home. See supra ¶ 2.

22. The Definitions Policy requires that the requested personal care 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 ¶ 16. Petitioner is currently authorized to receive a total of fifty-six (56) hours per week of combined home and

community-based services as follows: forty (40) hours per week of personal care services; sixteen (16) hours per week of homemaker services; and monthly incontinence supplies. *See supra* ¶ 9.

23. Petitioner's currently authorized personal care services administered under the Florida Medicaid program 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* ¶ 15. Although the PC Policy provides general guidance for general allowances for ADLs, *supra* ¶ 17, Petitioner provided no time estimates for each ADL to explain the amount of time Petitioner requires for his ADLs. Further, Petitioner provided no evidence (e.g., a daily schedule, a schedule of ADLs and IADLs, the amount of time needed for each ADL and IADL) to justify the approval of an additional eleven (11) hours of personal care services per week. Petitioner failed to explain how the requested additional hours of personal care services will be utilized to meet Petitioner's needs if approved in this matter.

24. Petitioner introduced a letter from [REDACTED] provider Russell Smith, PA-C, stating that Petitioner suffers from [REDACTED]. *See supra* ¶ 5. Mr. Smith stated that Petitioner needs assistance at home due to [REDACTED] and [REDACTED]. *See supra* ¶ 5. However, 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. *See supra* ¶ 16. Therefore, a letter from Mr. Smith does not, in itself, make the requested additional services medically necessary. Moreover, as Dr. Chenchugalla testified, additional personal care services have been authorized in this case to address Petitioner's [REDACTED]. Dr. Chenchugalla provided credible and

persuasive testimony that the authorized personal care services are sufficient to meet Petitioner's functional needs.

25. Considering the totality of Petitioner's circumstances, including [REDACTED], level of need for ADLs and IADLs, amount of currently approved services, and the fact that [REDACTED] resides with [REDACTED]

Petitioner failed to prove by a preponderance of the evidence that an additional eleven (11) hours per week of personal care services are not "in excess of Petitioner's needs." *See supra* ¶ 16.

26. In light of both parties' testimony and evidence, the SMMC LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet [REDACTED] burden of proving that an additional eleven (11) hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional personal care services was incorrect.

Homemaker Services

27. In the instant case, Petitioner also requested an additional seven (7) hours per week of homemaker services. Respondent approved an additional four (4) hours per week of homemaker services while denying the balance of the request. *See supra* ¶ 5, 7. Respondent determined that the remaining three (3) hours per week of homemaker services were not medically necessary because the services are in excess of Petitioner's needs. *See supra* ¶ 5, 7, 11.

28. 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* ¶ 15.

29. Section 4.2.1.9 of the SMMC PTC Policy defines homemaker services as 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.” *See supra* ¶ 15.

30. The record reflects that additional homemaker services are not warranted under the circumstances of this case. The record demonstrates that Petitioner’s needs can be met with the currently authorized level of services. *See supra* ¶ 11. Specifically, Petitioner resides in [REDACTED]. *See supra* ¶ 2. Petitioner’s primary caregiver, [REDACTED], does not work outside of the home. *See supra* ¶ 2. Although, Petitioner’s [REDACTED] works full time outside the home, [REDACTED] can provide some level of natural support. *See supra* ¶ 2. Regarding ADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED] and [REDACTED]. *See supra* ¶ 4. Petitioner needs assistance (but not total help) with [REDACTED]. *See supra* ¶ 4. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED], [REDACTED]. *See supra* ¶ 4. Petitioner needs assistance (but not total help) with using [REDACTED]. *See supra* ¶ 4.

31. At the Fair Hearing, Dr. Chenchugalla testified that Petitioner is currently authorized to receive a total of fifty-six (56) hours per week of combined home and community-based services as follows: forty (40) hours per week of personal care services; sixteen (16) hours per week of homemaker services; and [REDACTED]. *See supra* ¶ 9. Dr. Chenchugalla

provided credible and persuasive testimony that the authorized services are sufficient to meet Petitioner's needs. No additional evidence was presented by Petitioner as to how the homemaker services at issue would be used to meet Petitioner's IADLs, which most closely align with homemaker service tasks. ████████ did not explain the amount of time Petitioner requires for ██████ IADLs. Further, Petitioner provided no evidence to justify the approval of an additional three (3) hours of homemaker services per week. Petitioner failed to explain how the requested additional hours of homemaker services will be utilized to meet Petitioner's needs if approved in this matter.

32. As Dr. Chenchugalla's testimony was un rebutted and Petitioner did not present additional evidence on this issue, Petitioner did not establish by a preponderance of the evidence that three (3) additional hours per week of homemaker services are not "in excess of [Petitioner's] needs" at this time. Therefore, it was not proven that three (3) additional hours per week of homemaker services are medically necessary.


33. In light of both parties' testimony and evidence, and the SMMC LTC Policy, the undersigned Hearing Officer finds that Petitioner failed to meet his burden of proving that an additional three (3) hours per week of homemaker services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional homemaker services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

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

DONE and ORDERED this 7th day of June 2023, in Tallahassee, Leon County, Florida.


Kimberly Roche
23-FH0027 & 23-
FH0028
2023.06.07
09:16:00 -04'00'

KIMBERLY ROCHE, 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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