



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

**FILED**

Apr 14, 2023, 12:14 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0063

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0068

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic consolidated Fair Hearing in the instant case on March 17, 2023, at 9:04 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Authorized Representative

For the Respondent:

Joanna Alvarez-Martinez  
Manager of Appeals  
Sunshine State Health Plan, Inc.

### **STATEMENT OF ISSUE**

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

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

### **PRELIMINARY STATEMENT**

All parties appeared for the consolidated Fair Hearing telephonically. [REDACTED] [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.

Joanna Alvarez-Martinez, a Manager of Appeals for Sunshine State Health Plan, Inc. ("Sunshine Health"), appeared for the Fair Hearing as representative for Respondent. The following persons appeared for the Fair Hearing as a witnesses for Respondent: Dr. Vincent Jarvis ("Dr. Jarvis"), a Long-term Care ("LTC") Medical Director for Sunshine Health; Katelyn Schein, a LTC Care Coordinator for Sunshine Health; Darlene Pastrana, a Care Coordinator for Sunshine Health; and Julian Labrado, a Case Management Supervisor for Sunshine Health.

The following persons appeared for the Fair Hearing as an observer: Lee Ann Williams, a Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"); and Lynn Ringers, a Hearing Officer for the Agency.

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings ("Office") and Petitioner a 164-page evidence packet, which was admitted into evidence a Respondent's Composite Exhibit 1. Respondent's Composite Exhibit 1 includes the following documents: a Medicaid Fair Hearing Table of

Contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination (“NABD”) (dated October 24, 2022); a LTC Person Centered Care Plan (“Plan of Care”) (dated and signed on September 19, 2022); a LTC Plan of Care (dated and signed on February 13, 2023); a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701-B Comprehensive Assessment”) (dated September 14, 2022); a 701-B Comprehensive Assessment (dated December 8, 2022); a Standard Appeal Acknowledgment (dated November 3, 2022); a Notice of Plan Appeal Resolution (“NPAR”) (dated November 4, 2022); Sunshine Health’s Initial Review Summary; Sunshine Health’s Appeal Review Summary; Sunshine Health Policy and Procedure: LTC (Long Term Care) Ancillary Service Criteria (FL.LT.UM.09.00) (Effective: May 1, 2014) (“LTC Ancillary Service Criteria”); and Rule 59G-1.010, Florida Administrative Code.

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine Health. See Respondent’s Composite Exhibit 1, pages 1-2, 13, 91-138. Sunshine Health is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida. Petitioner is also an enrolled member of Medicare. *Id.* at 37.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] *Id.* at 13, 29, 63. Petitioner resides in the community [REDACTED]. *Id.* at 30, 63-64. Petitioner has [REDACTED]. *Id.* at 66. Petitioner has neither [REDACTED] [REDACTED] in the last year. *Id.* at 66. Petitioner experiences the following current health conditions: [REDACTED] [REDACTED] [REDACTED]. *Id.* at 69-70. Petitioner is diagnosed with [REDACTED]

[REDACTED] *Id.* at 71. Petitioner requires supervision. *Id.* at 72. Petitioner [REDACTED]  
[REDACTED]. *Id.* at 74. Petitioner is [REDACTED] *d.* at 75.

3. With respect to Activities of Daily Living (“ADLs”), Petitioner needs assistance (but not total help) with [REDACTED]. *Id.* at 67.

Petitioner needs supervision or prompt with [REDACTED] *Id.* Petitioner uses an [REDACTED]

[REDACTED] *Id.* With respect to Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]

[REDACTED]. *Id.* at 68. Petitioner needs assistance (but not total help) with [REDACTED]. *Id.*

4. On October 24, 2022, Sunshine Health issued an NABD denying Petitioner’s request for Homemaker services and Personal Care services based on medical necessity. *Id.* at 4-12. The NABD explained the basis of the reduction of services as follows, in pertinent part:

Sunshine Health has reviewed your request for **an additional 20 hours a week of Personal Care Services** (the person who helps bathe and dress you) and **an additional 1 hour a week of Homemaker Services** (the person who cleans for you), which we received on 10/21/2022.

After our review, this service has been: **DENIED** as of 10/24/2022.

We made our decision because:

*(Check all boxes that apply)*

- We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: *(See Rule)*
- Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR
- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services.

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
  2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
  3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;
- and one of the following:
1. Enable the enrollee to maintain or regain functional capacity; or
  2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice

The requested **service is not a covered benefit.**

**Other authority**

The facts that we used to make our decision are: The request for an extra 20 hours per week of Personal Care Services and an extra 1 hour per week of Homemaker Services is denied for lack of medical necessity. **Based on the assessment, the member's currently approved services are adequate to meet the member's care needs.**

**The member's present care plan includes:**

- **19 hours per week of Personal Care Services**
- **5 hours per week of Homemaker Services**
- **7 meals per week of Home Delivered Meals**

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

...

Sincerely,

Bonnie S. Koreff-Wolf, MD ["Dr. Koreff-Wolf"]

Medical Director

Respondent's Composite Exhibit 1, pages 4-12. (Emphasis added).

5. On November 2, 2022, Petitioner requested a plan appeal. *Id.* at 81-82. On November 4, 2022, Sunshine Health issued an NPAR *partially overturning* the denial of Personal Care services

and upholding the denial of Homemaker services. *Id.* at 87-90. The NPAR states the following, in pertinent part:

On 11/03/2022, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby partially approves your plan appeal. As a result, you will partially receive service, effective 11/3/2022.

The reason for our decision was based on additional clinical information from the case management assessment regarding the member's physical assistance needs, along with the family caregiver's work schedule outside the home, the denial of extra services is partially overturned. **Sunshine Health will now approve an extra 16 hours/week of Personal Care Services to meet the member's care needs.** The denial of the remaining requested 4 hours/week of Personal Care Services is upheld, and the denial of the extra 1 hour/week of Homemaker Services is upheld.

**This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified in Internal Medicine**

...

Thank you,  
Dr. John Carter ["Dr. Carter"]

Respondent's Composite Exhibit 1, pages 87-90. (Emphasis added).

6. As of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: 35 hours per week of Personal Care services, 5 hours per week of Homemaker services, 7 Home Delivered Meals per week, a monthly subscription of Personal Emergency Response System services, and [REDACTED]. *Id.* at 35-36, 40. Petitioner receives [REDACTED] several times per day. *Id.* at 70. Petitioner's primary caregiver is [REDACTED]. *Id.* at 32. [REDACTED] also works full-time outside of the home. *Id.* at 32. Petitioner's current Florida Medicaid LTC services are rendered as follows: "Monday-Friday 7am -9am, 5pm-8pm and Saturday/Sunday -8am-1pm." *Id.* at 30.

7. On January 11, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner regarding the denial of 1 hour per week of Homemaker services in AHCA Case Number 23-FH0063 and the denial of 4 hours per week of Personal Care services in AHCA Case Number 23-FH0068. On February 22, 2023, the undersigned Hearing Officer issued a notice, to all parties of record, consolidating both cases and scheduling the Fair Hearing to be convened by telephone on March 17, 2023, at 9:00 a.m. EST.

8. According to [REDACTED] testimony presented at the Fair Hearing, the requested services would be used to assist the Petitioner with supervision, ADLs and IADLs, and handling Petitioner's oxygen machine. [REDACTED] wants Petitioner to have care while [REDACTED] is away from home during the day working. [REDACTED] works 9:00 a.m. to 1:00 p.m., daily, without travel time included. [REDACTED] has additional medical records to support the request for additional services. However, the medical records have not been made available to [REDACTED] by Petitioner's physician yet.

9. According to Dr. Jarvis' testimony presented at the Fair Hearing, Dr. Jarvis reviewed the Plan of Care and the 701-B Comprehensive Assessment and concludes that the current approved services are sufficient to meet Petitioner's Personal Care and Homemaker needs. Petitioner's natural support is also a consideration in medical necessity determination. Sunshine Health will consider any new medical records submitted under a new request for services.

10. In making their medical necessity determinations, Dr. Koreff-Wolf and Dr. Carter relied upon Sunshine Health's policy and procedure: LTC Ancillary Service Criteria. *Id.* at 4-12, 87-90. The internal criteria that Sunshine Health used to make its decision appears in the LTC Ancillary Service Criteria, which provides as follows, in pertinent part:

### **C. Criteria for Type of Service:**

Criteria for each of the benefits noted in the Policy section will be used when reviewing the medical necessity of any ancillary services. In addition, the Medical Necessity Review policy FL.UM.02.01 is considered when determining medical necessity of ancillary services. The Florida Coverage Policies and Limitations Handbooks are used to determine benefits, any benefit limitations, and additional criteria.

The ancillary services of this policy are intended to augment and support the existing informal care and community services being provided to allow the member to remain safely in their home.

#### **1. Determinants for Services**

When considering the level of support the member requires and which of the ancillary services may support the member's cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member's support needed due to ADL deficits, living situation, and supervision needs.

##### a) Activities of Daily Living (ADL's)/Instrumental Activities of Daily Living (IADL's)

- Independent where member is able to provide the task without support, with or without assistive devices
- Minimal functional impairment where the ADL's require one of the following:
  - Supervision
  - At least minimum assistance
  - Member ambulates with assistance of a person or a device
  - Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply
  - Member has ADLs requiring at least minimal assistance
  - Member ambulates with assistance of a person or device
  - Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
  - Member has ADLs requiring total assistance
  - Member is non-ambulatory
  - Member transfers require one (1) to two (2) person assist
  - Member's treating physician has certified that member meets Maximum functional impairment.

##### b) Living situation consideration

- Lives alone.

- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
- Lives with non-family (with consideration of the number of days and hours that non-family members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

e) Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

The criteria for each ancillary service is described below:

...

**6) Homemaker Services**

Homemaker 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. These services are provided to members who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Chore services, including heavy chore services and pest control may be included in this service. Service are provided by a trained homemaker when the individual

regularly responsible for these services is temporarily absent or unable to manage these activities.

### Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activity of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

See Section 2 for more details

Covered Homemaker service may include:

- a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Housekeeping Considerations:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member
- For members living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area.
- The entire size of the home may be considered if cleaning of specific areas not used by the member is needed to maintain sanitary living conditions.
- For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.

- b) Shopping for the recipient's food and essential household items, picking up prescriptions and needed medical supplies

Shopping Considerations:

- Member's ability to obtain groceries, household goods, and medications on their own
- Member's ability to put away groceries, household goods, and medications on their own
- Member lives with family who does the shopping for the member and puts away groceries, household goods and medications
- Member has other supports who do the shopping for the member and puts away groceries, household goods and medications

c) Meal preparation includes menu planning, storing, preparing, cooking, and serving food (buttering bread and cutting food into bite size pieces, plating). Meal preparation does not include the cost of the food.

Meal Preparation considerations:

- Number of meals per days eaten by member or number of meals the member should eat per day
- Number of daily meals prepared by a caregiver and left in a location that the member can access, heat if necessary, and get to the table to eat.
- Meal preparation tasks member is able to complete independently. Is member able to use the microwave stove or oven?
- Amount of assistance needed in the preparation and cleanup, such as:
  - Meal planning
  - Meal preparation
  - Special diets
  - Special food preparation
  - Assembling food on plates
  - Getting food to the table
- Will additional supports allow the member to eat more often or improve nutritional status

d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all Laundromat and/or cleaning fees.

Laundry Considerations:

- Identify the amount of laundry to be done on a weekly basis, including washing, drying, folding and putting away member's clothes, bed linens and towels, including:
- Amount of clothing and other items to be laundered
- Identify if member soils their clothing or bedding due to incontinence, therefore more frequent laundry is needed, which results in more smaller loads
- Preparing clothes and other items to be washed
- Putting the clothes and other items in the washer and dryer
- Hanging clothes and other items to dry
- Other chores could be done while the member's clothes or other items are being washed, dried, folded, and put away.
- If laundry must be done in an apartment laundry room or a community laundry, additional time can be given for waiting for the laundry to be done.
- Routine changing of bed linens is considered part of bedroom housekeeping

Exclusions and Limitations for Homemaker include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.
4. Homemaker services shall not be provided overnight.
5. Homemaker services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Member/member's representative must be able to provide direction to aid when aid is in the home.
7. Care, grooming, or feeding of pets and animals
8. Yard work, gardening, or home maintenance work
9. Escort Services
10. Day care or afterschool care
11. Assistance with homework
12. Meal preparation does not include the cost of meals

...

**7. Personal Care Services**

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

Personal Care workers must be supervised by a registered nurse, licensed to practice nursing in Florida and who conducts a supervisory home visit every 60

days to observe the personal care worker. The services may be provided in the member's home or other location.

### Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

See Section C.1 for more details

Covered Personal Care services may include:

- a) Bathing - Assistance with bathing, including washing, rinsing, and drying the body or body parts.
  - Member's ability to transfer in and out of the tub or shower
  - Amount of time it takes the member to transfer in and out of the tub or shower
  - Ability of member to prepare the shower or run the bath water
  - Ability of member to use any assistive devices, such as a grab-bar or shower chair
  - Ability of member to use a sponge or wash cloth to clean himself/herself
  - How many times per week does the member bathe, consider that:
    - Incontinence episodes resulting in the need for a bath
    - Daily bathing of the elderly is not recommended due to damage that occurs to the skin from the water and the soap
    - Bathing more than once per day is a personal preference and not a necessity.
  - Full bath (bathtub, shower, or bed bath) or partial sponge bath (washing of face, underarms, and private areas).
  - A bed bath for members who are bed bound and cannot get out of the bed to be bathed in a shower or tub
- b) Dressing and Grooming – Dressing assistance includes the laying out, taking off, putting on, and fastening of clothing and footwear, and includes:
  - Member's ability to choose their own clothes, put them on, and put on socks and shoes
  - Ability to put clothes, socks and shoes on if someone lays out the clothes
  - Ability to button, zipper, tie, or buckle clothes or shoes
  - Ability to successfully use assistive devices in dressing, such as reachers, sock pullers, or shoehorns
  - Ability to dress self in the morning or evening to get ready for bed

Grooming includes assessment of member's ability to:

- Comb or brush hair
- Shave
- Complete oral hygiene, including brushing teeth, remove dentures/partial, clean dentures/partial, and replace dentures/partial
- Trim and clean fingernails and toenails

c) Eating and Feeding Considerations – Eating/Feeding is the process of a member getting oral nourishment from a receptacle (dish, plate, cup, glass, bottle, etc.) into their body after it is cooked or prepared for eating. (This does not include tube feeding as that is considered a skilled task.) Includes an assessment of the member's ability to:

- Cut foods into appropriate size pieces
- Move food or drink from the serving receptacle to their mouth

Support for eating considers the number of meals per day that the member eats.

Note: Assistance with the preparation of meals is considered as part of Meal Preparation

d) Toileting Considerations

- Taking off and putting on of clothing and/or diapers,
- Post-toilet hygiene
- Use of equipment, such as a urinal or bedpan
- Emptying of urinal or bedpan
- Cleaning of a catheter or ostomy bag
- Reminders or a toileting schedule

e) Transferring Considerations – Transferring is the member's ability to move horizontally and/or vertically between the bed, chair, wheelchair, commode, etc. It includes an assessment of the member's:

- Ability to use any mechanical devices such as a walker, cane, handrails, or wheelchair to assist with transfers
- Ability to safely transfer without the assistance of another person
- Ability to physically participate in the transfer by pivoting, holding on, or bracing themselves to assist the caregiver

f) Mobility Considerations – Mobility is the extent of the member's purposeful movement within their residence. It includes an assessment of the member's:

- Ability to purposely move about his/her residence independently with or without the use of assistive devices, this includes the ability of a member to move around in a wheelchair
- Movements being unsafe without the assistance of another person in ambulating
- Muscle weakness, unstable gait or unstable balance

...

## **9. Respite Care**

The provision of services on a short-term basis due to the absence of, or need to relieve, the member's natural supports on a planned or an emergency basis. Services are provided to members unable to care for themselves. Respite care does not substitute for the care usually provided by a registered nurse, a licensed practical nurse or a therapist. Respite care is provided in the home/place of residence, Medicaid licensed hospital, nursing facility or assisted living facility.

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

### Approval Criteria

To be considered for In-Home Respite Services, a member must have a primary caregiver as defined below, have a qualifying trigger diagnosis, and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) A primary caregiver is defined as any person who lives with the member and regularly provides or arranges help as needed with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). This person may or may not be related by birth or marriage.

b) Trigger diagnosis include:

1. Advanced Alzheimer's disease & dementia
2. Advanced Parkinson's disease
3. Multiple Sclerosis
4. ALS
5. Congestive Heart Failure
6. COPD
7. Cancer
8. End Stage Renal disease
9. TBI
10. Other diagnosis as deemed medically necessary by Medical Director

c) Four (4) Dimensions of Determination

1. Level of functioning for safety reasons
  - Independent

- Supervision
  - Minimal Assistance – ADL’s require one of the following:
  - Moderate Assistance – ADL’s require two of the following:
  - Total Assistance – ADL’s require total hands on assistance
- See Section 2.1 for more details

2. Caregiver Stress – defined by responses for caregiver assessment questions on the 701B

- Minimal Stress
  - Moderate Stress
  - Major Stress
  - Sudden Absence
- a. Defined by documented absence of caregiver due to medical emergency

3. Informal Supports

- Alone
- Lives with caregiver
- Lives with caregiver and others
- Lives with 2 caregivers

4. Services in Place

- Sunshine Health provided
- Provided by other provider/insurance

Exclusions and Limitations for In-Home Respite Services include but are not limited to:

1. Service must be provided at member’s residence.
2. Member must reside in a non-facility based setting.
3. Member resides with his or her informal, unpaid primary caregiver.
4. In-home Respite Care services provides short-term, temporary relief to the informal, unpaid caregiver.
5. In-home Respite Care provides relief to member’s primary caregiver when member care is causing stress for caregiver.
6. Service is provided when caregiver is absent.
7. The service is not provided when other family members resides in the home who are able to provide care.
8. Respite services can be provided on a planned or emergency basis.
9. The provider must be awake during the provision of respite services, and the services shall not be provided overnight.
10. In-home Respite Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
11. Services are to substitute the care that is provided by the caregiver, independent of the other services being provided to the member.
12. Provision of services provided during the respite period are within the respite provider’s scope of practice.

Respondent's Composite Exhibit 1, page 139-163. (Emphasis added).

### **CONCLUSIONS OF LAW**

11. 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) of the Florida Statutes ("Fla. Stat.") (2022). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

13. Because Petitioner requested 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.).

14. Petitioner's request for Florida Medicaid LTC services is governed by the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.192. 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:

###### **4.2.1.8 Home Delivered Meals**

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

###### **4.2.1.9 Homemaker Services**

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

#### **4.2.1.14 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.

#### **4.2.1.15 Respite Care**

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

...

#### **4.2.2 Mixed Services**

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

##### **4.2.2.5 Medical Equipment and Supplies**

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

##### **4.2.2.6 Personal Care**

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

15. The Florida Medicaid Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to

all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule. The Florida Medicaid Definitions Policy 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.**

(Emphasis added).

**Respondent’s denial of Homemaker services**

19. Based on the NABD, and the NPAR, Respondent denied Petitioner’s request for an additional hour per week of Homemaker services after a review of Petitioner’s Plan of Care and the 701-B Comprehensive Assessment. See supra ¶¶ 4-5. Respondent determined that the request was not medically necessary because it was in excess of Petitioner’s needs. See supra ¶¶ 4-5, 9. Specifically, Respondent determined the Petitioner’s currently approved Florida Medicaid LTC services and natural support are sufficient to meet Petitioner’s needs. See supra ¶¶ 4-5, 9.

Respondent also used the medical necessity criteria outlined in the LTC Ancillary Service Criteria in making their decision. See *supra* ¶ 4-5. The LTC Ancillary Service Criteria for Personal Care services weighs the following four (4) criteria: (a) IADLs; (b) Living Situation; (c) Supervision needs; and (d) Available supports. See *supra* ¶ 10. The undersigned Hearing Officer considered the elicited testimony and submitted documentation with respect to Sunshine Health's internal criteria, and the criteria for medical necessity with respect to Homemaker services.

20. The Florida Medicaid program covers Homemaker services that are determined to be medically necessary. See *supra* ¶ 14. Services such as Homemaker services must meet the medical necessity criteria set forth by the Florida Medicaid program. See *supra* ¶ 14. A Medicaid recipient's natural supports are a consideration to determine the recipient's needs. See *supra* ¶ 14. To be medically necessary, the quantity of services at issue (e.g., 1 hour per week) must not be in excess of the recipient's needs. Thus, in order to justify a need for additional Homemaker services, Petitioner must prove they have an unmet need of 1 hour per week for assistance with general household activities (such as meal preparation) and routine household care (including laundry and pest control).

21. With respect to the Sunshine Health LTC Ancillary Service Criteria, *supra* ¶ 11, the record indicates that the Petitioner requires total assistance with most IADLs. See *supra* ¶ 3. Petitioner lives in the community with [REDACTED] primary caregiver. See *supra* ¶ 2. Petitioner requires supervision. See *supra* ¶ 2. Petitioner has the natural support of [REDACTED] primary caregiver along. See *supra* ¶ 2, 3, 6, 8. Petitioner is also authorized to receive 35 hours per week of Personal Care services, 5 hours per week of Homemaker services, 7 Home Delivered Meals per week, a monthly subscription of Personal Emergency Response System services, and monthly disposable

incontinence supplies. *See supra* ¶ 6. Both parties agreed with respect to how the Petitioner measured according to the Sunshine Health LTC Ancillary Service Criteria. *See supra* ¶ 8-9.

16. The crux of this case rests in Petitioner’s need for additional assistance with general household activities (such as meal preparation) and routine household care (including laundry and pest control). [REDACTED] presented no testimony that the Petitioner needs such assistance. Instead [REDACTED] testimony centered on having a caregiver in the home for the hours that [REDACTED] is away at work. *See supra* ¶ 8. [REDACTED] works a minimum of 5 hours per day, without travel time. [REDACTED] presented no information regarding [REDACTED] travel time for it to be calculated into [REDACTED] unavailability. Furthermore, services cannot be furnished primarily for the convenience of the recipient’s caretaker. *See supra* ¶ 15 [REDACTED] must prove that Petitioner needs an additional hour per week of assistance with general household activities (such as meal preparation) and routine household care (including laundry and pest control). Simply, [REDACTED] did not do so here. Although the Petitioner requires supervision, it does not appear that supervision is properly addressed through this Medicaid LTC service (Homemaker). Instead, the Florida Medicaid program has addressed recipients who need supervision for their well-being and safety under a different Medicaid LTC service.<sup>1</sup> Thus, it appears that [REDACTED] requested the wrong Florida Medicaid LTC service on behalf of Petitioner, not necessarily the wrong quantity of Florida Medicaid LTC services. The undersigned Hearing Officer cannot assume that Petitioner has an unmet need for assistance with Homemaking tasks. Without this information,

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<sup>1</sup> Section 4.2.1.1 of the Florida Medicaid LTC Policy states, “Adult Companion Care [includes] the provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.”

the undersigned Hearing Officer applied significant weight to the professional assessment of Dr. Koreff-Wolf, Dr. Carter, and Dr. Jarvis.

22. Upon review of the documentary evidence and testimony elicited, the undersigned Hearing Officer finds that Petitioner *does not* meet Respondent's LTC Ancillary Service Criteria for an additional hour of Homemaker services, and the Florida Medicaid program's LTC Policy for Homemaker services based on medical necessity. Petitioner failed to establish that the additional quantity of Homemaker services at issue are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment," and *are not* "in excess of the patient's needs." See supra ¶ 14. As a result of not meeting their burden of proof, Respondent's medical necessity determination was correct in this case.

23. Accordingly, upon consideration of the evidence into the record, the sworn testimony of all witnesses presented at the scheduled Fair Hearing, and the aforementioned applicable laws and Florida Medicaid policies, the undersigned Hearing Officer concludes that Petitioner has *not* shown that the additional hour per week of Homemaker services are not in excess of Petitioner's needs. Petitioner has *not* proven by a preponderance of the evidence that Respondent's denial of Homemaker services was incorrect.

#### **Respondent's denial of Personal Care services**

24. Based on the NABD, and the NPAR, Respondent denied Petitioner's request for 20 hours per week of Personal Care services after a review of Petitioner's Plan of Care and 701-B Comprehensive Assessment. See supra ¶ 4-5. Subsequently, Respondent approved 16 hours per week of Personal Care services, and left the remaining 4 hours per week denied. Respondent determined that the request was not medically necessary because it was in excess of Petitioner's

needs. See *supra* ¶ 4-5, 9. Specifically, Respondent determined the Petitioner’s currently approved LTC services and natural support are sufficient to meet Petitioner’s needs. See *supra* ¶ 4-5, 9. The LTC Ancillary Service Criteria for Personal Care services weighs the following four (4) criteria: (a) IADLs; (b) Living Situation; (c) Supervision needs; and (d) Available supports. See *supra* ¶ 10. The undersigned Hearing Officer considered the elicited testimony and submitted documentation with respect to Sunshine Health’s internal criteria, and the criteria for medical necessity with respect to Personal Care services.

25. The Florida Medicaid program covers Personal Care services that are determined to be medically necessary. See *supra* ¶ 14. Services such as Personal Care services must meet the medical necessity criteria set forth by section 2.83 of the Florida Medicaid Definitions Policy. See *supra* ¶ 15. A Medicaid recipient’s natural supports are a consideration to determine the recipient’s needs. See *supra* ¶ 14. To be medically necessary, the quantity of services at issue (e.g., 4 hours per week) must not be in excess of the recipient’s needs. Thus, to justify a need for Personal Care services, Petitioner must prove they have an unmet need of 4 hours per week for “assistance with ADLs and IADLs.” The entire 4 hours per week of Personal Care services must not be in excess of the recipient’s needs or the request is not medically necessary. See *supra* ¶ 15.

26. With respect to the Sunshine Health LTC Ancillary Service Criteria, *supra* ¶ 11, the record indicates that the Petitioner requires total assistance with most ADLs. See *supra* ¶ 3. Petitioner lives in the community with [redacted] primary caregiver. See *supra* ¶ 2. Petitioner requires supervision. See *supra* ¶ 2. Petitioner has the natural support of [redacted] primary caregiver along. See *supra* ¶ 2, 3, 6, 8. Petitioner is also authorized to receive 35 hours per week of Personal Care services, 5

hours per week of Homemaker services, 7 Home Delivered Meals per week, a monthly subscription of Personal Emergency Response System services, and monthly disposable incontinence supplies. *See supra* ¶ 6. Both parties agreed with respect to how the Petitioner measured according to the Sunshine Health LTC Ancillary Service Criteria. *See supra* ¶ 8-9.

17. The crux of this case rests in Petitioner’s need for additional assistance with ADLs and IADLs. [REDACTED] presented insufficient testimony that the Petitioner needs such assistance. [REDACTED] testimony centered on having a caregiver in the home for the hours that [REDACTED] is away at work. *See supra* ¶ 8. [REDACTED] works a minimum of 5 hours per day, without travel time. [REDACTED]. [REDACTED] presented no information regarding [REDACTED] travel time for it to be calculated into [REDACTED]. [REDACTED] unavailability. Furthermore, services cannot be furnished primarily for the convenience of the recipient’s caretaker. *See supra* ¶ 15. [REDACTED] must prove that Petitioner needs an additional hour per week of assistance with general household activities (such as meal preparation) and routine household care (including laundry and pest control). Simply, [REDACTED] did not do so here. [REDACTED] did assert that the requested services would be used for “supervision, ADLS and IADLs, and handling the oxygen machine.” *See supra* ¶ 8. However, [REDACTED] did not elaborate which ADLs and/or IADLs Petitioner needs assistance with, how often these tasks occur, how long it takes to complete these tasks, and how [REDACTED] cannot meet these needs. Also, there is no evidence that a Personal Care aide is qualified to handle an [REDACTED] [REDACTED] or that an [REDACTED] requires constant monitoring. All in all, [REDACTED] merely asserted that Petitioner needs more assistance with ADLs and IADLs without substantively explaining the details behind Petitioner’s request. It appears that Petitioner requested the correct type of Florida Medicaid LTC service for its intended purpose, but did not prove beyond

a preponderance of the evidence that the quantity of services is medically necessary. The undersigned Hearing Officer cannot assume that Petitioner has an unmet need for assistance with Homemaking tasks. Without this information, the undersigned Hearing Officer applied significant weight to the professional assessment of Dr. Koreff-Wolf, Dr. Carter, and Dr. Jarvis.

27. Upon review of the documentary evidence and testimony elicited, the undersigned Hearing Officer finds that Petitioner *does not* meet Respondent's LTC Ancillary Service Criteria for an additional 4 hours of Personal Care services, and the Florida Medicaid program's LTC Policy for Personal Care services based on medical necessity. Petitioner failed to establish that the additional quantity of Homemaker services at issue are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment," and *are not* "in excess of the patient's needs." See supra ¶ 15. As a result of not meeting their burden of proof, Respondent's medical necessity determination was correct in this case.

28. Accordingly, upon consideration of the evidence into the record, the sworn testimony of all witnesses presented at the scheduled Fair Hearing, and the aforementioned applicable laws and Florida Medicaid policies, the undersigned Hearing Officer concludes that Petitioner has *not* shown that the additional 4 hours per week of Personal Care services are not in excess of Petitioner's needs. Petitioner has *not* proven by a preponderance of the evidence that Respondent's denial of Personal Care services was incorrect.

**IT IS THEREFORE ORDERED AND ADJUDGED:**

Respondent's denial of Homemaker services is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial of Homemaker services is hereby **DENIED**.

Respondent's denial of Personal Care services is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial of Personal Care services is hereby **DENIED**.

**DONE and ORDERED** this 14<sup>th</sup> day of April, 2023, in Tallahassee, Leon County, Florida.



Joseph Mabry  
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**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
**Office: (850) 412-3649**  
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**Email: OfficeOfFairHearings@ahca.myflorida.com**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**COPIES FURNISHED TO:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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