



FILED

May 16, 2023, 9:15 am

OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0076

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0079

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic consolidated Fair Hearing on the instant case on April 10, 2023, at 1:11 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Authorized Representative

For the Respondent:

Joshua Mitchell
Grievance and Appeals Fair Hearings 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 Adult Companion Care services was incorrect.

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

PRELIMINARY STATEMENT

All parties appeared for the scheduled 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

Joshua Mitchell ("Mr. Lee"), a Grievance and Appeals Fair Hearings Specialist for Humana Medical Plan, Inc. ("Humana"), appeared for the Fair Hearing as representative for Respondent. Avra Bowers, M.D ("Dr. Bowers"), a Medical Director for Humana, appeared for the Fair Hearing as a witness for Respondent.

Lee Ann Williams, a Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or AHCA), appeared for the Fair Hearing as an observer. Kameisha Presley, a Hearing Officer for the Agency, also appeared for the Fair Hearing as an observer.

Interpreter Myra (ID# 355501), a Spanish Interpreter, appeared for the Fair Hearing to provide language translation services on behalf of Petitioner.

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 297-page evidence packet¹, which was admitted into evidence as Respondent's Composite Exhibit 1. Respondent's Composite Exhibit 1 includes the following documents: a Medicaid Fair Hearing Case Summary;

¹ Filed with the Office on March 9, 2023.

Humana’s plan appeal information; a Notice of Adverse Benefit Determination (“NABD”) (dated September 23, 2022); another NABD (dated August 29, 2022a Notice of Plan Appeal Resolution (“NPAR”) (dated December 12, 2022); another NPAR (dated October 12, 2022); Humana’s authorization screenshots; various medical records; Humana’s Fall Risk Assessment; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Comprehensive Assessment”) (dated January 25, 2023); Humana’s Plan of Care; Humana’s Plan of Care Summary; the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“LTC Policy”) (March 2017); and Humana’s Member Handbook– English and Spanish.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana’s Long-term Care (“LTC”) program. See Respondent’s Composite Exhibit 1, pages 1, 35-40, 76-98. 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] and is [REDACTED] *Id.* at 1. Petitioner resides in [REDACTED]. *Id.* at 54. Petitioner is diagnosed with [REDACTED]. *Id.* at 55, 61. Petitioner requires [REDACTED]. *Id.* at 43. Petitioner is [REDACTED]. *Id.* at 43, 65. Petitioner has [REDACTED]. *Id.* at 47. Petitioner is [REDACTED] *Id.* at 57. Petitioner has the following health conditions: [REDACTED].
[REDACTED].
Id. at 59-60.

3. The 701-B Comprehensive Assessment reflects that with respect to Activities of Daily Living (“ADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]. *Id.* at 57. The 701-B Comprehensive Assessment reflects that with respect to Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]. *Id.* at 58.

4. Petitioner’s primary caregiver is [REDACTED]. *Id.* at 67-70. Petitioner lives with [REDACTED]. [REDACTED] works full-time outside of the home. *Id.* [REDACTED] does not have anyone to assist [REDACTED] with caring for Petitioner. *Id.* [REDACTED] is not in crisis as a caregiver. *Id.*

5. Prior to the instant request, Petitioner received the following Florida Medicaid LTC services, in pertinent part: a monthly supply of [REDACTED]; 10 hours per week of Homemaker services; 6 hours per week of Adult Companion Care services; and 36 hours per week of Personal Care services. *Id.* at 100-101. Petitioner’s Florida Medicaid LTC services are rendered by a Home Health Agency. *Id.* at 102.

6. On August 29, 2022, Humana issued an NABD denying Petitioner’s request for 8 hours per week of Respite Care services. *Id.* at 19-24. The NABD explained the basis of the denial as follows, in pertinent part:

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 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 currently have 10 hours of homemaker service each week and 30 hours of personal care service each week. You have requested 8 hours of in-home respite care on September 10, 2022 due to being out of town for personal business. You have high blood pressure; bladder problem (tumor); heart problems; memory problems; and joint problems (arthritis). You do not have trouble making your needs known. You have trouble thinking clearly or remembering things. Your family reports that you have left your home without someone (wandering), but currently you are not able to walk. You live with your son and daughter-in-law. You are unable to move around (walk). You need some help transferring (move from bed to chair). You need some help bathing and dressing. You need some help with toileting. You need help with house chores; shopping; and making meals. You have bladder and frequently bowel problems (incontinence). **You are being denied 8 hours of in-home respite care on September 10, 2022. You have exhausted your respite benefit for the year. You have received 301 hours of respite this year. Your respite benefit limit is 300 hours each year.**

...

Sincerely,

Aвра Carpousis-Bowers, MD, MBA, CPE ["Dr. Bowers"]

Medical Director

Respondent's Composite Exhibit 1, pages 19-24. (Emphasis added).

7. On September 23, 2022, Humana issued a NABD *partially denying* Petitioner's request for an additional 18 hours per week of Adult Companion Care services. *Id.* at 15-18. Humana approved an additional 3 hours per week of Adult Companion Care services and denied the remaining 15 hours per week of Adult Companion Care services. *Id.* The NABD explained the basis of the denial as follows, in pertinent part:

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 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:

4. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs;
5. 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
6. 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:

3. Enable the enrollee to maintain or regain functional capacity; or
4. 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 currently have 10 hours of homemaker service each week; 36 hours of personal care service each week; and 3 hours of Adult Companion Care each week. You have requested an additional 18 hours of Adult Companion Care each week.

You have [REDACTED]
[REDACTED]
[REDACTED] You have [REDACTED]
[REDACTED]. You have [REDACTED]. You do not [REDACTED]. Your [REDACTED]. You [REDACTED]. You need more help. You [REDACTED]. Your [REDACTED]. Your [REDACTED]. You are [REDACTED]. You spend [REDACTED]. You need help [REDACTED]. You need total help [REDACTED]. You need help with [REDACTED]. You have [REDACTED]. **You are being approved for an additional 3 hours of adult companion care service each week.**

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

...
Sincerely,
Dr. Srujan Gaddam ["Dr. Gaddam"]
Medical Director

Respondent's Composite Exhibit 1, pages 11-15. (Emphasis added).

8. On September 29, 2022, Petitioner requested a plan appeal. *Id.* at 4-9. On December 12, 2022, Humana issued an NPAR *denying* Petitioner's plan appeal regarding Adult Companion Care services. *Id.* at 28-30. The NPAR states the following, in pertinent part:

On December 2, 2022, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is an MD and board certified in Emergency Medicine.

The reason for the decision was based on the information received. You have requested a review of a decision made in authorization 162451760 in which a request was made for the addition of 18 hours weekly of Adult Companion

Services on behalf of [Petitioner]. 3 hours weekly of Adult Companion Services was approved, and you are appealing the 15 hours weekly of Adult Companion, which was denied. [Petitioner] currently has 10 hours of homemaker service each week; 36 hours of personal care service each week; and 6 hours of Adult Companion Care each week. [Petitioner] has [REDACTED]
[REDACTED]
[REDACTED] has
[REDACTED]. [Petitioner] has [REDACTED]
[REDACTED]
[REDACTED]. [REDACTED]

[Petitioner] lives with [REDACTED]
[REDACTED]. [Petitioner]
spends [REDACTED] needs [REDACTED]
[REDACTED] needs [REDACTED]
[REDACTED]
[REDACTED]

[Petitioner] is being approved for an additional 3 hours of adult companion care service each week. The 52 hours weekly of Home Health Care that [REDACTED] currently receives should be sufficient to cover the times when [REDACTED] family is working. The decision for denial of additional 15 hours of Adult Companion Services is upheld.

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.

...
Sincerely,
Dr. Anne Brady [“Dr. Brady”]
Medical Director

Respondent’s Composite Exhibit 1, pages 28-30. (Emphasis added).

9. On October 12, 2022, Humana issued an NPAR *denying* Petitioner’s plan appeal regarding Respite Care services. *Id.* at 31-33. The NPAR states the following, in pertinent part:

On October 10, 2022, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is a MD and board certified in Internal Medicine, hereby **denies your plan appeal.**

The reason for the decision was based on the information received. You have requested the initial one-time request of eight (8) hours of respite care be reconsidered (appealed). [Petitioner] currently has 10 hours of homemaker service each week and 30 hours of personal care service each week.

...

[Petitioner] has exhausted [redacted] respite benefit for the year. [redacted] has received 301 hours of respite this year. [Petitioner]’s respite benefit limit is 300 hours each year.

After thorough review of [Petitioner]’s chart, we have decided to uphold the denial of eight (8) hours of respite care services. The hours [redacted] is receiving should be enough to meet [redacted] medical needs and can be divided into shifts to better meet [redacted] medical 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.

...

Sincerely,

Dr. Srujani Gaddam, Medical Director [“Dr. Gaddam”]

Medical Director

Respondent’s Composite Exhibit 1, pages 31-33. (Emphasis added).

10. On January 13, 2023, [redacted] requested a Fair Hearing on behalf of Petitioner regarding the denial of Adult Companion Care services in AHCA Case Number 23-FH0076, and the denial of Respite Care services in AHCA Case Number 23-FH0079. On March 1, 2023, the undersigned Hearing Officer issued a notice, to all parties of record, consolidating all three cases and scheduling the consolidated Fair Hearing to be convened by telephone on March 20, 2023, at 9:00 a.m. EST. On March 17, 2023, the undersigned Hearing Officer granted Petitioner’s motion for continuance based on good cause. On March 21, 2023, the undersigned Hearing Officer issued another notice, to all parties of record, scheduling the consolidated Fair Hearing to be convened by telephone on April 10, 2023, at 1:00 p.m. EST. The Scheduling Order issued to both parties states the following, in pertinent part:

Submission of Legal Authorities to Office of Fair Hearings

The Respondent is **ORDERED** to file with the Office of Fair Hearings all legal authorities, including Medicaid rules, policies and regulations, internal plan guidelines and criteria, and contractual provisions, relied upon for its determination of any issues presented in the Fair Hearing. The Petitioner must have access to this information during the course of the hearing. Failure to file these documents may result in a default final order in favor of the Petitioner.

11. According to [REDACTED]' testimony² presented at the Fair Hearing, [REDACTED] works 40 hours per week, 5:00 a.m. to 2:00 p.m., five days per week; [REDACTED] is does not work on Fridays and Sundays. Petitioner's LTC service schedule mirrors [REDACTED]' work schedule because Petitioner requires constant supervision. See supra ¶ 2. [REDACTED] needs additional LTC services to accommodate [REDACTED] commute to and from work. [REDACTED] is willing and able to care for the Petitioner when [REDACTED] is present in the home. However, [REDACTED] does not work from home and must commute to and from [REDACTED] employer. [REDACTED] estimates 15-30 minutes, each way, for [REDACTED] travel commute. [REDACTED] works more than 40 hours per week.

12. According to Dr. Bowers' testimony³ presented at the Fair Hearing, Humana denied Petitioner's request for Adult Companion Care services based on a review of the 701-B Comprehensive Assessment (ADLs and IADLs), Petitioner's submitted medical records, and Petitioner's Plan of Care. Humana also considered Petitioner's natural support, but did not quantify how much (e.g., time) went into the determination. Both Petitioner's primary caregiver and the 701-B Comprehensive Assessment indicate that the Petitioner requires constant supervision. Dr. Bowers assessed that Petitioner's request for Adult Companion Care services is

² Fair Hearing audio timestamp: 21:50-34:30; 47:40-49:10.

³ Fair Hearing audio timestamp: 34:50-47:30.

in excess of their needs. Humana denied Petitioner's request for Respite Care services based on a benefit limitation, not medical necessity. Humana did not submit their fee schedule outlining the benefit limitations of Respite Care services, and Humana's member handbook does not outline the benefit limitations of Respite Care services.

CONCLUSIONS OF LAW

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

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

15. Because 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.).

16. Petitioner's request for Florida Medicaid LTC services is governed by the Florida Medicaid LTC Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.192. See Respondent's Composite Exhibit 1, pages 106-129. 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.

1.1.1 Introduction

This policy is intended to provide information about the coverage and limitations of services provided under the LTC program.

Note: All Florida Medicaid policies are promulgated in Rule Division 59G, Florida Administrative Code (F.A.C.). Coverage policies are available on the Agency for Health Care Administration's (AHCA) Web site at <http://ahca.myflorida.com/Medicaid/review/index.shtml>

...

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:

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

4.2.1.15 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.

Respondent's Composite Exhibit 1, pages 106-129.

Respondent's denial of Adult Companion Care services

17. Based on the record, Petitioner requested an additional 18 hours per week of Adult Companion Care services, and Respondent *partially denied* the request after a review of Petitioner's approved Plan of Care and the 701-B Comprehensive Assessment. *See supra* ¶ 5-6. Respondent determined that the request for an additional 15 hours per week of Adult Companion Care services was not medically necessary because it was in excess of Petitioner's needs. *See supra* ¶ 7-8. Respondent approved an additional 3 hours per week of Adult Companion Care services. *Id.* Specifically, Dr. Gaddam determined, "[t]he hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs." *See supra* ¶ 7. Dr. Brady determined, "[t]he 52 hours weekly of Home Health Care that [redacted] currently receives should be sufficient to cover the times when [redacted] family is working." *See supra* ¶ 8. Petitioner currently has 10 hours of homemaker service each week, 36 hours of personal care service each week, and 6 hours of Adult Companion Care each week. *Id.* The undersigned Hearing Officer considered the elicited testimony from both parties and submitted documentation (Respondent's Composite Exhibit 1) with respect to the Florida Medicaid LTC Policy's criteria for Adult Companion Care services.

18. The Florida Medicaid program covers Adult Companion Care services that are determined to be medically necessary. See supra ¶ 16. Adult Companion Care services administered under the Florida Medicaid program provide, “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.” See supra ¶ 16. Florida Medicaid services such as Adult Companion Care services must meet the medical necessity criteria set forth by section 1.3.14 of the Florida Medicaid LTC Policy. See supra ¶ 16. A Medicaid recipient’s natural support is a consideration in determining the recipient’s needs for LTC services. See supra ¶ 16. To be medically necessary, the quantity of services at issue (e.g., 14 hours per week) must not be in excess of the recipient’s needs. Thus, in order to justify a need for additional Adult Companion Care services, Petitioner must prove they have an unmet need of 15 hours per week for 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 in light of approved LTC services and any available natural support. The entire 14 hours per week of Adult Companion Care services must not be in excess of the recipient’s needs or the request is not medically necessary. See supra ¶ 16.

19. The crux of this case ultimately rests on the Petitioner’s unmet need for assistance with non-medical care, supervision while Petitioner’s primary caregiver is commuting to and from work. The record, which neither party disputes, indicates that the Petitioner requires constant supervision, *supra* ¶ 2, and Petitioner’s Authorized Representative is requesting additional Adult Companion Care services for the purposes of supervision during the time it takes Petitioner’s primary caregiver to commute to and from work. See supra ¶ 11. Petitioner requires total assistance with ADLs and IADLs, and is diagnosed with [REDACTED]

██████████. See supra ¶ 2-3. Petitioner's primary caregiver works 40 hours per week (5 days per week), with an approximate commute of 30 minutes each way. See supra ¶ 11. This amounts to 5 hours per week of commuter time, which Petitioner's primary caregiver is seeking coverage for. The undersigned Hearing Officer found ██████████' testimony to be credible and reliable with respect to ██████ work schedule, ██████ commuter time, ██████ willingness to care for the Petitioner when ██████ is present in the home, and Petitioner's need for constant supervision. However, it appears that ██████████ requested more hours than are needed. Petitioner is already allotted 56 hours per week of Florida Medicaid LTC services, and Petitioner's primary caregiver, by ██████ own admission, is outside of the home 45 hours per week. See supra ¶ 4, 11. Thus, on its face, Petitioner is allotted enough LTC hours per week to accommodate ██████ work schedule (including travel time). ██████████ provided no testimony or evidence as to any other time obligations which the Hearing Officer and Respondent should consider in the medical necessity determination. Also, ██████████ did not disclose the work schedule of Petitioner's Home Health Aide for the already-approved 52 hours per week of LTC services. This information is vital in determining how the Florida Medicaid LTC services are being used, *and if so*, whether the Florida Medicaid LTC services are being used in the most suitable manner. Although Petitioner may benefit from additional Adult Companion Care services, Petitioner's needs can be met by properly scheduling when the approved Florida Medicaid LTC services are being used. As a result, the record does not indicate that Respondent's medical necessity determination was incorrect in assessing that the request for an additional 15 hours per week of Adult Companion Care services are more than the Petitioner needs.

20. Petitioner **has not** established that the quantity of adult companion care services at issue (e.g., additional 15 hours per week) 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 ¶ 16. As a result of **not** meeting Petitioner’s burden of proof, Petitioner **has not** shown that Respondent’s medical necessity determination in this case was incorrect.

21. 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 requested additional 15 hours per week of Adult Companion Care services are not in excess of Petitioner’s needs or that the request is individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment. Petitioner **has not** proven by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for an additional 15 hours per week of Adult Companion Care services was incorrect.

Respondent’s denial of Respite Care services

22. Petitioner requested eight (8) hours, weekly, of respite care services. See ¶ 6. In an NABD, dated August 29, 2022, Respondent denied Petitioner’s request. *Id.* Respondent explained that Petitioner had exhausted the respite benefit for the year (300 hours). *Id.*

23. As provided in the LTC Policy, respite care services are the “provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee’s natural supports on a planned or an emergency basis”. As provided in the record, Petitioner currently receives fifty-two (52) hours of combined services. See ¶¶ 5, 7. Further, [REDACTED] works from

approximately 5:00 a.m. until 2:00 p.m., five days a week, and has a commute of 15 – 30 minutes, each way. See ¶ 11. As such, it appears that Petitioner’s caregiver has coverage for periods when [REDACTED] is at work. Petitioner provided no additional evidence that eight (8) hours of respite care were needed in this case.


24. 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 requested 8 hours of respite care services are not in excess of Petitioner’s needs or that the request is individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment. Petitioner **has not** proven by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for 8 hours per week of respite care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s denial of Adult Companion Care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial of Adult Companion Care services is **DENIED**.

Respondent’s denial of Respite Care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial of Respite Care services is **DENIED**.

DONE and ORDERED this 16th day of May, 2023, in Tallahassee, Leon County, Florida.


Joseph Mabry
23-FH0076 & 23-
FH0079
2023.05.16 07:54:15
-04'00'

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
Fax: (850) 487-1423
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]

**Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com**

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