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

FILED
May 26, 2023, 11:10 am
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER, **AHCA Case No.: 23-FH0177**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Medicaid Fair Hearing in the above-styled case on April 4, 2023, at 11:08 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

For the Respondent: Lee Ann Williams
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of fifty-six (56) hours per week of personal care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [redacted] ("[redacted]"), Petitioner's Authorized Representative and [redacted] appeared for the hearing and provided testimony on behalf of Petitioner. Veronica Gomez ("Ms. Gomez"), Petitioner's My Waiver

Support Coordinator and Consumer Directed Care Plus ("CDC+") Consultant, appeared as a witness for Petitioner.

Lee Ann Williams, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as a representative for Respondent. Dr. Chris Kunis ("Dr. Kunis"), Medical Director for eQHealth Solutions, Inc., appeared as a witness for Respondent.

Interpreter Joseph, Translator ID No. 31579212, with Global Interpreting Network provided translation services for Petitioner.

Petitioner introduced a sixty-six (66) page evidence packet. The evidence packet is maintained in the Office of Fair Hearings' case management system as "23-FH0177 Additional Documents.pdf." Absent an objection from Respondent, the undersigned admitted the evidence packet into evidence as Petitioner's Composite Exhibit 1.

Respondent introduced a one hundred and twenty (120)-page evidence package at the Fair Hearing. The packet is maintained in the Office of Fair Hearings' case management system as "[redacted] FH 04.04.2023 1-103.pdf." [redacted] FH 04.04.2023 104-120.pdf Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 1.

Respondent introduced an eighty (80)-page evidence package at the Fair Hearing. The packet is maintained in the Office of Fair Hearings' case management system as "AHCA Evidence plus CDC.pdf." Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 2.

FINDINGS OF FACT

1. AHCA is a single state agency responsible for administering the Medicaid program and for ensuring compliance with state and federal Medicaid Rules. *See* Respondent's Composite Exhibit 2 at page 3.

2. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. *See* Respondent's Composite Exhibit 1 at page 22. eQHealth is a Quality Improvement Organization ("QIO") contracted by the Agency to review prior authorization requests for services. *See* Respondent's Composite Exhibit 2 at 2. The Agency through contractual agreement authorized eQHealth to make medical necessity determinations regarding requests for fee-for-service Medicaid services requiring prior authorizations. *Id*.

3. As of the date of the Fair hearing, Petitioner is a [redacted] ([redacted]-year-old [redacted] diagnosed with [redacted]. *See* Respondent's Composite Exhibit 1 at page 22, and Petitioner's Composite Exhibit 1 at page 16. Petitioner lives with [redacted] and [redacted]. *See* Petitioner's Composite Exhibit 1 at page 2. [redacted] is Petitioner's caregiver under the CDC+ program. *Id.* at 2, 5.

4. Regarding Activities of Daily Living ("ADLs"), Petitioner requires minimum assistance with [redacted]. *See* Respondent's Composite Exhibit 1 at page 51, 53. Petitioner needs minimum or moderate assistance to complete [redacted]. *Id*. Petitioner [redacted] *Id*. at 51. Petitioner is able to [redacted]. *Id*. at 54. Petitioner does not require skilled nursing therapies such as intravenous fluids, tube feeding, suctioning, nebulizers, oxygen. *Id*. at 51.

5. Petitioner's physician Dr. Andrew Lee ("Dr. Lee") provided a prescription for home health services and accompanying documentation. *See* Petitioner's Composite Exhibit 1 at page 19-20. The documentation states:

> Requires home health services for [redacted].

Id. at 20.

6. [redacted] does not work outside the home. *Id*. at 21. [redacted] spouse has the following work schedule: 9.25 hours Monday through Friday with the [redacted] School District; and a variable schedule on Saturdays with Uber Eats. *Id*. at 23-24.

7. As Dr. Kunis testified, Petitioner attends school and therapy as follows. Petitioner attends outbound school on Monday, Tuesday, Thursday, and Friday from 7:30 a.m. to 3:30 p.m. and on Wednesday from 7:30 a.m. to 2:30 p.m. *See* Petitioner's Composite Exhibit 1 at page 6. Petitioner receives Occupational Therapy ("OT") twice a week for one (1) hour per session and Speech Therapy ("ST") once a week for one (1) hour per session. *See* Respondent's Composite Exhibit 1 at page 23. Petitioner receives Behavior Analysis services at home twice per week for two (2) hours per session. *Id*.

8. On January 13, 2023, Respondent issued a Notice of Outcome ("NOO") denying Petitioner's request for personal care services. *Id.* at 28-29. The NOO stated as follows:

> The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically the requested services are not medically necessary under the following standard(s):
>
> Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

The rationale for our decision is as follows:
PR Principal Reason – Denial:

Submitted information does not support the medical necessity for requested services.

Request is for PCS services for this [redacted] year old with [redacted]. Patient is [redacted]. [redacted] does not work/does not have any medical limitations/ and would be the PCS services provider. As [redacted] is available to provide all care so should provide the care. As per Medicaid Handbook: parents must provide as much care as then can.

Id. at 29.

9. Petitioner requested reconsideration and Respondent issued a Notice of Reconsideration Determination ("NRD"), dated January 25, 2023, upholding the denial. *Id*. at 37-38. The NRD stated, in pertinent part:

Specifically the services must be:

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

The medical basis for the reconsideration decision is as follows:

[redacted] yo with [redacted] The patient is [redacted]. The [redacted] works M-Sa; the [redacted] is not working and has no physical limitations.

Uphold previous denial of all units. The submitted documentation was reviewed. The [redacted] is available and able to provide the requested ADL care without need or PCS services.

Id. at 38.

10. On January 27, 2023, [redacted] requested a Fair Hearing to challenge the denial of personal care services. *Id*. at 9. On March 6, 2023, the undersigned scheduled the Fair Hearing for April 4, 2023, at 11:00 a.m. EST, and all parties were duly notified. *Id*.

11. [redacted] testified that Petitioner suffers from [redacted]. [redacted] states that Petitioner has a [redacted]. Petitioner [redacted]. [redacted] testified that [redacted] is Petitioner's caregiver under the CDC+ program and the requested hours will be utilized as follows: eight (8) hours per day for seven (7) days per week. [redacted] asserted that the personal care services are necessary because of Petitioner's [redacted].

12. Ms. Gomez argued that the CDC+ program was designed especially for recipients like Petitioner and that [redacted] needs specialized care from someone who knows [redacted] well. She testified that [redacted] tried to use an outside provider and was unsuccessful in the past.

13. Dr. Kunis testified that he reviewed the documentation provided in this case and agrees with the previous two physician reviewers at eQHealth that the requested personal care services are not medically necessary. Dr. Kunis asserted that [redacted] has no medical limitations, is not employed, and is available to provide care for [redacted] He argued that under the Florida Medicaid program, parents must provide as much care as possible, and that the Florida Medicaid program is intended to supplement the care provided by the parents. Referring to the Outpatient Review History, Dr. Kunis noted that Petitioner is [redacted]. *Id*. at 23. Dr. Kunis further noted that Petitioner requires [redacted] and [redacted] attends outbound school for seven (7) to eight (8) hours per day. *Id*. Dr. Kunis testified that Petitioner receives a total of approximately seven (7) hours per week of the following therapies: Occupational Therapy, Speech Therapy, and

behavior analysis services. *Id*. Dr. Kunis testified that Petitioner has had [redacted]. *Id*. Based on the documentation provided, Dr. Kunis opined that the requested fifty-six (56) hours per week of personal care services are in excess of Petitioner's needs.

CONCLUSIONS OF LAW

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

15. This hearing was held as a *de novo* proceeding pursuant to Rule 59G-1.100(17)(b), Florida Administrative Code ("F.A.C.").

16. The burden of proof in this proceeding is governed by Rule 59G-1.100(17)(g), F.A.C., which provides as follows:

> The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

17. Because Petitioner is requesting new services, Rule 59G-1.100(17)(g), F.A.C., assigns the burden of proof to the 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.)

18. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy"), incorporated by reference in Rule 59G-4.215, F.A.C., governs Petitioners' request for personal care services. The PC Policy states 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.

. . .

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 (ADL)

As defined in Rule 59G-1.010, F.A.C.

1.3.2 Babysitting

Custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient.

. . .

1.3.6 Home Health Services

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

. . .

2.0 Eligible recipient

2.1 General Criteria

An eligible recipient must be enrolled in the Florida Medicaid program on the date of service and meet the criteria provided in this policy. Provider(s) must verify each recipient's eligibility each time a service is rendered.

2.2 Who can receive

Florida Medicaid recipients under the age of 21 years requiring medically necessary personal care services. Some services may be subject to additional coverage as specified in section 4.0.

Respondent's Composite Exhibit 2 at page 40-41.

16. The PC Policy provides the following general and specific criteria for coverage of

personal care services:

4.0 Coverage Information

4.1 General Criteria

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

- Are determined to be 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

. . .

4.2.1 Parental Responsibility

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IALS care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

. . .

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.

17. The PC Policy provides the following general and specific exclusions to the coverage of personal care services:

> **5.0 Exclusion**
> **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 1.0
> - The recipient does not meet the eligibility requirements listed in 2.0
> - The service unnecessarily duplicates another provider's service.
>
> **5.2 Specific Non-Covered Criteria**
> Florida Medicaid does not reimburse for the following:
> . . .
> - Assistance with homework
> - Babysitting
> - Companion sitting or leisure activities
> - Respite care to facilitate the parent or legal guardian attending to personal matters
> - 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),
>
> . . .
> Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

Respondent's Composite Exhibit 2 at page 42-47.

18. The Florida Medicaid Authorization Requirements Policy ("Authorization Requirements Policy") (June 2016), incorporated by reference in Rule 59G-1.053, F.A.C., provides general requirements for providers to obtain authorization to render Florida Medicaid services. The Authorization Requirements Policy states:

> **1.2 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 Authorization**
> The process of obtaining approval for reimbursement of a service based on medical necessity.
> . . .
> **1.3.6 Provider**
> The term used to describe any entity, facility, person, or group that has been approved for enrollment or registered with Florida Medicaid.
>
> **1.3.7 Quality Improvement Organization**
> Entity designated to perform utilization review, quality assurance, and quality improvement activities for Florida Medicaid-covered services rendered by fee-for-service providers (also known as the QIO).
> . . .
> **2.0 Authorization Requirements**
> **. . .**
> **2.4.2 Requests for Additional Information**
> The QIO may request additional information, as necessary, to determine medical necessity.
> . . .
> **3.0 Determination Process**
> **3.1 Review Criteria**
> The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO's physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA's medical necessity definition.
>
> **3.2 Review Process**

> The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.
>
> **3.2.1 Continued Authorization Requests**
> The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:
> - The reduction is to correct for factual errors or omissions in prior certifications.
> - There is a documented improvement in the recipient's medical condition.
> - There is a documented change in the recipient's circumstances.
> - The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

Id. at 32 - 34.

19. The PC Policy provides the following with respect to Florida Medicaid recipients under the age of 21 years, requesting personal care services:

> **4.3 Early and Periodic Screening, Diagnosis, and Treatment**
> As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

Id. at 42.

20. Given that Petitioner is [redacted] ([redacted] years old, the PC Policy permits coverage for the personal care services at issue. However, a state may place medical necessity limitations on Early and Periodic Screening, Diagnosis, and Treatment ("EPSDT") services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Pursuant to section 409.905(2), Florida Statutes:

> The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all

> services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

21. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida's definition of medical necessity. The Definitions Policy, which is incorporated by reference in Rule 59G-1.010, F.A.C., defines medical necessity as follows:

> **2.83 Medically Necessary or Medical Necessity**
> The medical or allied care, goods, or services furnished or ordered must meet the following conditions:
>
> - Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain
> - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
> - Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
> - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
> - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider
>
> The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Id. at 23.

22. The evidence and testimony establish that Respondent denied Petitioner's request for personal care services because Respondent's QIO determined that the requested fifty-six (56) hours per week are not medically necessary. Specifically, Respondent denied the services on the basis that they are "in excess of Petitioner's needs." *See* supra ¶ 8, 9, 13.

23. The PC Policy states that Florida Medicaid reimburses for services that meet all of the following: are determined to be medically necessary; do not duplicate another service; and meet the criteria as specified in this LTC Policy. *See* supra ¶ 16. In order for personal care services to be medically necessary, section 2.83 of the Definitions policy requires that all five medical necessity criteria must be met. *See* supra ¶ 21. This includes the following criterion: services must be "individualized, specific, and consistent with the symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." *See* supra ¶ 21. The PC Policy further states that Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. *See* supra ¶ 16. Parents and legal guardians must participate in providing care to the fullest extent possible. *See* supra ¶ 16. Section 5.2 of the PC Policy provides that personal care services cannot be used for babysitting purposes. *See* supra ¶ 17. Babysitting is defined as "custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient." *See* supra ¶ 15.

24. The record demonstrates that the requested fifty-six (56) hours per week of personal care services are not warranted in this this case. Personal care services are intended to provide assistance with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADLs) 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. Dr. Kunis provided credible and persuasive testimony that Petitioner needs [redacted]. *See* supra ¶ 13. As Dr. Kunis testified, Petitioner is [redacted]

[redacted]. *See* supra ¶ 13. Further, Petitioner requires minimum assistance with [redacted] ADLs of [redacted], and [redacted] is able to attend outbound school for seven (7) to eight (8) hours per day. *See* supra ¶ 13. Petitioner is able to [redacted]. *See* supra ¶ 4. Petitioner does not require skilled nursing therapies such as intravenous fluids, tube feeding, suctioning, nebulizers, oxygen. *See* supra ¶ 4. Petitioner has had [redacted]. *See* supra ¶ 13.

25. The PC Policy provides general guidance for the amount of time allocated for ADLs, *supra* ¶ 16. Here, Petitioner has the burden of proof that fifty-six (56) hours are medically necessary. *See* supra ¶ 17. Petitioner provided no time estimates to explain the amount of time Petitioner requires for each of [redacted] 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 support the requested amount of services. Petitioner did not explain what ADLs would no longer be covered if the requested additional hours personal care services are not approved in this matter. The PC Policy is clear that personal care services are intended for recipients whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. *See* supra ¶ 23. In this case, Petitioner's [redacted] did not provide any evidence that [redacted] is unable to provide ADL or IADL care. For example, the record indicates that [redacted] has [redacted]. *See* supra ¶ 10. Petitioner's parents must participate to the fullest possible extent. The record reflects that Petitioner is able to attend outbound school seven (7) to eight (8) hours per day and receives a total of seven (7) hours per week of therapies. *See* supra ¶ 7, 13. Based on the

documentation provided, it was unclear what additional care Petitioner needed that [redacted] would be unable to provide. Based on the foregoing, the record does not demonstrate by a preponderance of the evidence that the requested fifty-six (56) hours per week of personal care services are "not in excess of Petitioner's needs."

26. A letter was provided from Petitioner's physician in this case. *See* supra ¶ 5. However, the letter is not persuasive because it merely states that Petitioner needs "assistance" and "supervision." The PC Policy prevents personal care services from being used for companion sitting or babysitting. *See* supra ¶ 15, 17. Moreover, 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 ¶ 21.

27. Because Petitioner did not demonstrate that the requested fifty-six (56) hours per week of personal care services are "not in excess of Petitioner's needs," the undersigned concludes that the record doe not demonstrate that the requested services are medically necessary. Looking at all of the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that the requested personal care services at issue in this case are necessary to correct or ameliorate defects and physical and mental illness and conditions.

28. In light of the testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1 and 2, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested fifty-six (56) hours per week of personal care services was incorrect.

DECISION

Respondent's denial of fifty-six (56) hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED.**

DONE AND ORDERED this 26th day of May 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
23-FH0177
2023.05.26 09:42:00
-04'00'

LAURA GALLAGHER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

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[redacted]

AHCA Medicaid Hearing Unit
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