

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



FILED

May 03, 2023, 4:06 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA CASE NO.: 23-FH0228

[REDACTED]

VS.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED]

PETITIONER,

AHCA CASE NO.: 23-FH0229

[REDACTED]

VS.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on March 2, 2022, at 1:00 p.m. Eastern Standard Time.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Joshua Mitchell  
Grievance and Appeals Fair Hearing Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

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

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional homemaker services was incorrect.

### **PRELIMINARY STATEMENT**

All parties appeared telephonically. All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED] appeared on behalf of the Petitioner. The caretaker of Petitioner's [REDACTED], attended as a witness for Petitioner.

Joshua Mitchell, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana") appeared on behalf of Respondent. Dr. Srujani Gaddam ("Dr. Gaddam"), Medical Director for Humana, attended as a witness for Respondent.

Lee Ann Williams, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty-four (284)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file titles "Evidence Packet 23-FH0228 23-FH0229\_Part1.pdf", "Evidence Packet 23-FH0228 23-FH-0229\_Part2.pdf", and "Evidence Packet 23-FH0228 23-FH0229\_Part3.pdf". Absent an objection from the Petitioner, the undersigned admitted the two

hundred and eighty-four (284)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana. *See* page 1 of RCE 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] *Id.* Petitioner lives with [REDACTED]. *Id.* at 4.

3. Petitioner is diagnosed with the following: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. *Id.* at 54 - 59. Petitioner’s [REDACTED]

[REDACTED]. *Id.* at 56. 911 has been called to help [REDACTED] *Id.* at 68.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated October 3, 2022, (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED]

[REDACTED]. *Id.* at

56. Petitioner has assistance with his ADLs most of the time. *Id.*

5. As provided in the 701B, Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED]

[REDACTED],

[REDACTED]

*Id.* at 66. Petitioner has assistance most of the time with heavy chores, light housekeeping, using the telephone, preparing meals and shopping, and always has assistance with managing money, managing medication, and using transportation. *Id.* at 57.

6. Petitioner [REDACTED]  
[REDACTED]. Petitioner's requests were denied in each Notice of Adverse Benefit Determination ("NABD"), both dated November 11, 2022. The NABD explained the basis of the denial as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: (*See Rule*)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
  2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
  3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

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 14 hours of homemaker service each week; 21 hours of personal care service each week. You have requested an additional 8 hours of homemaker service each week; an additional 8 hours of personal care service each week.

You have [REDACTED]  
[REDACTED]  
[REDACTED]. You have [REDACTED]  
[REDACTED] You have [REDACTED]  
[REDACTED].

You have not had any recent changes in your health. You have not recently been in the hospital.

You [REDACTED]. [REDACTED]. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Your request for 8 hours of homemaker services and 8 hours of personal care services each week is being denied as not medically necessary.

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

Pages 11 – 12 of RCE 1.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated January 26, 2023, upholding the denial. *Id.* at 88 – 90. The NPAR explained as follows:

The reason for the decision is based on the information received. You are appealing the denial of the requested additional 8 hours of personal care (PC) and additional 8 hours of homemaker (HMK) services per week for [Petitioner]. They currently receive 14 hours of HMK and 21 hours of PC services per week. They live with [REDACTED]. They [REDACTED]  
[REDACTED]

[REDACTED] The current 35 hours per week can be split into shifts to meet their needs. These hours are sufficient. We are upholding the decision of the medical director and denying your appeals.

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.

Page 29 of RCE 1.

8. On February 1, 2023, Petitioner requested Fair Hearings to challenge the denial of personal care services and homemaker services. On February 8, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for March 2, 2023, at 1:00 p.m. EST.

9. Petitioner's [REDACTED], testified to the following:

a. [REDACTED] provides care for Petitioner.

b. Petitioner's [REDACTED]

c. [REDACTED]  
[REDACTED]

d. Petitioner [REDACTED]  
[REDACTED]

e. Petitioner is [REDACTED]

f. Petitioner has [REDACTED]  
[REDACTED]

g. Petitioner has [REDACTED]

h. Petitioner is [REDACTED]  
[REDACTED]

i. Petitioner [REDACTED]  
[REDACTED]

- j. Petitioner [REDACTED]
- k. [REDACTED]  
[REDACTED]
- l. Petitioner has [REDACTED]  
[REDACTED]
- m. Petitioner has [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- n. Petitioner uses the thirty-five (35) total hours of personal care and homemaker services during the week for seven (7) hours each weekday. Petitioner does not use the services on the weekend, but [REDACTED] says the additional service hours are needed for the weekend.

10. Dr. Gaddam is a Medical Director for Humana. Dr. Gaddam’s testimony established the following facts:

- a. Respondent’s decision was based on the 701B assessment. Based on the assessment there were not any significant changes to Petitioner’s ability to perform ADLs and IADLs.
- b. The Petitioner should allocate the total thirty-five (35) hours of personal care and homemaker services for each day of the week, Monday through Sunday.

**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 Fla. Stat. § 409.285(2)(2019). 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 Fla. Admin. Code R. 59G-1.100(17)(b).

13. 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.)

14. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services:

**1.1 Description and Program Goal**

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

**1.3.1 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

...

**1.3.9 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

#### **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 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:

- x 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
- x Is under the care of a physician and has a physician’s order for personal care services
- x Requires more extensive and continual care than can be provided through a home health visit
- x Requires services that can be safely provided in their home or the community

...

The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“PC Policy”) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215. The PC Policy provides for the time allotted to perform each personal care activity, as follows:

#### **7.0 Authorization 7.1 General Criteria**

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

...

Personal Care Task General Time Allowances:

### Bathing

Full-body Bath: Tub, shower or sponge/bed bath. Up to 30 minutes. May rotate with partial bath based on recipient's needs

Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum. 15–20 minutes per partial bath

### Dressing

Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons. 15 minutes

Application of prosthetic devices or application of therapeutic stockings. May add 15 minutes for applying hose and/or Prosthesis

### Grooming and Skin Care

Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin. 15–30 minutes

Shampoo and comb hair, basic hair care, basic nail care. 15 minutes

### Positioning

Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed. 10 minutes/every 2 hours when medically indicated

### Transfers

Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices. 15 minutes/every 2 hours when medically indicated

### Toileting and Maintaining Continence

Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product. 15–45 minutes

### Eating

Taking in food by any method. Extra time may be allowed for preparing a special diet. 30 minutes per meal

### Delegated Medical Monitoring and Activities

Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output. 15–30 minutes day for all monitoring tasks

Performed

PC Policy, pages 3 – 8, and 10.

15. The LTC Policy also addresses medical necessity:

**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.

16. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational

- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at page 7.

**A. Personal Care Services**

17. Petitioner requested eight (8) additional hours of personal care services, weekly. *See supra* ¶ 6. In the NABD, dated November 11, 2022, Respondent denied Petitioner’s request, as upheld in the NPAR, dated January 26, 2023. *See supra* ¶¶ 6, 7. Respondent explained that Petitioner’s request was not medically necessary based on the plan’s review criteria and guidelines but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. *See supra* ¶ 16. *Id.*

18. As provided in the LTC Policy, personal care is 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.” As provided in the 701B on the record, Petitioner [REDACTED]

[REDACTED]; Petitioner [REDACTED]  
[REDACTED]  
[REDACTED]

19. Regarding his IADLs, Petitioner [REDACTED]  
[REDACTED]

transportation. See supra ¶ 5. Petitioner has assistance most of the time with heavy chores, light housekeeping, using the telephone, preparing meals and shopping, and always has assistance with managing money, managing medication, and using transportation. *Id.*

20. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PCS Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides the time allotted for personal care tasks. The time allotted for tasks applicable for Petitioner are as follows: a full body bath is allotted up to 30 minutes; dressing is allotted up to 15 minutes; grooming and skin care is allotted between 30 and 45 minutes; transfers are allotted up to 15 minutes/every 2 hours; and toileting is allotted up between 15 – 45 minutes. Petitioner is currently approved for twenty-one (21) hours of personal care services, weekly, and fourteen (14) hours of homemaker services, weekly. See supra ¶ 6. In all, Petitioner has approximately thirty-five (35) hours of combined services each week to assist with ADLs and IADLs.

21. As Petitioner bears the burden of proof, Petitioner must show that Respondent’s denial of personal care services was incorrect. Here, the Petitioner receives 21 hours of personal care services per week. Petitioner did not show evidence of why 21 hours per week in personal care services was insufficient. Petitioner is using the allotted hours for the weekdays, and not the weekends, although the Petitioner may use the allotted hours in daily shifts for each day of the week. The 21 hours for personal care services over 7 days a week would be 3 hours per day. See supra ¶ 9. There was no evidence presented on how long it takes to assist Petitioner with his ADLs, specifically for the ADL of toileting, which was of concern for [REDACTED]. [REDACTED] testified that Petitioner is under a provider’s care for [REDACTED].

[REDACTED]. See supra ¶¶ 4, 5. The time allotted for the task of toileting is 15 to 45 minutes. See ¶ 20. However, [REDACTED] testimony did not include specific data on the time it takes for Petitioner's to perform his ADLs, including [REDACTED] *id.* Additionally, according to Petitioner's 701B assessment, he always has assistance, or has assistance most of the time with his IADLs. See supra ¶ 5. Ms. Ryckman's testimony did not refute that fact.

22. Based on the foregoing, the record does not show that the additional personal care services are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of [Petitioner's] needs." See supra ¶ 16. Accordingly, the record does not show that the additional personal care services at issue are medically necessary.

23. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of the evidence that Respondent's denial of Petitioner's request for personal care services was incorrect.

#### **B. HOMEMAKER SERVICES**

24. Petitioner requested an additional eight (8) hours of homemaker services, weekly. In the NAMD, dated November 11, 2023, Respondent denied Petitioner's request. See supra ¶ 6.

25. As provided in the LTC policy, homemaker services is 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." In regards to his IADLs, Petitioner

needs total assistance (cannot do at all) for heavy chores, light housekeeping, shopping and using transportation; for preparing meals Petitioner needs assistance (but not total help). See supra ¶ 5.

26. Petitioner bears the burden of proof to show that it is medically necessary for Petitioner to receive the additional homemaker services. At the Fair Hearing, Dr. Gaddam provided credible and persuasive testimony that based on the 701B, the fact that Petitioner receives fourteen (14) hours of homemaker services under the current plan, and that [REDACTED] and is able to assist with his IADLs, no additional homemaker service hours are medically necessary. See supra ¶ 10. [REDACTED] did not provide evidence to dispute that [REDACTED] can provide some assistance with Petitioner's IADLs or what IADLs are either not completed now, or will no longer be completed, if the requested services are not approved. See supra ¶ 9.

27. Based on the foregoing, the record does not show that the additional homemaker services are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of [Petitioner's] needs." See supra ¶ 15. Accordingly, the record does not show that the additional personal care services at issue are medically necessary.

28. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of Petitioner's request for additional homemaker services was incorrect.

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

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

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

**DONE** and **ORDERED** this 3<sup>rd</sup> day of May 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki  
23-FH0228 and 23-FH0229  
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**DEBBIE K. WINICKI, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**Copies Furnished To:**



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**GAMedicaidRightFax@humana.com**

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