

**FILED**

**MAY 30 2023**

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

Agency For Health  
Care Administration

[REDACTED]

**PETITIONER,**

**AHCA Case No.: 23-FH0268**

**Plan ID No.:**

**vs.**

**HUMANA MEDICAL PLAN, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, a Hearing Officer with the Office of Fair Hearings convened the telephonic Fair Hearing on the instant case on April 7, 2023, at 11:02 a.m. EST.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Markeshi Lee

Medicaid Fair Hearing Specialist

Humana State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's adult companion care services was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED]

Petitioner's Authorized Representative, represented Petitioner at the hearing. [REDACTED]

Petitioner's home health aide, appeared as a witness.

Markeshi Lee, Medicaid Fair Hearing Specialist, appeared as the representative for Humana Medical Plan, Inc. ("Humana"). Dr. Avra Bowers ("Dr. Bowers"), Long Term Care Medical Director for Humana, appeared as a witness for Respondent.

Lee Ann Williams, Medical Health Care Program Analyst, for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings an eighty-seven (87)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH0268 Evidence Packet.pdf." Absent an objection from Respondent, the undersigned admitted the evidence packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a seventeen (17)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH0268 Faxed Evidence (2).pdf." Absent an objection from Respondent, the undersigned admitted the evidence packet into evidence as Petitioner's Composite Exhibit 2.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and twenty-five (325)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "Evidence Packet\_Part1.pdf," "Evidence Packet\_Part2.pdf," "Evidence Packet\_Part3.pdf," "Evidence Packet\_Part4.pdf," "Evidence Packet\_Part5.pdf," "Evidence Packet\_Part6.pdf," and "Evidence Packet\_Part7.pdf." Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana. See Respondent's Composite Exhibit 1 at page 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is a [REDACTED] living with [REDACTED] primary caregiver, [REDACTED] in a private residence. *Id.* at 26-28 [REDACTED] works full time outside the home and works extended hours. *Id.* at 30.

3. Petitioner suffers from [REDACTED]

[REDACTED]

[REDACTED]

4. Petitioner's most recent 701B Assessment states the following regarding Petitioner's Activities of Daily Living ("ADLs"): Petitioner needs [REDACTED]

[REDACTED]

5. Regarding Instrumental Activities of Daily Living ("IADLs"), the 701B Assessment states that Petitioner needs [REDACTED]

[REDACTED]

[REDACTED]

6. On January 25, 2023, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) terminating Petitioner’s adult companion care services. *Id.* at 9-13. The NABD stated the reason for Respondent’s actions as follows, in pertinent part:

We determined that your requested services are **not medically necessary** because the services do not meet either of the reason(s) 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 receive 30 hours of Adult Companion Care non-medical care for supervision and socialization each week. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. You are receiving hospice care services.

You live with a caregiver. You so have a memory problem. The service of 30 hours of Adult Companion care each week is being terminated[.] You live with others who should be able to meet your companionship needs.

*Id.* at 9-10.

7. Petitioner requested a plan appeal on February 2, 2023, and received a Notice of Plan Appeal Resolution (“NPAR”), dated February 3, 2023, upholding Humana’s decision to terminate Petitioner’s adult companion care services. *Id.* at 18-20. The NPAR stated as follows:

[Petitioner] currently has 28 hours of personal care services each week and 28 hours of home maker services weekly. [REDACTED] has several (multiple) medical problems.

[Petitioner] lives with you, [REDACTED] caregiver. You help care for [REDACTED] [REDACTED]

After thorough review of [Petitioner’s] chart, we will continue to uphold the termination of 30 hours of adult companion care services weekly. The hours [REDACTED] is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.

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

*Id.* at 18-19.

8. Dr. Bowers is a Long Term Care Medical Director for Humana. Dr. Bowers established that Humana approved six (6) of the thirty (30) hours per week of adult companion care services that were terminated in this case. Accordingly, twenty-four (24) hours per week of adult companion care services per week are in dispute. In addition, Petitioner receives twenty-eight (28) hours per week of homemaker services and twenty-eight (28) hours per week of personal care services. In total, Petitioner receives sixty-two (62) hours per week of home and community-based services. Dr. Bowers opined that the approved sixty-two (62) hours per week of services are sufficient to

meet Petitioner's needs. She testified that the six (6) hours of companion care services were re-authorized to cover Ms. Millan's extended work hours and transportation time. Additionally, Dr. Bowers testified that Petitioner receives hospice skilled nursing services at home twice per week. *Id.* at 46.

9. [REDACTED] testified that Petitioner's condition is [REDACTED] asserted that Petitioner needs [REDACTED]

[REDACTED]

**CONCLUSIONS OF LAW**

10. 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 the Agency under section 409.285(2)(a).

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

12. Because Respondent is reducing a previously approved service, Rule 59-1.100(17)(g), F.A.C., assigns the burden of proof to Respondent. 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.)

13. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"), incorporated by reference in Rule 59G-4.192, F.A.C.,

governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care, adult companion care, and homemaker 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)

...

#### **1.3.16 Natural Supports**

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

### **4.1 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

...

#### **4.2.1.1. 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.

...

#### **4.2.1.9 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.

...

#### **4.2.1.15 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:

...

#### **4.2.2.6 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.

...

### **6.2 Specific Criteria**

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

LTC Policy at pages 1 - 8.

14. 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.

LTC Policy at pages 2 – 3.

15. In this case, Respondent initially terminated Petitioner's adult companion care services and then approved six (6) hours per week. *See supra* ¶ 6 and 7. The net effect of Humana's decision was to reduce adult companion care services from thirty (30) to six (6) hours per week. *See supra* ¶ 8. Respondent's rationale for reducing the services was that Petitioner's request failed to meet the requirements of medical necessity. Specifically, Respondent's witness indicated that the adult companion care services at issue are in excess of Petitioner's needs. *See supra* ¶ 6-8.

16. As provided in the LTC Policy, the purpose of adult companion care services is to 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* ¶ 13. Thus, adult companion care services are designed to prevent social isolation and to provide supervision to

protect the enrollee's safety. *See supra* ¶ 13. The LTC Policy covers 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 the LTP Policy. *See supra* ¶ 13.

17. The record does not demonstrate that the previously approved adult companion care services are warranted in this case. Regarding Petitioner's medical condition, Petitioner is a

[REDACTED] *See supra* ¶ 3. Petitioner's 701B Assessment indicates that Petitioner requires supervision for safety reasons due to the following: Petitioner [REDACTED]

[REDACTED] *See supra* ¶ 3.

18. Regarding Petitioner's living arrangements, Petitioner lives with [REDACTED] works full-time, and [REDACTED] works extended hours. *See supra* ¶ 2. Regarding Petitioner's functional limitations, Petitioner's 701B Assessment indicates that Petitioner needs [REDACTED]

[REDACTED] *See supra* ¶ 4. Petitioner needs [REDACTED]

[REDACTED]

services at home twice per week. *See supra* ¶ 8. Dr. Bowers provided credible and persuasive

testimony that the authorized services are sufficient to cover Petitioner's supervision needs and that the six (6) hours per week of adult companion care services were re-authorized to ensure that Petitioner is covered during [REDACTED] work hours. [REDACTED] did not dispute that [REDACTED] work hours are covered but instead argued that [REDACTED] needs additional hours to rest, shower, and run errands. *See supra* ¶ 9. The caregiver needs identified by [REDACTED] more closely align with respite care services than adult companion care services. *See supra* ¶ 13.

19. Based on Petitioner's aforementioned living arrangements, [REDACTED] [REDACTED] the record demonstrates by a preponderance of the evidence that additional companion care services are in excess of Petitioner's needs.

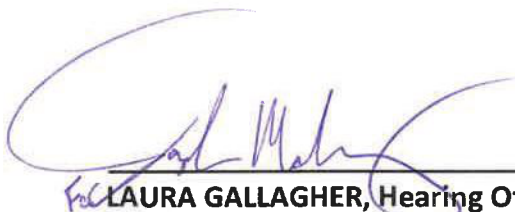
20. Upon consideration of the testimony provided, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned finds that Respondent met its burden of proving by a preponderance of the evidence that the previously approved adult companion care services are no longer medically necessary.

21. Accordingly, the undersigned Hearing Officer concludes that Respondent proved by a preponderance of the evidence that Respondent's reduction of adult companion care services was correct.

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

Respondent's reduction of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction is **DENIED**.

**DONE and ORDERED** this 30th day of May, 2023, in Tallahassee, Leon County, Florida.



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**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.

**Copies Furnished To:**



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

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