



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

FILED
May 15, 2023, 1:03 pm
OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH0280

[Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH0281

[Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on April 25, 2023, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Markeshi Lee
Medicaid 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 denial of an additional ten (10) hours per week of personal care services was incorrect.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's denial of an additional eight (8) hours per week of homemaker services was incorrect.¹

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] Petitioner's Authorized Representative and son, appeared at the hearing and provided testimony on Petitioner's behalf.

Markeshi Lee, Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana") represented Respondent. Dr. Srujani Gaddam ("Dr. Gaddam"), Medical Director for Humana, provided testimony on behalf of the Respondent.

Suzanne Chillari, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and sixteen (316)-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

¹ At the Fair Hearing, Respondent authorized an additional four (4) hours of homemaker services thereby reducing the total number of hours in dispute from twelve (12) hours to eight (8) hours per week. See Respondent's Exhibit 2.

Packet_Part5.pdf,” “Evidence Packet_Part6.pdf.” Absent an objection from Petitioner, the undersigned admitted Respondent’s evidence packet into evidence as Respondent’s Composite Exhibit 1.

At the Fair Hearing, Dr. Gaddam authorized an additional four (4) hours of homemaker services in light of Petitioner’s termination of home delivered meals. On April 28, 2023, the Office of Fair Hearings received a three (3) page screenshot of Authorization #172297320 showing that the additional four (4) hours per week of homemaker services were authorized. Petitioner’s Authorized Representative did not object to the additional homemaker services. [REDACTED] position is simply that Petitioner needs more services. Therefore, the undersigned admits the screen shot into evidence as Respondent’s Exhibit 2.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana’s LTC plan. See Respondent’s Composite Exhibit 1, page 2. Humana is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in the State of Florida.

2. As of the time of the hearing, Petitioner was an [REDACTED] who lives alone in a private residence. *Id.* at 46-47. Petitioner’s [REDACTED]
[REDACTED]. *Id.* at 65.

3. Petitioner has the following health conditions: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*
at 65.

4. [REDACTED] provided the responses to the questions on Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated December 5, 2022 (“701B Assessment”). *Id.* at 47.

5. According to the 701B Assessment, regarding Petitioner’s Activities of Daily Living (“ADLs”), Petitioner needs assistance (but not total help) with [REDACTED]
[REDACTED]
[REDACTED]. *Id.*

6. According to the 701B Assessment, regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 51.

7. According to a Supplemental Assessment, dated April 5, 2023, Petitioner’s [REDACTED]
[REDACTED]. *Id.* at 89. [REDACTED] full-time and has [REDACTED] own family to care for. *Id.* The Supplemental Assessment states that Petitioner can be alone about four (4) hours per day, and [REDACTED] provides four (4) hours of assistance on Saturdays and two (2) hours of assistance on Sundays. *Id.*

8. Petitioner does not need supervision. *Id.* at 55. [REDACTED]
[REDACTED]
[REDACTED]

the home that interest her several times a month. *Id.* at 60. Petitioner's [REDACTED] house every other week to prevent isolation. *Id.* at 55.

9. On December 9, 2022, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) approving an additional four (4) hours per week of personal care services and denying an additional ten (10) hours per week of personal care services. *Id.* at 15-19. On December 9, 2022, Respondent also issued a NABD denying an additional twelve (12) hours per week of homemaker services. *Id.* at 24-27. The NABDs stated identical reasons for Respondent’s determinations 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 have 10 hours of homemaker service each week; 10 hours of personal care service each week; and 7 home delivered meals each week. You have requested an additional 12 hours of homemaker service each week; and an additional 14 hours of personal care service each week.

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

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

You live alone . Your [REDACTED] help care for you. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] You are being approved for an additional 4 hours of personal care services each week Your request for 12 hours of homemaker service each week 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.

Id. at 15-16, 23-24.

10. Petitioner requested plan appeals for both of Respondent’s denials. On February 8, 2023, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”), upholding the denial of ten (10) additional hours per week of personal care services. *Id.* at 32-34. On February 8, 2023, Respondent also issued an NPAR upholding the denial of fourteen (14) additional hours per week of homemaker services. *Id.* at 35-37. The NPARs stated identical reasons for Respondent’s decisions as follows, in pertinent part:

On February 8, 2023, 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 Family Medicine, hereby denies your plan appeal.

The reason for the decision was based on the information received. You are appealing the denial of the additional 10 of the requested 14 hours of personal care (PC) service per week. [Petitioner] was approved with an additional 4 out of

the 14 hours of PC service requested. You are also appealing the denial of the request for an additional 12 hours of homemaker (HMK) service weekly. [Petitioner] currently receives 7 home delivered meals (HDM), 10 hours of HMK and 14 (10+4 recently approved) hours of PC services each week. We have reviewed [REDACTED] documents and reassessed [REDACTED] needs. [REDACTED] total current 24 hours of care weekly, along with 7 meals should be sufficient to meet [REDACTED] needs. [Petitioner] may split the hours into morning and evening shifts to better meet [REDACTED] needs. We are upholding the decision of the medical director and denying your appeal.

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.

Id. at 32, 35.

11. Petitioner requested a Fair Hearing due to the denial of additional personal care and homemaker services. On April 3, 2023, the undersigned scheduled the Fair Hearing for April 25, 2021, at 9:00 a.m., and all parties were duly notified.

12. At the Fair Hearing, [REDACTED] expressed frustration in communicating with Humana and in dealing with Petitioner's multiple home health aides. [REDACTED] testified that Petitioner needs coverage on the weekends and that four (4) hours on Saturday and four (4) hours on Sunday would be sufficient when combined with the care [REDACTED] would alternate giving Petitioner on the weekend afternoons. [REDACTED] testified that Petitioner stopped using home delivered meals. [REDACTED] asserted that Petitioner has [REDACTED].

13. Referring to Petitioner's 701B Assessment, Dr. Gaddam testified that Petitioner "needs some assistance" but is still "fairly independent" with her ADLs. Dr. Gaddam confirmed that Petitioner is currently authorized to receive fourteen (14) hours per week of personal care services and seven (7) hours per week of homemaker services. Dr. Gaddam asserted that Petitioner [REDACTED] but has not experienced behavioral changes. In light of Petitioner's

decision to discontinue home delivered meals, Dr. Gaddam testified that Humana would approve four (4) additional hours per week of homemaker services. On April 28, 2023, Humana provided a screen shot of Authorization #17220732 approving an additional four (4) hours per week of homemaker services.

14. As of April 28, 2023, Petitioner is authorized to receive the following home and community-based services: fourteen (14) hours per week of personal care services; fourteen (14) hours per week of homemaker services; Personal Emergency Response Services (“PERS”) monthly; and incontinence supplies. *Id.* at 83, and Respondent’s Exhibit 2.

CONCLUSIONS OF LAW

15. 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. This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

17. 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.

18. Because Petitioner is requesting additional 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.).

19. Rule 59G-1.100(18)(f), F.A.C., states, “[t]he Final Order may prescribe corrective action retroactively to the date the incorrect action was taken.”

20. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“March 2017”) (“SMMC LTC Policy”). The Agency’s SMMC LTC Policy has been incorporated, by reference, into Rule 59G-4.192, F.A.C. The SMMC LTC Policy provides as follows:

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 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.

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

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.

...

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.

...

4.2.1.9 Homemaker Services

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

...

4.2.1.14 Personal Emergency Response Systems

For installation and service monitoring of an electronic device connected to an enrollee's phone that includes a portable "help" button, when provided to an enrollee at high risk of institutionalization to secure help in an emergency.

4.2.1.15 Respite Care

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

4.2.2 Mixed Services

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

...

4.2.2.6 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.

...

6.0 Documentation

...

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.

SMMC LTC Policy, pages 1-8.

21. The Florida Medicaid Definitions Policy (August 2017) (“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.

Definitions Policy at page 7.

22. The Agency's Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy") has been incorporated, by reference, into Rule 59G-4.215, F.A.C. The PC Policy provides 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.

...

4.0 Coverage Information

4.1 General Criteria

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

- Are determined 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
- . . .

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 section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- 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)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC

- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

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 Contenance	
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.

Personal Care Services

23. In the instant case, Respondent denied an additional ten (10) hours per week of personal care services. *See supra* ¶ 9 and 10. As established on the record by the evidence and testimony, Respondent denied Petitioner’s request because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. *See supra* ¶ 9 and 10.

24. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 20.

25. The evidence presented in this case does not reflect that an additional ten (10) hours per week of personal care services are warranted. Specifically, regarding ADLs, Petitioner: needs assistance (but not total help) with [REDACTED]

[REDACTED]. As Dr. Gaddam testified, based on the 710B Assessment, Petitioner “needs some assistance” but is still “fairly independent” with [REDACTED] ADLs. See supra ¶ 13. Regarding IADLs, Petitioner: needs total assistance (cannot do at all) [REDACTED]

[REDACTED] See supra ¶ 6. [REDACTED]

[REDACTED]. See supra ¶ 6.

Petitioner always has assistance with her ADLs and IADLs. See supra ¶ 5, 6.

26. Petitioner has multiple medical conditions, including [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] supra ¶ 3.

27. Petitioner lives alone in a private residence. *Id.* at 46-47. Petitioner’s [REDACTED]

and [REDACTED], live nearby and provide natural support especially on the

weekends. See supra ¶ 2, 7. Petitioner does not need supervision. See supra ¶ 8. As Dr. Gaddam

testified, Petitioner has [REDACTED] but has not experienced behavioral changes. *See supra* ¶ 8, 13. For example, Petitioner does not get lost and wander off and is not easily agitated or disruptive. *See supra* ¶ 8.

28. The SMMC LTC Policy and the Definitions Policy require that the additional personal care services must “[b]e 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.” *See supra* ¶ 21 – 22. Petitioner is currently authorized to receive the following home and community-based services: fourteen (14) hours per week of personal care services; fourteen (14) hours per week of homemaker services; Personal Emergency Response Services (“PERS”) monthly; and incontinence supplies. *See supra* ¶ 14.

29. Petitioner’s currently authorized personal care services are “[t]o 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.” *See supra* ¶ 20. Although the PC Policy provides general guidance for the allowances for ADLs, *supra* ¶ 22, the hours approved by Respondent in this case are consistent with the general time allowances in the PC Policy. Here, Petitioner has the burden of proof. *See supra* ¶ 18. Petitioner provided no time estimates to explain the amount of time Petitioner requires for each of her 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 approval of an additional ten (10) hours of personal care services per week. Similarly, Petitioner’s 701B Assessment, which was completed with input from [REDACTED] indicates that Petitioner currently always has assistance with [REDACTED] ADLs and IADLs. *See supra* ¶ 4-6. 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.

30. Considering the totality of Petitioner's circumstances, including her diagnoses, level of functional need for assistance with ADLs and IADLs, amount of currently approved services, and the natural support provided by [REDACTED], Petitioner failed to prove by a preponderance of the evidence that an additional ten (10) hours per week of personal care services are not "in excess of [Petitioner's] needs." See supra ¶ 21 and 22.

31. In light of both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Exhibit 2, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner failed to meet [REDACTED] burden of proving that an additional ten (10) hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of additional personal care services was incorrect.

Homemaker Services

32. In the instant case, Respondent denied an additional twelve (12) hours per week of homemaker services. See supra ¶ 9 and 10. As established on the record by the evidence and testimony, Respondent denied Petitioner's request, because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. See supra ¶ 9 and 10. Subsequent to the NPAR and at the Fair Hearing, Dr. Gaddam testified on the record that Respondent would approve an additional four (4) hours per week of homemaker services because Petitioner discontinued home delivered meals; therefore, eight (8) additional hours per week of homemaker services are at issue. See supra ¶ 13.

33. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 20. In order to be medically necessary, the SMMC LTC Policy requires that the requested homemaker services must “[b]e 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.”

34. The evidence presented in this case does not reflect that an additional eight (8) hours per week of homemaker services are warranted. Specifically, regarding ADLs, Petitioner: needs assistance (but not total help) with [REDACTED]

[REDACTED]. See supra ¶ 5. As Dr. Gaddam testified, Petitioner is Petitioner “needs some assistance” but is still “fairly independent” with [REDACTED] ADLs. See supra ¶ 13. Regarding IADLs, Petitioner: needs total assistance (cannot do at all) with [REDACTED]

[REDACTED]

[REDACTED] See supra ¶ 5, 6. Petitioner always has assistance with [REDACTED] ADLs and IADLs. See supra ¶ 6.

35. Petitioner has multiple medical conditions, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See supra ¶ 3.

36. Petitioner lives alone in a private residence. *See supra* ¶ 2. Petitioner's [REDACTED] live nearby and provide natural support. *See supra* ¶ 2, 7. Petitioner does not need supervision. *See supra* ¶ 8. Although [REDACTED] is forgetful or easily confused several days per month, Dr. Gaddam provided credible and persuasive testimony that Petitioner does not experience behavior problems. *See supra* ¶ 13. For example, Petitioner does not get lost and wander off and is not easily agitated or disruptive. *See supra* ¶ 8.

37. Rule 59G-1.010, F.A.C., requires that the requested homemaker services must “[b]e 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.” *See supra* ¶ 20. Petitioner is currently authorized to receive the following home and community-based services: fourteen (14) hours per week of personal care services; fourteen (14) hours per week of homemaker services; Personal Emergency Response Services (“PERS”) monthly; and incontinence supplies. *See supra* ¶ 14.

38. Petitioner’s currently authorized homemaker services are “[t]he provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker.” *See supra* ¶ 20. In addition to receiving currently homemaker services to help with household activities and household care, Petitioner’s currently authorized personal care services can also assist “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.” *See supra* ¶ 20. Petitioner provided no time estimates for each of her IADLs, which most closely align to homemaker services, and did not explain why Petitioner requires additional assistance with IADLs. 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 approval of an additional eight (8) hours of homemaker services per week. Similarly, Petitioner's 701B Assessment, which was completed with input from [REDACTED], indicates that Petitioner always has assistance with [REDACTED] ADLs and IADLs. See supra ¶ 4, 5. Petitioner did not explain what IADLs would no longer be covered if the requested additional hours homemaker services are not approved in this matter.

39. Considering the totality of Petitioner's circumstances, including [REDACTED] diagnoses, level of functional need for assistance with ADLs and IADLs, amount of currently approved services, and the fact that [REDACTED] has the natural support of [REDACTED] who live nearby, Petitioner failed to prove by a preponderance of the evidence that an additional eight (8) hours per week of homemaker services are not "in excess of [Petitioner's] needs." See supra ¶ 20.

40. In light of both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Exhibit 2, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that an additional eight (8) hours per week of homemaker services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional homemaker services was incorrect.

DECISION

Respondent's denial of an additional ten (10) hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

Respondent's denial of an additional eight (8) hours per week of homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE AND ORDERED this 15th day of May 2023, in Tallahassee, Leon County, Florida.

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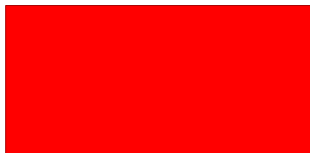


LAURA GALLAGHER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

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