

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



FILED

May 19, 2023, 8:51 am  
OFFICE OF FAIR HEARINGS

[REDACTED]  
PETITIONER,

AHCA Case No.: 23-FH0364  
[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on March 22, 2023, at 12:02 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]  
Petitioner’s Authorized Representative

For the Respondent:

Michael Moens  
Grievance and Appeals Fair Hearings Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s reduction of personal care services from sixty-three (63) hours per week to thirty-five (35) hours per week was correct.

**PRELIMINARY STATEMENT**

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED]

[REDACTED], Petitioner's Authorized Representative, appeared for the Fair Hearing to provide testimony on behalf of Petitioner, and did not call any witnesses.

Michael Moens, a Grievance and Appeals Fair Hearings Specialist for Humana Medical Plan, Inc. ("Humana"), appeared for the Fair Hearing as representative for Respondent. Avra Carpousis-Bowers, MD ("Dr. Bowers"), a Medical Director for Humana, appeared for the Fair Hearing as a witness for Respondent. Joshua Mitchell with Humana appeared for observation purposes.

Prior to the Fair Hearing, Petitioner submitted a one hundred and eighty-one (181)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH0364 Hearing Evidence.pdf." Without objection, the evidence packet was admitted into evidence as Petitioner's Composite Exhibit 1. Petitioner also submitted a one (1)-page document. The document consists of a letter, dated December 27, 2022, from Michael Jordan of Cornerstone Hospice & Palliative Care. Without objection, the document was admitted into evidence as Petitioner's Exhibit 2.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings ("Office") and Petitioner a two hundred and sixty-three (263)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as: "Evidence packet 23-FH0364\_Part1.pdf," "Evidence packet 23-FH0364\_Part2.pdf," "Evidence packet 23-FH0364\_Part3.pdf," and "Evidence packet 23-FH0364\_Part4.pdf." Without objection, the evidence packet was admitted into evidence as Respondent's Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana’s Long-term Care (“LTC”) program. See Respondent’s Composite Exhibit 1, pages 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner [REDACTED] *Id.* at 27. Petitioner is recently widowed and resides with [REDACTED]. *Id.* at 27-28. Petitioner had a recent hospitalization in September, 2022, and is under hospice care. *Id.* at 28, 31. As of March 6, 2023, Petitioner [REDACTED]

[REDACTED] See Petitioner’s Composite Exhibit 1 at page 95. Petitioner has [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

See Respondent’s Composite Exhibit 1 at pages 33-34, 47, and Petitioner’s Composite Exhibit 1 at page 103. [REDACTED]

[REDACTED] See Petitioner’s Composite Exhibit 1 at pages 57, 60, 75. Petitioner [REDACTED]

[REDACTED]

[REDACTED]. See Petitioner’s Composite Exhibit 1 at page 95. Petitioner [REDACTED]

[REDACTED] *Id.* at 104.

3. Petitioner’s Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment”) reflects that with respect to Activities of Daily Living (“ADLs”), Petitioner [REDACTED]

[REDACTED]  
[REDACTED]. *Id.* at 31. Further, the 701B Assessment states that Petitioner [REDACTED]

[REDACTED] *Id.* at 31. Petitioner  
[REDACTED]

[REDACTED]  
[REDACTED]. *Id.* at 38. The 701B Assessment reflects that with respect to Instrumental Activities

of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]  
[REDACTED]

[REDACTED] *Id.* at 32.

4. Petitioner’s primary caregiver is [REDACTED] *Id.* at 41. Ms. Almonte works full-time outside of the home. *Id.* at 42. [REDACTED] provides approximately eighty-four (84) hours per week of natural support. *Id.*

5. On November 16, 2022, Humana issued an Notice of Adverse Benefit Determination (“NABD”) reducing Petitioner’s personal care services from sixty-three (63) hours per week to thirty-five (35) hours per week. *Id.* at 3-7. The NABD explained the basis of the determination as follows, in pertinent part:

We made our decision because:  
(Check all boxes that apply)

- ✓ We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010)

...

- ✓ Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
    1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs;
    2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
    3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;
- And one of the following:
1. Enable the enrollee to maintain or regain functional capacity; or
  2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...  
✓ **Other authority.**

The facts that we used to make our decision are:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law - specifically see checked box above) and reflects the application of the Plan's approved review criteria and guidelines.

You currently receive 7 hours PDO homemaker service weekly, 63 hours PDO personal care service weekly, incontinence supplies monthly. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status. You have [REDACTED]. You are able to make your needs known. You do not have trouble thinking clearly or remembering things. You do not leave your home without someone (wandering). **You have not had any recent changes in your health. You have not recently been in the hospital.** You [REDACTED] Your caregiver works fulltime outside of the home. You [REDACTED]

**You never have bladder and never have bowl problems (incontinence).** We are reducing to 35 hours PDO personal care service weekly. The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs. (Emphasis added.)

6. On November 29, 2022, Petitioner requested a plan appeal. *Id.* at 19. On November 30, 2022, Humana issued a Notice of Plan Appeal Resolution (“NPAR”) upholding the reduction of personal care services. *Id.* at 29-21. The NPAR states the following, in pertinent part:

The reason for the decision was based on the information we received . . . [Petitioner] currently receives seven hours PDO homemaker service weekly, 35 hours PDO Personal care service weekly and, incontinence supplies monthly. [REDACTED] has [REDACTED] [REDACTED] is able to make [REDACTED] needs known. [REDACTED] does not have trouble thinking clearly or remembering things. [REDACTED] does not leave [REDACTED] home without someone (wandering). [REDACTED] has not had any recent changes in [REDACTED] health. [Petitioner] has not recently been in the hospital. He [REDACTED] You help care for [REDACTED]. You work fulltime outside of the home. [REDACTED] [REDACTED] [REDACTED] never has bladder and bowel problems (incontinence).

[Petitioner] has six hours of home health aide services daily to meet [REDACTED] needs. After thorough review of [REDACTED] chart, we have decided to uphold the termination of 26 hours of Personal care PDO services. 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 (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.

Respondent’s Composite Exhibit 1 at pages 19-20.

7. Apart from the services at issue in this case, Petitioner is authorized to receive the following services: seven (7) hours per week of homemaker services; thirty-five (35) hours per week of personal care services; and various incontinence supplies. *Id.* at 66. Petitioner also receives the following specialty care: [REDACTED]

[REDACTED] *Id.* at 34.

8. On February 23, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner regarding the reduction of personal care services. On February 28, 2023, the undersigned Hearing

Officer issued a notice to all parties of record scheduling the Fair Hearing to be convened by telephone on March 22, 2023, at 12:00 p.m. EST.

9. Dr. Bowers' testified that Humana reduced Petitioner's personal care services based on Petitioner's living situation, Petitioner's functional needs for maximum assistance with ADLs and IADLs as stated in the 701B Assessment, Petitioner's Plan of Care, and Petitioner's hospice service, although Dr. Bowers was unable to identify the hospice services or level of services received. Dr. Bowers opined that thirty-five (35) hours per week are adequate to meet Petitioner's personal care needs.

10. [REDACTED] testified that Petitioner's health is in decline since [REDACTED]. [REDACTED] asserted that Petitioner is [REDACTED]. Further, Petitioner [REDACTED]. [REDACTED].

**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 section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

13. Because Respondent is reducing existing personal care services, Fla. Admin. Code R. 59G-1.100(17)(g) 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.).

14. The Florida Medicaid Long Term Care (“LTC”) services at issue are governed by the Florida Medicaid Statewide Medicaid Managed Care Long-term Care program Coverage Policy (March 2017) (“LTC Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.192. See Respondent’s Composite Exhibit 1, pages 73-85. The Florida Medicaid LTC Policy provides the following, in pertinent part:

**1.0 Description and Program Goal**

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

...

**1.3 Definitions**

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

**1.3.1 Activities of Daily Living (ADLs)**

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

**1.3.5 701-B Comprehensive Assessment**

An individualized, complete assessment of an individual’s medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

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

When necessary for the recipient to function independently, including:

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

### **1.3.14 Medically Necessary or Medical Necessity**

For the purposes of this policy, the service must meet either of the following criteria:

- a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
- b) All other LTC supportive services must meet all of the following:
  - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
  - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
  - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

### **1.3.16 Natural Supports**

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

...

## **4.0 Coverage Information**

### **4.1 General Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service

- Meet the criteria as specified in this policy

## **4.2 Specific Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care
- Intended to enable the enrollee to reside in the most appropriate and least restrictive setting

...

### **4.2.1 Home and Community-Based Supportive Services**

The LTC program benefit includes coverage of the following home and community-based supportive services:

#### **4.2.1.1 Adult Companion Care**

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

#### **4.2.1.9 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.

### **4.2.2 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.

Respondent's Composite Exhibit 1, pages 75-78.

15. The Florida Medicaid Definitions Policy (August 2017)(“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “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 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.

16. Based on the NABD and NPAR, Respondent reduced Petitioner’s personal care services by twenty-eight (28) hours per week after a review of Petitioner’s approved Florida Medicaid LTC services, Petitioner’s natural support, and the 701B Assessment, and Plan of Care. See supra ¶ 5-6, 10. Respondent reduced Petitioner’s personal care services from sixty-three (63) hours per week to thirty-five (35) hours per week. See supra ¶ 5-6. Respondent determined that twenty-eight (28) hours per week of personal care services was no longer medically necessary because it was in excess of Petitioner’s needs. See supra ¶ 5-6, 10.

17. The Florida Medicaid program covers personal care services that are determined to be medically necessary, do not duplicate another service, and meet the criteria as specified in the LTC Policy. See supra ¶ 14. Personal care services are intended 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.” See supra ¶ 14.

18. The record in this case does not reflect that a reduction in personal care services is warranted. When reviewing the record, the undersigned found that the 701B Assessment did not give a full picture of Petitioner’s current medical conditions. Petitioner’s recent medical history includes:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See supra ¶ 2. Based on the documentation and testimony, Petitioner is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See supra ¶ 2. Petitioner [REDACTED]

[REDACTED] See supra ¶ 2.

16. Further, as a basis for Respondent’s decision to reduce personal care services, the NABD and NPAR state that Petitioner has “not had any recent changes in [his] health. You have not

recently been in the hospital. . . You never have bladder and never have bowl problems (incontinence).” The testimony and evidence disprove these statements. For example, the 701B Assessment states that Petitioner [REDACTED]

[REDACTED] See supra ¶ 3. As of March 6, 2023, Petitioner [REDACTED]

[REDACTED] See supra ¶ 2. Petitioner [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See supra ¶ 2. Finally, [REDACTED]

[REDACTED]

[REDACTED] See supra ¶ 2, 10. Petitioner’s

[REDACTED] See supra ¶ 2, 10.

19. Based on the aforementioned facts, Respondent failed to establish that the twenty-eight (28) hours per week of personal care services at issue in this case are no longer “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment,” and are now “in excess of the patient’s needs.” See supra ¶ 15. Dr. Bowers testified that Petitioner receives hospice services, but she was not able to identify the hospice services or the number of hours of hospice services Petitioner receives. Therefore, the record does not demonstrate that the services at issue are would be duplicative of hospice services. Accordingly, Respondent did not demonstrate by a preponderance of the evidence that the previously-approved total of sixty-three (63) hours per week of personal care services are no longer medically necessary.

20. Upon consideration of the testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, and the applicable laws and Florida Medicaid policies, the undersigned Hearing Officer concludes that Respondent has not demonstrated that the reduction of personal care services was correct.


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

Respondent's reduction of personal care services is **REVERSED**. Petitioner's appeal based on Respondent's reduction of personal care services is **GRANTED**.

**DONE and ORDERED** this 19th day of May 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher

23-FH0364

 2023.05.19

08:22:20 -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.

**COPIES FURNISHED TO:**



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

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