

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



FILED

Jun 05, 2023, 2:18 pm  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0531

[REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 19, 2023, at 10:00 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Christian Pacheco  
Senior Director of Quality Improvement  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to partially deny Petitioner's request for 35 hours of additional personal care services, weekly, was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to partially deny Petitioner's request for 10 hours of homemaker services, weekly, was incorrect.

### **PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED], appeared on behalf of the Petitioner.

Christian Pacheco, Senior Director of Quality Improvement for Sunshine State Health Plan, Inc. ("Sunshine"). The following attended as witnesses for Respondent: Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine; Claudia Williams, Long Term Care Supervisor for Sunshine; Katie Maldando, Utilization Management at Sunshine; Agaiter Durr, Utilization Management for Sunshine; Shacondra Lumaine, Long Term Care Coordinator for Sunshine; Andrea Hoffman, Long Term Care Coordinator II for Sunshine; and Alshenetha Williams, Care Coordinator for Sunshine.

Lee Ann Willams, 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 sixty (60)-page evidence packet. The sixty (60)-page packet appears in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner Surname].pdf". Absent an objection from the Petitioner, the undersigned admitted the sixty (60)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine. See p. 1 RCE 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id* at 135.

2. Petitioner is [REDACTED]. *Id.* at 45. Petitioner lives with [REDACTED]. *Id.* at 46.

3. Petitioner is diagnosed with the following: [REDACTED]  
[REDACTED]. *Id.* at 51 - 52.

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

[REDACTED]  
[REDACTED] Petitioner needs assistance (but not total help); [REDACTED]

[REDACTED]

*Id.*

5. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED]

[REDACTED]  
[REDACTED]

(cannot do at all). *Id.* at 50.

6. Petitioner requested an additional thirty-two (32) hours of personal care services, weekly, and fourteen (14) hours of homemaker services, weekly. In a Notice of Adverse Benefit Determination (“NABD”), dated December 1, 2022, Respondent approved fifteen (15) hours of personal care services and six (6) hours of homemaker services, but denied the remaining units. *Id.* at 4 – 12. The NABD explained the basis of the partial 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:

The request for an extra 32 hours per week of Personal Care Services and an extra 14 hours per week of Homemaker Services is partially approved. The member's present care plan includes 6 hours per week of Personal Care Services and 4 hours per week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will approve an additional 15 hours per week of Personal Care Services, and will deny the remaining 17 hours per week of Personal Care Services and Sunshine Health will approve an additional 6 hours per week of Homemaker Services and deny the remaining 8 hours per week of Homemaker Services, as not medically needed. The updated care plan approved by Sunshine Health will include 21 hours per week of Personal Care Services and 10 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

You, or someone legally authorized to do so, can ask us for a complete copy of your file, including medical records, a copy of plan review criteria and guidelines, contract provisions, other documents, records, and other information relevant to the adverse benefit determination. These will be provided free of charge.

...

*Id* at page 5.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated January 20, 2023, partially approving the appeal. *Id.* at 107 - 109. The NPAR explained as follows:

On 01/20/2023, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby Partially approved your plan appeal. As a result, [Petitioner] *will partially receive* additional requested services, effective 01/20/2023. The reason for our decision was based on the information provided that the member needs total assistance with most of her Activities of Daily Living and must be fed at times and that her dementia and incontinence have increased, the denial of an extra 17 hours per week of Personal Care Services and an extra 12 hours per week of Homemaker Services is partially overturned. Sunshine Health will approve an extra 14 hours per week of Personal Care Services and will deny the remaining requested 3 hours per week of Personal Care Services and an extra 12 hours per week of Homemaker Services. The updated care plan approved by Sunshine Health will include: 35 hours per week of Personal Care Services 10 hours per week of Homemaker Services This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

...

Pages 108 - 109 of RCE 1.

8. On March 7, 2023, Petitioner requested a Fair Hearing to challenge the partial denial of homemaker and personal care services, weekly. On March 21, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for April 10, 2023, at 10:00 a.m. EST.

9. [REDACTED] of Petitioner testified to the following at the Fair Hearing:

a. Petitioner has [REDACTED] needs full-time care.

b. [REDACTED] believes the current personal care hours do not meet [REDACTED] needs.

- c. The family are not professional caregivers and should be allowed to have lives.
- d. Recipient was recently hospitalized with [REDACTED] [REDACTED] was found at home unresponsive. Recipient is now in rehab and the family needs help for when [REDACTED] comes home.

10. Dr. Carter is the Long-Term Care Medical Director for Sunshine Health. Dr. Carter testified to the following:

- a. Recipient currently receives 35 personal care hours and 10 homemaker hours per week, which totals to 45 hours per week of services.
- b. Dr. Carter opined that these hours are sufficient to meet Recipient's needs.
- c. The family members work outside the home but are expected to add to the care received by Recipient and are considered primary caregivers.

11. Respondent's coverage policy, LT.UM.00 provides the following regarding homemaker and personal care services:

**6. Homemaker Services**

Homemaker provides assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to member's who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activities of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs

d) Available supports

...

## **7. Personal Care Services**

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders  
The Personal Care Provider cannot administer any medications, but may bring medications to the member and remind the member to take the medications at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

### Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

...

Exclusions and Limitations for Personal Care services include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort services

...

**CONCLUSIONS OF LAW**

12. 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).

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

14. 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.)

15. 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 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)

...

### **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

...

#### **4.2.1.9 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.

...

#### **4.2.2.6 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.

16. 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.

17. 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.

#### A. Personal Care Services

18. In this case, Petitioner requested an additional thirty (32) hours, weekly, of personal care services. See ¶ 6. Respondent partially denied Petitioner's request. *Id.* Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity but did not specify which medical necessary criteria was the basis for its decision. *Id.* In the NPAR, Respondent explained that the requested personal care hours were in excess of Petitioner's needs but did approve an additional (15) personal care hours, weekly and an additional six (6) homemaker hours. *Id.* at 5. On appeal, Respondent approved an additional fourteen (14) hours of personal care services, weekly. See ¶ 7. In all, the denial of three (3) hours of personal care services, weekly, is at issue.

19. As provided in the LTC policy, personal care services are 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 ¶ 13. Petitioner is currently approved to receive 35 hours of personal care and 10 hours of homemaker services, weekly. As shown by the record, Petitioner's needs for assistance with ADLs is as follows [REDACTED]

[REDACTED], Petitioner needs assistance (but not total help); [REDACTED]

[REDACTED] See ¶ 4. Regarding her IADLs, Petitioner needs for [REDACTED]

[REDACTED], Petitioner needs total assistance (cannot do at all). See ¶ 5.

20. At the Fair Hearing, [REDACTED] stated that the family was unable to provide additional care for Recipient as the family are not licensed or trained as caregivers. See ¶ 9. However, Dr.

Carter provided credible testimony that the approved hours were enough to take care of Recipient's needs and that the family has a responsibility to add to the care as they are the primary caregivers. See ¶ 10. In all, Petitioner did not show that [REDACTED] request for an additional three (3) hours of personal care, was "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." For example, Petitioner did not demonstrate which ADLs and IADLs were not attended to with the services in place.

21. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of three (3) additional personal care hours, weekly, was incorrect.

#### B. Homemaker Services

22. In this case, Petitioner requested an additional 14 hours, weekly, of homemaker services. See ¶ 6. Respondent partially denied Petitioner's request. *Id.* Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity but did not specify which medical necessary criteria was the basis for its decision. *Id.* In the NPAR, Respondent explained that the requested personal care hours were in excess of Petitioner's needs but did approve an additional (15) personal care hours, weekly and an additional six (6) homemaker hours. *Id.* at 5. As such, the denial of eight (8) hours of homemaker services, weekly, is at issue.

23. As provided in the LTC policy, homemaker services are 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.” As shown by the record, Petitioner needs total assistance with [REDACTED]. However, Petitioner has 35 hours of personal care services and 10 ten hours of homemaker services, all of which can be used to assist with homemaker tasks. In all Petitioner receives approximately 6.5 hours of services, daily.

24. At the Fair Hearing Petitioner failed to provide evidence that the approved hours were insufficient to meet [REDACTED] needs. For example, explaining which homemaking tasks were not completed with the services already in place. As such, Petitioner did not demonstrate that the requested services were “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.”

25. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of eight (8) additional homemaker hours, weekly, 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 is **DENIED**.

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

**DONE and ORDERED** this 5th day of June 2023, in Tallahassee, Leon County, Florida.



LYNNE RINGERS  
23-FH0531  
2023.06.05 14:05:42  
-04'00'

---

**LYNNE RINGERS, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
**Office: (850) 412-3649**  
**Fax: (850) 487-1423**  
**Email: OfficeOfFairHearings@ahca.myflorida.com**

**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:**



**Sunshine**  
**SunshineHealth\_MFH@centene.com**

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