



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

FILED

Jun 08, 2023, 12:52 pm

OFFICE OF FAIR HEARINGS

[REDACTED]  
PETITIONER,

AHCA Case No.: 23-FH0536  
[REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

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

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on May 25, 2023, at 9:00 a.m., Eastern Standard Time (EST).

**APPEARANCES**

For the Petitioner:

[REDACTED]  
Petitioner's Authorized Representative

For the Respondent:

Joanna Alvarez-Martinez  
Manager of Appeals  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that the denial of personal care services was incorrect.

**PRELIMINARY STATEMENT**

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

Joanna Alvarez-Martinez, Manager of Appeals for Sunshine State Health Plan, Inc. (“Sunshine Health”) appeared on behalf of Respondent. The following persons attended as witnesses for Respondent: Dr. Bonnie Koreff-Wolf (“Dr. Koreff-Wolf”), Medical Director for Sunshine Health; Claudia Williams, Long Term Care (“LTC”) Supervisor for Sunshine Health; Shacondra Lumaine, LTC Coordinator for Sunshine Health; Agaitha Durr, LTC Coordinator for Sunshine Health; Dr. Alvin Haynes, Medical Director for Sunshine Health; and Althea Williams-Jamerson, Care Coordinator Supervisor for Sunshine Health.

Doris Rivera, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent fifteen (15) pages of documentary evidence. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “23-FH0536 & 23-FH0545 Emailed Correspondence.pdf”. Absent an objection from the Respondent, the undersigned admitted the fifteen (15)-page evidence packet as Petitioner’s Composite Exhibit 1 (“PCE-1”). Additionally, post-hearing, Petitioner submitted a thirty-two (32)-page evidence packet of nursing schedules and related correspondence. During the Fair Hearing, Respondent stipulated to the admission of the nursing schedule evidence, and it was admitted by the undersigned as Petitioner’s Composite Exhibit 2 (“PCE-2”). The evidence packet appears in the Office of Fair Hearings’ document management system as file title “23-FH0536 Supporting Evidence.pdf”.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one-hundred and twenty-five (125)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “MFH packet [Petitioner].pdf”.

Absent an objection from the Petitioner, the undersigned admitted the one-hundred and twenty-five (125)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine Health. See page 13 of RCE 1. Sunshine Health is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

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

3. Petitioner is diagnosed with the following: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] *Id.* at 55, 59 - 60.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated October 3, 2022, (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED]  
[REDACTED] Petitioner needs total assistance (cannot do at all); for [REDACTED] Petitioner needs assistance (but not total help). *Id.* at 57. Petitioner has assistance with his ADLs all of the time. *Id.*

5. As provided in the 701B, Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED]  
[REDACTED], Petitioner needs total assistance (cannot do at all). *Id.* at 58. Petitioner always has assistance with his IADLs. *Id.*

6. Respondent reduced Petitioner’s personal care services by thirteen (13) hours, from thirty-three (33) hours to twenty (20) hours. Petitioner’s request to reinstate the thirteen (13) personal care hours were denied in a Notice of Adverse Benefit Determination (“NABD”), dated January 10, 2023. The NABD explained the basis of the denial as follows:

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

...

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

and one of the following:

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

....

The facts that we used to make our decision are: Sunshine Health has looked at the member's present care needs and provided home services. The member's present care plan includes 33 hours per week of Personal Care Services and 7 hours per week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Personal Care Services from 33 hours per week to 20 hours per week, which is a reduction of 13 hours per week of Personal Care Services. The member receives 168 hours per week (24 hours per day, 7 days a week) of Attendant Care Services. This is skilled nursing service which can also assist with personal care and homemaker services. The member lives with [REDACTED] family who can assist as informal support. Twenty hours per week of Personal Care Services should be adequate to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Pages 4 – 5 of RCE 1.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated January 27, 2023, upholding the denial. *Id.* at 79 – 82. The NPAR explained as follows:

The reason for our decision was based on the assessment of the members care needs and household and caregiver status, the reduction of Personal Care Services from 33 hours/week to 20 hours/week is upheld. The presently approved non-skilled and skilled services are enough to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and with Sunshine Health Policy LT.UM.08 LTC (Long Term Care) Skilled Nursing Criteria. This decision was made by a Medical Director who is a Board Certified Physician in Internal Medicine.

Page 79 of RCE 1.

8. On March 10, 2023, Petitioner requested Fair Hearings to challenge the reduction of personal care services. On May 5, 2023, the undersigned issued a Second Order Consolidating and Scheduling Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for May 25, 2023, at 9:00 a.m. EST.

9. Dr. Koreff-Wolf is a Medical Director for Sunshine Health. Dr. Koreff-Wolf’s testimony established that thirty-three (33) hours of personal care services weekly for Petitioner is not medically necessary for the reasons that Petitioner currently receives one-hundred and sixty-eight (168) hours weekly of attendant care services, which is a skilled nursing service that can also assist with personal care and homemaker services; and Petitioner lives with [REDACTED] family who can assist with support. Dr. Koreff-Wolf testified that after a careful review and assessment of Petitioner’s needs, it was decided that twenty (20) hours of personal care services per week is adequate to meet Petitioner’s care needs, combined with seven (7) hours of homemaker services and one hundred and sixty-eight (168) hours of attendant care services. Dr. Koreff-Wolf testified

that [REDACTED] is Petitioner's [REDACTED] and direct social worker ("DSW") under the participant direction option program ("PDO"). Dr. Koreff-Wolf acknowledged that [REDACTED] gives [REDACTED] many hours of care, but [REDACTED] also acknowledged that [REDACTED] has been declining attendant care, and sometimes uses the agency's service only ninety-six hours a week. Dr. Koreff-Wolf explained that the service delivery model of participant direction option ("PDO") does not guarantee a living wage for the DSW, and a maximum of forty (40) hours of home care services per week may be assigned to the DSW. Further, Dr. Koreff-Wolf explained, under the PDO service delivery model, the attendant care is a full service that includes some personal care and homemaker services. The Petitioner receives [REDACTED] [REDACTED] which is performed by the skilled nurse on duty, but, Dr. Koreff-Wolf asserted, the nurse could also perform some personal care and homemaker services. In order for the skilled nursing attendant care weekly hours to be reduced there would have to be a prescription from Petitioner's physician, and Petitioner would have to approve of the reduction. Dr. Koreff-Wolf testified that after any such attendant care reduction, then possibly Petitioner's weekly personal care hours could be increased. Dr. Koreff-Wolf concluded that each member's plan of care must be individualized and adjusted to meet the member's care needs, accurately.

10. Petitioner's [REDACTED], testified that inconsistent attendant care services due to a general nursing shortage has been an ongoing issue. [REDACTED] testified that [REDACTED] had to leave her full-time job outside of the home to become Petitioner's DSW. [REDACTED] explained further that because the one hundred and sixty-eight (168) hours of prescribed attendant care are not always filled, [REDACTED] are required to cover Petitioner needs. During those times, [REDACTED] argued, the personal care hours [REDACTED] provides as Petitioner's DSW and as [REDACTED]

are not duplicative of the attendant care hours. [REDACTED] testified that Petitioner works outside the home which requires newly assigned nurses to be trained to assist with [REDACTED] routine of commuting to work by public transportation (by Links bus), and other related matters. [REDACTED] submitted the nurses' schedules for [REDACTED] care, from May 24, 2021, through June 30, 2023, to show the inconsistent and sometimes unfulfilled shifts. See pages 1 through 32 of PCE-2.

### **CONCLUSIONS OF LAW**

11. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

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

#### **1.1 Description and Program Goal**

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

...

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

ADLs include:

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

...

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

When necessary for the recipient to function independently, including:

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

...

### **4.1 General Criteria**

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

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

### **4.2 Specific Criteria**

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- x Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- x Is under the care of a physician and has a physician's order for personal care services
- x Requires more extensive and continual care than can be provided through a home health visit
- x Requires services that can be safely provided in their home or the community

...

15. The LTC Policy also addresses medical necessity:

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

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

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

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

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

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

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

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

Definitions Policy at page 7.

17. Respondent reduced Petitioner’s thirty-three (33) hours of weekly personal care services to twenty (20) hours. See supra ¶ 6. In the NABD, dated January 10, 2023, Respondent denied Petitioner’s request to reinstate the total thirty-three (33) hours, as upheld in the NPAR, dated January 27, 2023. See supra ¶¶ 6, 7. Respondent explained that Petitioner’s request was not medically necessary based on the plan’s review criteria and guidelines but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. See supra ¶ 6.

18. As provided in the LTC Policy, personal care is to provide “assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated October 3, 2022, (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED]

[REDACTED], Petitioner needs total assistance (cannot do at all); [REDACTED] needs assistance (but not total help). See supra ¶ 4. Petitioner has assistance with [REDACTED] DLs all of the time. *Id.*

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

[REDACTED] Petitioner

needs total assistance (cannot do at all). See supra ¶ 5. Petitioner always has assistance with [REDACTED] IADLs. *Id.*

20. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PCS Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides the time allotted for personal care tasks. The time allotted for Petitioner’s personal care tasks are daily, as needed, on an ongoing basis. See supra ¶ 5. Petitioner is currently approved for twenty (20) hours of personal care services, seven (7) hours of homemaker services, and one hundred and sixty-eight hours of attendant care, which would include personal care and homemaker services in addition to skilled nursing care, each week. See supra ¶ 6.

21. As Respondent bears the burden of proof, Respondent must show that the reduction of personal care services was correct. Here, the Petitioner receives twenty (20) hours of personal care services per week from his DSW to assist with his ADL’s. Additionally, Petitioner is approved to receive skilled nursing, attendant care for twenty-four hours a day, seven days a week, for [REDACTED] medical needs. The nurses attending Petitioner may also provide non-skilled care, such as assistance with [REDACTED] and IADLs. Petitioner also lives with [REDACTED] who may provide natural support for [REDACTED] needs.

22. Based on the foregoing, the record shows that the reduction of personal care services from thirty-three (33) hours to twenty (20) hours per week are “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of [Petitioner’s] needs.” See supra ¶ 16. Accordingly, the record shows that Petitioner’s personal care service needs meet the medically necessary criteria under the Florida Medicaid Long Term Care Policy. *Id.*

23. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of the evidence that Respondent's reduction of Petitioner's personal care services was correct.

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

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

**DONE** and **ORDERED** this 8th day of June, 2023, in Tallahassee, Leon County, Florida.



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

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**Copies Furnished To:**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**Sunshine State Health Plan, Inc.**  
**SunshineHealth\_MFH@centene.com**

**AHCA Medicaid Hearing Unit**  
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