

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



FILED

Jun 26, 2023, 8:26 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0546

[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0547

[REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 8, 2023, at 10:06 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner/Petitioner's Authorized Representative

For the Respondent:

Michael Moens
Grievance & Appeals 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 additional homemaker services was incorrect.

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

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] Petitioner's Authorized Representative and [REDACTED] appeared for the Fair Hearing to provide testimony on behalf of the Petitioner. [REDACTED] Petitioner's [REDACTED] appeared for the Fair Hearing as a witness for Petitioner.

Michael Moens, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana"), appeared for the Fair Hearing as representative for Respondent. Dr. Wayne Sherman ("Dr. Sherman"), Medical Director for Humana, appeared for the Fair Hearing as a witness for Respondent.

Sandra Durden, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the Fair Hearing, the Office of Fair Hearings received a three (3)-page evidence packet from Petitioner. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH0546 23FH0547 Suncoast Letter.pdf"¹ and "23-FH0546 23FH0547 Medical Certification.pdf"². Absent an objection from Respondent, the evidence packet was admitted into evidence as Petitioner's Composite Exhibit 1 ("PCE-1").

¹ Page 1 of PCE-1.

² Pages 2 – 3 of PCE-1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two-hundred ninety-seven (297)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "Evidence Packet 23-FH0546 23-FH0547_Part1.pdf", "Evidence Packet 23-FH0546 23-FH0547_Part2.pdf", Evidence Packet 23-FH0546 23-FH0547_Part3.pdf", Evidence Packet 23-FH0546 23-FH0547_Part4.pdf", and "Evidence Packet 23-FH0546 23-FH0547_Part5.pdf". Absent an objection from the Petitioner undersigned admitted the two-hundred ninety-seven (297)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana's Long-term Care ("LTC") program. See RCE 1 at pages 1, 35 – 39. 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 is [REDACTED]. *Id.* at 43. Petitioner resides in the community with [REDACTED]. *Id.* at 43 – 44, 53. Petitioner's primary caregiver and [REDACTED], does not work outside of the home. *Id.* at 57 – 59. According to Petitioner's Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B"), dated April 4, 2023, Petitioner has the following health conditions: [REDACTED]

[REDACTED]
[REDACTED]. *Id.* at 49 –

50. Petitioner has [REDACTED]
[REDACTED] *Id.* at 53.

3. As provided in the 701B, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED], Petitioner needs total assistance (cannot do at all); [REDACTED], Petitioner needs assistance (but not total help); and [REDACTED] Petitioner needs supervision or prompting. Petitioner uses an assistive device for [REDACTED] *Id.* at 47. In regard to [REDACTED] instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]
[REDACTED]
[REDACTED]. *Id.*

4. By letter dated October 14, 2022, Petitioner’s primary care provider, Olguimer Santiago Lopez, APRN, recommended support due to Petitioner’s health status. The letter stated:

[Petitioner] is a patient in the Suncoast Premier and was in our practice on 10/14/2022. [Petitioner] needs long term care all day at least 16 hours a day for [REDACTED] ADLS. Patient is [losing] mobility and [REDACTED] needs more care under supervision.

...

See PCE 1 at page 1.

5. Petitioner requested an additional ten (10) hours per week of homemaker services and an additional thirty (30) hours per week of personal care services. In two (2) Notices of Adverse Benefit Determination (“NABD”), dated November 2, 2022, Respondent approved seven (7) of the ten (10) hours homemaker services, and twenty-one (21) of the thirty (30) personal care service hours requested. See RCE 1 at 3 – 7, 11 – 15. 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:

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 have requested 10 hours of direct service worker (PDO) homemaker service each week and 30 hours of direct service worker (PDO) personal care service each week. You have

[REDACTED]

You live with your [REDACTED] help care for you. Your [REDACTED] is your direct service worker (PDO). [REDACTED] works full-time outside of the home. [REDACTED].

[REDACTED]

You are being approved for 7 hours of direct service worker (PDO) homemaker service each week and 21 hours of direct service worker (PDO) personal care service each week. You live with others who share in the household

responsibilities. These hours should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

...

Id. at 3-4 and 11 -12.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated February 22, 2023, upholding the partial denial of additional homemaker services. *Id.* at 24 – 26. The NPAR explained as follows, in pertinent part:

The reason for the decision was based on information received. The member’s [REDACTED] has requested the denial of 3 hours of homemaker direct service worker (PDO) weekly be reconsidered (appeal). The member currently has 21 hours of personal care direct service worker (PDO) each weekly; 7 home delivered meals weekly; and 7 hours of homemaker services weekly. The member has [REDACTED] [REDACTED]. The member does not have trouble making [REDACTED] needs known. The member sometimes has trouble thinking clearly or remembering things. The member does not leave [REDACTED] home without someone (wandering).

The member has not had any recent changes in [REDACTED] health. The member has not recently been in the hospital. The member lives with [REDACTED]. The [REDACTED] helps care for the member. The member’s son-in-law is [REDACTED] service worker (PDO). The member’s [REDACTED] works full-time outside of the home. The member uses a wheelchair to move around (walk). The member needs help [REDACTED] [REDACTED] [REDACTED]. The member lives with family who share in the household responsibilities. The member has 28 hours of home health aide services weekly to meet [REDACTED] needs.

After thorough review of the member’s chart, we continue to uphold the denial of 3 hours of homemaker services weekly. The hours the member is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.

This determination of the Medical Director has been made based on medical necessity and 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 24 – 25.

7. On February 22, 2023, Respondent also issued an NPAR denying Petitioner’s request for additional personal care services. *Id.* at 27 – 29. The NPAR stated the following, in pertinent part:

The reason for the decision was based on information received. The member’s [REDACTED] has requested the denial of 9 hours of personal care services weekly be reconsidered (appeal). The member currently has 21 hours of personal care direct service worker (PDO) services each weekly; 7 home delivered meals weekly; and 7 hours of homemaker direct service worker (PDO) services weekly. The member has [REDACTED]

[REDACTED] The member does not have trouble making [REDACTED] needs known. The member sometimes has trouble thinking clearly or remembering things. The member does not leave [REDACTED] home without someone (wandering). The member has not had any recent changes in [REDACTED] health. The member has not recently been in the hospital. The member lives with [REDACTED] The member’s [REDACTED] direct service worker (PDO). The member’s [REDACTED] works full-time outside of the home. The member uses a wheelchair to move around (walk). The member needs help [REDACTED]

After thorough review of the member’s chart, we continue to uphold the denial of 9 hours of personal care services weekly. The hours the member is receiving should be enough to meet [REDACTED] needs and can be divided into shifts to better meet [REDACTED] needs.

This determination of the Medical Director has been made based on medical necessity and 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 27 – 28.

8. On March 15, 2023, the Office of Fair Hearings received a Fair Hearing request on behalf of Petitioner to challenge the denial of additional homemaker services in AHCA Case Number 23-FH0546 and the denial of additional personal care services in AHCA Case Number 23-FH0547. On

April 20, 2023, the undersigned issued a notice, to all parties of record, consolidating both cases and an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 8, 2023, at 10:00 a.m. EST.

9. Accordingly, as of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: twenty-one (21) hours of personal care services, weekly, and seven (7) hours of homemaker services, weekly, and five (5) home delivered meals, weekly. *Id.* at 100 – 101.

10. [REDACTED] testified at the Fair Hearing to the following:

a. Petitioner cannot [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

b. [REDACTED] believes Petitioner needs more care hours to better serve [REDACTED] unique needs.

c. [REDACTED] works full-time as a teacher outside of the home.

11. [REDACTED] testified at the Fair Hearing to the following:

a. The needs of care were requested based on Petitioner’s primary doctor’s statements and medical certification. See ¶ 4, and PCE 1 at pages 1 – 3.

- b. [REDACTED] has been the primary caregiver for about a year-and-a half. Petitioner receives 10 home delivered meals every two weeks. [REDACTED] quit his job as a teacher to work as Petitioner's direct service worker (PDO). [REDACTED] [REDACTED] has recently started a new job and has also started the process of transferring a new caregiver due to having economic difficulty.

12. Dr. Sherman established the following at the Fair Hearing:

- a. In Florida, the service hours provided are based on medical necessity. Petitioner's [REDACTED] was present when the 701B assessment was completed with the care coach. The information for Petitioner's ADLs and IADLs was used to make the determination on [REDACTED] medical necessity. In consideration of Petitioner's status as an [REDACTED] was approved for 3 hours per day of personal care services, i.e., a total of 21 hours per week to meet [REDACTED] needs. In consideration of [REDACTED] need for assistance with IADLs, approved home delivered meals, and as [REDACTED] resides in the home with family, [REDACTED] was approved for 3 hours per week of homemaker services to meet [REDACTED] needs.

CONCLUSIONS OF LAW

13. 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).

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

15. Because Petitioner is requesting a new service, 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.)

16. The Florida Medicaid Statewide Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. *Id.* at 106 – 127. The LTC Policy provides the following, in pertinent part:

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
- 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:

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee’s home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

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.

Id. at 108 – 114. (Emphasis added).

17. 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.

18. 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	15–20 minutes per partial bath

minimum, bathing of the face, hands, and perineum.	
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 Continence	
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	15–30 minutes day for all monitoring tasks performed

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.	
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PC Policy at pages 3 – 8, and 10.

Homemaker Services

19. In the instant case, Petitioner requested an additional ten (10) hours per week of homemaker services. See ¶ 5. Respondent approved seven (7) additional hours per week of homemaker services while denying the remaining three (3) hours. See ¶ 5 – 6. Respondent determined that the remaining three (3) hours per week of homemaker services were not medically necessary because the services are in excess of Petitioner’s needs. See ¶¶ 5 – 6. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. See ¶ 15.

20. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. See ¶ 16. Section 4.2.1.9 of the LTC Policy defines homemaker services as 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.” See ¶ 16.

21. The record is very clear that Petitioner suffers from multiple medical conditions and requires support with these problems. See ¶ 3 – 4, 10. As provided in the 701B, Petitioner’s needs for ADLs are as follows: [REDACTED]

Petitioner needs total assistance (cannot do at all [REDACTED]) Petitioner needs assistance (but not total help); [REDACTED] petitioner needs supervision or prompting. Petitioner uses an assistive device for [REDACTED]. See ¶ 3. In regard to [REDACTED] IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED] [REDACTED]; and Petitioner needs assistance (but not total help) with [REDACTED]. See ¶ 3.

22. The record does not demonstrate that the additional homemaker services are warranted under the circumstances of this case. Dr. Sherman’s testimony established that Humana took into consideration Petitioner’s need for assistance with IADLs, [REDACTED] approved home delivered meals, and living situation in the home with family, to approve her for 3 hours per week of homemaker services to meet [REDACTED] needs. See ¶ 12. In the letter introduced from Petitioner’s primary care provider, Olguimer Santiago Lopez, APRN, it indicates that Petitioner is “[losing] mobility and [REDACTED] needs more care under supervision.” See ¶ 4. According to [REDACTED] testimony, Petitioner is a [REDACTED]. See ¶ 10. [REDACTED] provided credible testimony that Petitioner’s [REDACTED] [REDACTED]. See ¶ 10. No additional evidence was introduced to suggest when or how the additional homemaker services would be used to assist with Petitioner’s homemaker tasks. The record did not include evidence, such as a daily care schedule or weekly division of routine household responsibilities, to reflect Petitioner’s need for additional household care. The record is also not clear of the scope of [REDACTED] availability as a natural support outside of [REDACTED] regular work hours or any other obligations which impede [REDACTED] availability to provide care for Petitioner

in [REDACTED]. Absent this supporting documentation, the undersigned cannot find that Petitioner demonstrated how the additional homemaker hours are not in excess of Petitioner's needs.

23. All in all, 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 additional homemaker services was incorrect.

Personal Care Services

24. In the instant case, Petitioner requested an additional thirty (30) hours per week of personal care services. See ¶ 5. Respondent approved twenty-one (21) additional hours per week of personal care services while denying the remaining nine (9) hours. See ¶¶ 5, 7. Respondent determined that the remaining nine (9) hours per week of personal care services were not medically necessary because the services are in excess of Petitioner's needs. See ¶¶ 5, 7, 11. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. See ¶ 15.

25. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. See ¶ 16. The Definitions Policy requires that the requested 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 ¶ 16. Under Florida's Medicaid program, 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 ¶ 16.

26. As previously recognized, Petitioner suffers from multiple medical problems and needs significant support with [REDACTED] ADLs and IADLs. See ¶¶ 3, 10 – 11, 21. In the letter introduced from Petitioner’s primary care provider, Olguimer Santiago Lopez, APRN, it indicates that Petitioner “needs long term care all day at least 16 hours a day for [REDACTED] ADLS.” See ¶ 4. [REDACTED] testified that the hours of care were requested based on Petitioner’s primary doctor’s statements and medical certification. See ¶¶ 4, 11. Dr. Sherman’s testimony established that Humana took into consideration Petitioner’s status as [REDACTED], to approve Petitioner for 3 hours per day of personal care services, i.e., a total of 21 hours per week to meet her needs. See ¶ 12.

27. The LTC Policy states that the fact that a provider has prescribed or recommended medical services does not, alone, make such services medically necessary. See ¶ 17. While Petitioner’s provider has offered persuasive insight into Petitioner’s functional capacity and need for support, this evidence, in itself, does not support a finding that additional personal care service hours are warranted. Moreover, Petitioner did not offer any time schedules that Petitioner requires for each ADL and IADL which would likely justify the need for the additional nine (9) personal care service hours. Petitioner’s testimony did not include which ADLs or IADLs are still unmet with the approved personal care service hours. Absent clear evidence of these specifications, the undersigned cannot find that Petitioner has demonstrated how the additional personal care services are not in excess of Petitioner’s needs.

28. All in all, 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 additional personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

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

DONE AND ORDERED this 26th day of June, 2023 in Tallahassee, Leon County, Florida.



Kimberly Roche
23-FH0546 & 23-
FH0547
2023.06.26 08:05:43
-04'00'

KIMBERLY ROCHE, 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