



**FILED**

Jun 20, 2023, 8:05 am

OFFICE OF FAIR HEARINGS

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

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**PETITIONER,**

**AHCA Case No.: 23-FH0649**

█

**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 May 16, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

█

Petitioner

For the Respondent:

Michael Moens  
Medicaid Fair Hearings Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Personal Care services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared for the scheduled Fair Hearing telephonically. Petitioner appeared for the Fair Hearing to provide testimony, and did not call any witnesses.

Michael Moens, a Medicaid Fair Hearings Specialist for Humana Medical Plan, Inc. (“Humana”), appeared for the Fair Hearing as representative for Respondent. Dr. Srujani Gaddam (“Dr. Gaddam”), a Medical Director for Humana, appeared for the Fair Hearing as a witness for Respondent.

Linda Latson, a Registered Nurse Specialist for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as an observer.

Interpreter Sonya (ID# 340342), a Spanish Interpreter, appeared for the Fair Hearing to provide language translation services on behalf of Petitioner.

Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings (“Office”) and Petitioner a 281-page evidence packet. The 281-page packet appears in the Office’s document management system as file titles “Evidence Packet 23-FH0649\_Part1.pdf”, “Evidence Packet 23-FH0649\_Part2.pdf”, and “Evidence Packet 23-FH0649\_Part3.pdf”. Absent an objection from the Petitioner, the undersigned admitted the 281-page evidence 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* pages 1, 31-33 of RCE 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 is [REDACTED]. *Id.* at 1, 58. Petitioner resides in the community alone. *Id.* at 36. Petitioner has fallen once in the past six months. *Id.* at 38, 84. Petitioner has no recent history of hospitalizations or emergency room (ER) visits. *Id.* at 38.

Petitioner is [REDACTED]. *Id.* at 43. Petitioner consumes a special diet for medical reasons. *Id.* at 46. Petitioner is prescribed medication to be taken daily. *Id.* at 47. Petitioner does not have a caregiver. *Id.* at 49-51. Petitioner's [REDACTED] does not live near the Petitioner and works full-time. *Id.* at 44.

3. The 701-B Comprehensive Assessment reflects that with respect to Activities of Daily Living ("ADLs"), Petitioner needs assistance (but not total help) with [REDACTED]. *Id.* at 39. Petitioner [REDACTED] [REDACTED]. *Id.* Petitioner needs no assistance with eating. *Id.* Petitioner uses an assistive device for ADLs. *Id.* The 701-B Comprehensive Assessment reflects that with respect to Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with [REDACTED]. *Id.* at 40. Petitioner needs assistance (but not total help) with [REDACTED]. *Id.* Petitioner needs no assistance with using transportation, managing money, and using the telephone. *Id.*

4. On February 9, 2023, Humana issued an NABD *denying* Petitioner's request for an additional 6 hours per week of Personal Care services based on medical necessity. *Id.* at 3-7. The NABD explained the basis of the denial 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 have 7 hours of homemaker service each week; 14 hours of personal care service each week; 7 home delivered meals weekly; and 3 hours of Adult Companion Care each week. You have requested an additional 6 hours of personal care service each week[.]**

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

**[REDACTED] You have not had any recent changes in your health. You have not recently been in the hospital. You live alone. You [REDACTED]**

**[REDACTED] You do not need help transferring (move from bed to chair); and toileting. You need some help [REDACTED]. You need help with [REDACTED]**

[REDACTED]

**[REDACTED]). You [have] 24 hours of home health aide services each week to meet your needs.**

Your request for an additional 6 hours of personal care service each week is being denied as not medically necessary. **The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs.**

...

Sincerely,  
Dr. Srujan Gaddam ["Dr. Gaddam"]  
Medical Director

Respondent's Composite Exhibit 1, pages 3-7. (Emphasis added).

5. On February 15, 2023, Petitioner requested a plan appeal. *Id.* at 12-16. Petitioner submitted medical records in support of the plan appeal. *Id.* at 19-25. On March 21, 2023, Humana issued an NPAR *upholding* the denial of Petitioner's request for additional Personal Care services. *Id.* at 27-29. The NPAR states the following, in pertinent part:

On March 15, 2023, after consideration of the information you provided to Humana Healthy Horizons Comprehensive Plan in support of your plan appeal, was reviewed by, a medical director who is a MD and board certified in Internal Medicine **hereby denies your plan appeal.**

The reason for the decision was based on the information received. You have requested that the additional 6 hours of personal care service each week that was denied in your initial request be reconsidered (appeal).

**You have several (multiple) medical problems. You do not have trouble making your needs known. You sometimes have trouble** [REDACTED]

**You live alone. You** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**The denial of 6 additional hours of personal care service each week is being upheld. The hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your 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.

...

Sincerely,  
Dr. Avra Carpousis-Bowers, Medical Director ["Dr. Bowers"]  
Medical Director

Respondent's Composite Exhibit 1, pages 27-29. (Emphasis added).

6. On March 24, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner regarding the denial of Personal Care services. On April 24, 2023, the undersigned Hearing Officer issued a notice, to all parties of record, scheduling the consolidated Fair Hearing to be convened by telephone on May 16, 2023, at 9:00 a.m. EST.

7. As of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC Services, in pertinent part: A monthly supply of various disposable medical supplies; 7 hours per week of Homemaker services; 14 hours per week of Personal Care services; 3 hours per week of Adult Companion Care services; and a monthly subscription of Personal Emergency Response System (“PERS”) services. *Id.* at 58-76, 78.

8. According to Petitioner’s testimony presented at the Fair Hearing, Petitioner is requesting more assistance with ADLs in the home. Petitioner does not have any natural support to assist with ADLs.

9. According to Dr. Gaddam’s testimony presented at the Fair Hearing, Humana’s position is that Petitioner’s current Plan of Care, *supra* ¶ 7, is sufficient to meet Petitioner’s needs considering the 701B Comprehensive Assessment reflecting Petitioner’s needs. Petitioner has Transportation services available to [REDACTED] to transport [REDACTED] to and from medical appointments outside of the home.

#### **CONCLUSIONS OF LAW**

10. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Florida Statutes (“Fla. Stat.”) § 409.285(2) (2022). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

12. 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.).

13. Petitioner’s request for additional Florida Medicaid LTC services (e.g., Personal Care services) is governed by the Florida Medicaid LTC Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.192. See Respondent’s Composite Exhibit 1, pages 90-111. 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 90-111. (Emphasis added).

14. The Florida Medicaid Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule. The Florida Medicaid Definitions Policy 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.**

(Emphasis added).

15. Based on the NABD (initial denial), and the NPAR (appellate denial), Dr. Gaddam and Dr. Bowers denied Petitioner's request for an additional 6 hours per week of Personal Care services based on the State of Florida's criteria for Medical Necessity. See supra ¶ 4-5. Respondent made

their decision after a review of Petitioner's approved Plan of Care (Petitioner's approved services through Florida Medicaid), Petitioner's health conditions, and Petitioner's functional needs. See supra ¶ 4-5, 9. Dr. Gaddam and Dr. Bowers determined that an additional 6 hours per week of Personal Care services are not medically necessary because it is in excess of Petitioner's needs. See supra ¶ 4-5, 9. Of note, Dr. Gaddam and Dr. Bowers advised that, "[t]he hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your needs." See supra ¶ 4-5. The undersigned Hearing Officer considered the elicited testimony from both parties and submitted documentation with respect to the Florida Medicaid LTC Policy's criteria for Personal Care services.

16. The Florida Medicaid program approves Personal Care services that are determined to be medically necessary. See supra ¶ 13. Personal Care services administered under the Florida Medicaid program provide "assistance with ADLs and IADLs" to its Medicaid recipients. See supra ¶ 13. For Personal Care services to be approved, the request must meet the medical necessity criteria outlined in section 2.83 of the Florida Medicaid Definitions Policy. See supra ¶ 13-14. A Medicaid recipient's natural support is a consideration in determining the recipient's needs for additional Personal Care services. See supra ¶ 13. The requested quantity of services at issue must not be more than the recipient needs. In the instant case, Petitioner must prove they have an unmet need of 6 hours per week for assistance with ADLs and IADLs that cannot be met by natural support. The entire requested quantity of services must not be in excess of the recipient's needs, or the request is not medically necessary. See supra ¶ 14.

17. The crux of this case ultimately rests on the Petitioner's need for *additional* assistance with ADLs and IADLs. The record indicates that Petitioner lives alone and does not have natural

support. *See supra* ¶ 2. Petitioner requires some level of assistance with all ADLs and IADLs. *See supra* ¶ 2. Petitioner currently receives 14 hours per week of Personal Care services to assist with ADLs and IADLs along with 7 hours per week of Homemaker services to assist with general household activities and routine household care, and 3 hours per week of Adult Companion Care services to provide non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee. *See supra* ¶ 4-5, 7. Petitioner asserted that they need more assistance with ADLs and IADLs, but provided no testimony regarding what tasks are not being met with the current Plan of Care, how much time these ADL and IADL tasks take to complete, and how frequent these tasks need to be completed daily. Petitioner merely made a declaratory statement with no explanation and no documentation to support the position. Also, Petitioner never addressed whether Petitioner's needs could be met by dividing Petitioner's Plan of Care (e.g., 24 hours of LTC services) into smaller shifts/blocks of time. Petitioner's testimony did not show that Petitioner has an unmet need for assistance with ADLs and IADLs and there is no evidence in the record to show that Petitioner has an unmet need for assistance with ADLs and IADLs. There is insufficient evidence to indicate that Petitioner has an unmet need for an additional 6 hours per week of Personal Care services. As a result, Petitioner has not shown that the request for additional Personal Care services is not in excess of Petitioner's needs and not furnished in a manner not primarily intended for the convenience of the recipient's caretaker. Thus, Petitioner's request is not medically necessary.

18. Petitioner *has not* established that the quantity of Personal Care services (an additional 6 hours per week) at issue are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment," and *are not* "in excess of the patient's needs."

See supra ¶ 13-14. As a result of *not* meeting Petitioner's burden of proof, Petitioner has not shown that Respondent's medical necessity determination in this case was incorrect.

19. Accordingly, upon consideration of the evidence into the record, the sworn testimony of all witnesses presented at the scheduled Fair Hearing, and the aforementioned applicable laws and Florida Medicaid policies, the undersigned Hearing Officer concludes that Petitioner *has not* shown that the requested additional 6 hours per week of Personal Care services are not in excess of Petitioner's needs or that the request is individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment (e.g., functional ability). Petitioner *has not* proven by a preponderance of the evidence that Respondent's denial of Petitioner's request for an additional 6 hours per week of Personal Care services 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 of Personal Care services is **DENIED**.

**DONE and ORDERED** this 20th day of June, 2023, in Tallahassee, Leon County, Florida.

Joseph Mabry



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**JOSEPH MABRY, 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]

**Humana Medical Plan, Inc.**  
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