



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

FILED

Jun 26, 2023, 11:57 am  
OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH0693

[Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[Redacted],

PETITIONER,

AHCA Case No.: 23-FH0694

[Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the Office of Fair Hearings (“OFH”) convened a telephonic Medicaid Fair Hearing in the above styled case on May 10, 2023, at 10:00 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Markeshi Lee  
Appeals and Fair Hearing Specialist  
Humana Medical Plan, Inc.

## STATEMENT OF ISSUES

The first issue in this matter is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional five (5) hours per week of homemaker services (Case No. 23-FH00693) was incorrect.

The second issue in this matter is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional thirteen (13) hours per week of personal care services per week (Case No. 23-FH0694) was incorrect.<sup>1</sup>

## PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] the Petitioner's designated Authorized Representative appeared and testified on behalf of the Petitioner. The Petitioner also appeared and testified on [REDACTED] own behalf. Finally, Muresse Saint-Hilaerere, ("Ms. Saint-Hilaerere") one of the Petitioner's home health aides also appeared and testified on behalf of the Petitioner.

Markeshi Lee, Humana Medical Plan, Inc., ("Humana"), Appeals and Fair Hearing Specialist appeared for the hearing and represented Respondent. Dr. Manohar Chenchugalla ("Dr. Chenchugalla"), Humana Medical Director, provided testimony on behalf of the Respondent.

Doris Rivera, Medical Healthcare Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

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<sup>1</sup> The Petitioner requested an additional twenty (20) hours of additional personal care hours per week on October 28, 2022. See Respondent's Composite Exhibit 1, page 28. On November 3, 2023, the Respondent approved an additional seven (7) hours per week of the requested twenty (20) personal care hours. By stipulation of the parties on the record this matter concerns only the additional thirteen (13) hours of personal care services per week that were denied by the Respondent. See Respondent's Composite Exhibit 1, pages 28-35 and pages 44-50.

Two Haitian-Creole translators were utilized throughout the Fair Hearing, including Edwina, Identification Number 337850, and Jean, Identification Number 701258.

Prior to the hearing, Petitioner submitted a six (6)-page evidence package that was admitted into evidence without objection, is identified herein as "Petitioner's Composite Exhibit 1" and is recorded in the OFH document management system as "23-FH0694 Faxed DAR + Correspondence.pdf".

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and thirty-seven (337)-page evidence packet that was admitted into evidence without objection, is identified herein as "Respondent's Composite Exhibit 1", and is recorded in the OFH document management system as follows: "Evidence Packet\_Part 1.pdf"; "Evidence Packet\_Part 2.pdf"; "Evidence Packet\_Part 3.pdf"; "Evidence Packet\_Part 4.pdf"; "Evidence Packet\_Part 5.pdf"; and "Evidence Packet\_Part 6.pdf".

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana's LTC plan. See Respondent's Composite Exhibit 1, page 1. Humana is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. As of the time of the hearing, Petitioner is a [REDACTED] residing in a home with [REDACTED], who serves as the Petitioner's primary caregiver, plus [REDACTED] [REDACTED]. See Respondent's Composite Exhibit 1, page 93 and testimony of Petitioner's Authorized Representative. Petitioner's [REDACTED] which has resulted in past hospitalizations. *Id.* at 105.

3. Petitioner has the following health conditions: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See Respondent's Composite Exhibit 1, pages 93, 98, and 105, and Petitioner's Exhibit 1, pages 5 and 6. The Petitioner experiences [REDACTED] and the Petitioner's Authorized Representative testified the Petitioner was recently [REDACTED]. See Respondent's Composite Exhibit 1, pages 95 and 109. The Petitioner has not been [REDACTED]. See Respondent's Composite Exhibit 1, pages 98, 105, and 108.

4. The Florida Department of Elder Affairs 701B Comprehensive Assessment, dated February 4, 2023, which is the most recent 701B on the record (the "2/4/23 701B"), reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner needs total assistance with [REDACTED]. See Respondent's Composite Exhibit 1, page 93. Petitioner needs some assistance (but not total help) [REDACTED]. *Id.* In addition, the Petitioner uses assistive devices for [REDACTED]. See Respondent's Composite Exhibit 1, pages 93 and 99. The 2/4/23 701B states that Petitioner cannot be left alone and is a fall risk. *Id.* at 83, 93.

5. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the 2/4/23 701B reflects that Petitioner needs assistance (but not total help) with [REDACTED]. See Respondent's Composite Exhibit 1, page 94. Petitioner needs total assistance (cannot do at all) with all the remaining IADLs, including [REDACTED].

[REDACTED]. See Respondent's Composite Exhibit 1, pages 94 and 109.

6. Petitioner is currently authorized to receive the following home and community-based services: twenty (21) hours of personal care services per week, thirteen (13) hours of homemaker services per week, two (2) meals per day seven (7) days per week, and a Personal Emergency Alert System ("PERS"). See Respondent's Composite Exhibit 1, pages 112-134. In addition, the Petitioner has also received fifteen (15) hours per week of respite care services, consisting of three (3) hours per day Monday through Friday, after making ten (10) separate requests for hours every two (2) weeks between December 13, 2022, and May 13, 2023. See Respondent's Composite Exhibit 1, page 122, and Humana testimony by Dr. Chenchugalla and Ms. Lee.

7. On November 3, 2022, Respondent issued a Notice of Adverse Benefit Determination ("NABD") in Case Number 23-FH0693 denying an additional five (5) hours per week of homemaker services and a NABD in Case Number 23-FH0694 approving seven (7) hours of additional personal care hours per week of the requested twenty (20) additional hours of personal care services per week. See Respondent's Composite Exhibit 1, pages 20-27 and pages 28-35. Both NABDs stated the reason for Respondent's determination 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 5 additional hours of homemaker (HMK) and 20 additional hours of personal care (PC) services weekly. You currently receive 7 hours of HMK and 14 hours of personal care (PC) services weekly, and 24/7 personal emergency response system monthly. You have [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] primary caregiver who work 8 hours, M-F. You were temporarily approved for 5 additional HMK hours weekly and 20 additional PC hours weekly during hurricane Ian. The hours expire on 11/03/22 and you are requesting to continue with the increase. We are approving 7 additional hours of PC service weekly. You live with [REDACTED] here house chores and meals are completed for the benefit of the household and not as an additional task for you. You also currently receive 7 hours of HMK, and your aide can help prepare additional meals for you along with light housekeeping of your room and doing laundry for you. Therefore, we are denying your request for additional 5 hours of HMK service weekly. You will now receive a total of 28 hours of HHA care weekly or 4 hours daily that should be sufficient to meet your needs. You also have PERS for emergencies.

*Id.*

8. Petitioner timely requested an appeal of Respondent's denials. See Respondent's Composite Exhibit 1, pages 37 and 44. On November 28, 2022, Respondent sent the Petitioner a Notice of Plan Appeal Resolution ("NPAR") letter in Case Number 23-FH0693, upholding the

denial of five (5) additional hours of homemaker services. See Respondent's Composite Exhibit 1, pages 37-43. The NPAR in Case Number 23-FH0693 stated as follows:

Your appeal has been upheld for the following reason:

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 5 additional hours of homemaker (HMK) and 20 additional hours of personal care (PC) services weekly. You currently receive 7 hours of HMK and 14 hours of personal care (PC) services weekly, and 24/7 personal emergency response system monthly. You [REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
primary caregiver who work 8 hours, M-F. You were temporarily approved for 5 additional HMK hours weekly and 20 additional PC hours weekly during hurricane Ian. The hours expire on 11/03/22 and you are requesting to continue with the increase. We are approving 7 additional hours of PC service weekly. [REDACTED]

[REDACTED] where house chores and meals are completed for the benefit of the household and not as an additional task for you. You also currently receive 7 hours of HMK, and your aide can help prepare additional meals for you along with light housekeeping of your room and doing laundry for you. Therefore, we are denying your request for additional 5 hours of HMK service weekly. You will now receive a total of 28 hours of HHA care weekly or 4 hours daily that should be sufficient to meet your needs. You also have PERS for emergencies.

The denial of 5 hours of homemaker service each week is being upheld. The hours received should be enough to meet the member needs and can be divided into shifts to better meet [REDACTED] needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the Plan's approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

See Respondent's Composite Exhibit 1, pages 37 - 43.

9. On November 28, 2022, Respondent sent Petitioner Notice of Plan Appeal Resolution letter (“NPAR”) in Case Number 23-FH0694, upholding the denial of thirteen (13) additional hours of personal care services. See Respondent’s Composite Exhibit 1, pages 44-50. The NPAR in Case Number 23-FH0694 stated as follows:

The reason for the decision stated you have requested that the additional 13 hours of personal care service each week that was denied in your initial request be reconsidered (appeal).

The member has [REDACTED]. The member does not have trouble making her needs known. The member does not have trouble thinking clearly or remembering things. The member does not leave her home without someone (wandering). The member lives [REDACTED] works fulltime outside of the home. The member uses [REDACTED].

The denial of 13 hours of personal care service each week is being upheld. The hours received should be enough to meet the member needs and can be divided into shifts to better meet her 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.

See Respondent’s Composite Exhibit 1, pages 44-50.

10. Petitioner requested a Fair Hearing due to the denial of an additional five (5) hours per week of homemaker services and thirteen (13) hours per week of personal care services . On April 21, 2023, the undersigned hearing officer scheduled a Fair Hearing for May 10, 2023, at 10:00 a.m. EST.

11. During the Fair Hearing, the Petitioner testified that [REDACTED] needs help when [REDACTED]. The Petitioner further testified that [REDACTED] is experiencing frequent dizziness, particularly when [REDACTED] is bending down or standing, and that there is little that [REDACTED] can do on her own due to [REDACTED] health conditions.

12. The Petitioner's Authorized Representative testified that [REDACTED] needs more help than [REDACTED] currently approved for. The Authorized Representative testified that [REDACTED] has a high risk for falls, and has a history of falls, including one resulting in a broken leg that required surgery and an extended stay in a skilled nursing facility. The Authorized Representative stated that recently [REDACTED] mother fell at 4:00 a.m. and that [REDACTED] back as a result of trying to pick up [REDACTED] with the assistance of [REDACTED], requiring a hospital visit. The Authorized Representative further testified that [REDACTED] is experiencing increased dizziness, was recently diagnosed [REDACTED]. The Petitioner testified that [REDACTED] a full-time job with the State of Florida, is out of the house between the hours of 8:00 a.m. through 5:30 p.m., Monday through Friday, and is sometimes required to work evenings with advanced prior notice. Finally, the Authorized Representative testified that [REDACTED] was advised by [REDACTED] Humana care coach that [REDACTED] could request and use respite care hours to supplement the personal care and homemaker services already approved for [REDACTED], which is in-fact occurring.

13. Ms. Saint-Hilaerere, the Petitioner's home healthcare aide who currently works with the Petitioner seven (7) days per week during the past three (3) months also testified at the Fair Hearing. The aide testified that when she is able to work eight (8) hours per day on Monday

through Friday, she is able to get most of the tasks completed for the Petitioner, but on the weekends when she works five (5) hours per day, she is unable to finish taking care of the Petitioner ADLs or complete the necessary homemaker services. The aide also testified that she is utilizing the approved respite care hours to supplement the home health hours, and that those still are not enough to complete what must be done to take care of the Petitioner.

14. Dr. Chenchugalla testified for Humana and stated that it is the position of Humana that the already approved home health care hours, including the personal care hours and the homemaker hours are sufficient to meet the Petitioner's needs, based on the current February 4, 2023, form 701B. Dr. Chenchugalla testified he was previously unaware that the Petitioner was receiving respite care hours from Humana but that any additional hours that are provided for respite care only support the conclusion that the Petitioner has sufficient home healthcare hours to meet the Petitioner's needs.

15. In an undated letter after the Petitioner's last examination date of March 28, 2023, Leslie Garcia Rivera, M.D., the Petitioner's primary care physician for over twelve (12), years signed a Letter of Medical Necessity for Home Health Care wherein she prescribes 40 hours of "Personal Care Aide; Private Duty Nursing; Skilled Nursing ... 5 days per week". See Petitioner's Exhibit 1 and testimony from the Petitioner's Authorized Representative.

#### **CONCLUSIONS OF LAW**

16. 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). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

18. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

19. Because Petitioner is requesting additional services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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.).

20. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“March 2017”) (“SMMC LTC Policy”). The Agency’s SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC LTC Policy provides as follows:

**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
- 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.

...

**2.2 Who Can Receive**

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

**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.

...

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

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

...

#### **4.2.1.9 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.

...

#### **4.2.1.14 Personal Emergency Response Systems**

For installation and service monitoring of an electronic device connected to an enrollee's phone that includes a portable "help" button, when provided to an enrollee at high risk of institutionalization to secure help in an emergency.

#### **4.2.1.15 Respite Care**

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee's natural supports on a planned or an emergency basis. (Emphasis added.)

...

#### **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.

...

### **6.0 Documentation**

...

#### **6.2 Specific Criteria**

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

SMMC LTC Policy, pages 1-8.

21. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “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 severe 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.

22. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“PC Policy”) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215. 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
<b>Bathing</b>	
<b>Full-body Bath:</b> Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
<b>Partial Bath:</b> A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath

<b>Dressing</b>	
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
<b>Grooming and Skin Care</b>	
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
<b>Positioning</b>	
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
<b>Transfers</b>	
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
<b>Toileting and Maintaining Continence</b>	
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
<b>Eating</b>	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
<b>Delegated Medical Monitoring and Activities</b>	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications,	15–30 minutes day for all monitoring tasks performed

monitoring vital signs, and measurement of intake/output.	
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PC Policy, pages 3 – 8, and 10.

### Homemaker Services

23. In the instant case, Respondent denied an additional five (5) additional hours of homemaker services. *See supra* ¶ 7, 8, and 9. As established on the record by the evidence and testimony, Respondent denied Petitioner’s request, because the Petitioner request failed to establish that the requested homemaker services were medically necessary. *Id.*

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

25. The evidence presented in this case does not reflect that Petitioner needs an additional five (5) hours per week of homemaker services. Specifically, Petitioner resides in a home with [REDACTED] who provide natural support. *See supra* ¶ 2, 12. Regarding IADLs, which most closely align with the definition of homemaker services, Petitioner needs assistance (but not total help) [REDACTED] a ¶ 5. Petitioner also needs total assistance (cannot do at all) with the following IADLs: [REDACTED] [REDACTED]n. *Id.* The record reflects that Petitioner’s [REDACTED]. *Id.* at 21,

29. The Petitioner is [REDACTED]  
[REDACTED] See supra ¶ 3. Petitioner currently has thirteen (13) hours of homemaker services per week for homemaker needs such as light housekeeping and laundry. The Petitioner has not presented evidence demonstrating unmet needs regarding the performance of IADLs, and in-fact the testimony and evidence presented at the hearing by the Petitioner and [REDACTED] witnesses reflect the assistance that is required by the Petitioner is addressed to the ADLs, such as [REDACTED], which more closely align with the definition of personal care services

26. Section 1.3.14 of the SMMC LTC Policy mandates that the requested 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 supra ¶ 20. Here, Petitioner is currently authorized to receive the following home and community-based services: twenty (21) hours of personal care services per week, thirteen (13) hours of homemaker services per week, two (2) meals per day seven (7) days per week, and a PERS. See supra ¶ 6.

27. The record does not establish by a preponderance of the evidence that there are unmet homemaker needs, what homemaker services would no longer be performed if the requested services are not authorized, specifically how the requested additional services would be utilized, or that Petitioner’s currently authorized home healthcare hours are insufficient to meet [REDACTED] homemaker needs.

28. Considering the totality of Petitioner’s circumstances, including her medical condition and diagnoses, level of need for ADLs and IADLs, natural support, and the amount of currently approved services, the Petitioner has failed to prove beyond a preponderance of the evidence

that an additional five (5) hours per week of homemaker services are not “in excess of [Petitioner’s] needs.” See supra ¶ 21 and 22.

29. In light of the testimony and evidence in this matter, and the SMMC LTC Policy, the undersigned Hearing Officer finds that the Petitioner failed to prove by a preponderance of the evidence that an additional five (5) hours of homemaker services are medically necessary.

#### **Personal Care Services**

30. In the instant case, Respondent denied an additional thirteen (13) hours per week of personal care services. See supra ¶ 7, 8, and 9. As established on the record by the evidence and testimony, Respondent denied Petitioner’s request, because the Petitioner request failed to establish that the requested services were medically necessary. *Id.* However, Respondent did not specify which medical necessity criterion was not met. Based upon Dr. Chenchugalla’s testimony and the NPAR, supra ¶ 9, 14, the undersigned concludes that Respondent denied the requested personal care services on the basis that they are “in excess of the patient’s needs.” See supra ¶

21. Both the Respondent’s NPAR and the testimony of Dr. Chenchugalla’s failed to account for the Petitioner’s [REDACTED] nor did Respondent rebut Petitioner’s testimony regarding how that condition necessitates the need for additional hours of personal care services each week.

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

32. The evidence presented in this case does reflect that the Petitioner needs thirteen (13) additional hours of personal care services. Specifically, the Petitioner resides with [REDACTED] who serves as the primary caregiver, and [REDACTED]. Petitioner's [REDACTED]. See supra ¶ 2. Petitioner's [REDACTED] and primary caregiver has a full-time job and provided credible testimony that [REDACTED] outside of the home a minimum of 42.5 hours per week, between 8:00 a.m. through 5:30 p.m., Monday through Friday, and is occasionally required to also work in the evenings. See supra ¶ 2 and 12-13. Regarding ADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED]  
[REDACTED]  
[REDACTED]. *Id.* The Petitioner has multiple medical conditions, mostly arising from the most serious condition of [REDACTED]  
[REDACTED]. See supra ¶ 3. In addition, the Petitioner is [REDACTED]  
[REDACTED]. See supra ¶ 11-12. The Petitioner is at a high risk for falls and in fact recently experienced a fall that resulted [REDACTED]  
[REDACTED]. See supra ¶ 11-12. As a result, the 710B and credible testimony of Petitioner's Authorized Representative demonstrate that Petitioner cannot be left alone. See supra ¶ 4.

33. Section 1.3.14 of the SMMC LTC Policy and section 2.83 of the Definitions Policy mandates 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 supra ¶ 20, 21. Here, Petitioner is currently authorized to receive a total

of thirty-four (34) hours per week of the following combined home and community-based services: twenty (21) hours of personal care services per week, thirteen (13) hours of homemaker services per week, two (2) meals per day seven (7) days per week, and a PERS. *See supra* ¶ 6.

34. Petitioner’s currently authorized 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 supra* ¶ 20. The Petitioner herein requires total (maximum) assistance with all the ADLs and IADLs, with the exception of eating and using the phone, which both require some assistance but not total assistance. *See supra* ¶ 4 and 5. In addition, the Petitioner has recently [REDACTED]

[REDACTED]

[REDACTED]

*See supra* ¶ 11, 12 and 13.<sup>2</sup> Also significant is the testimony of the Petitioner’s aide where [REDACTED] gets most everything done for the Petitioner on Mondays through Fridays when [REDACTED] she has eight (8) home health hours and doesn’t complete what needs to be done when [REDACTED] has five (5) home health hours on Saturdays and Sundays. The record in this matter clearly demonstrates that without the additional respite hours being utilized to assist the Petitioner with her ADLs and IADLs, there would be unmet needs. However, and as stated under oath by the Humana Medical Director, respite hours are intended as relief for the caregiver(s) to give them a break and not for the performance of ADLs and IADLs. *See also supra* ¶ 22.

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<sup>2</sup> The Humana Medical Director testified at the Fair Hearing that he was unaware the Petitioner had recently been diagnosed with a benign brain tumor. He also testified that he was previously unaware the Petitioner was receiving respite care from Humana.

35. Considering the totality of Petitioner's circumstances, including her medical condition and diagnoses, level of need for ADLs and IADLs, the amount of currently approved services, and the Petitioner's physician recommending a total of forty (40) hours of home healthcare, and the elevated risk for falls due to a newly diagnosed brain tumor, the Petitioner has proved beyond a preponderance of the evidence that an additional thirteen (13) hours per week of personal care services are not "in excess of [Petitioner's] needs." See supra ¶ 15, 21 and 22.

36. In light of the testimony and evidence in this matter, the SMMC LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that the Petitioner has met [REDACTED] burden of proving that an additional thirteen (13) hours per week of personal care services are medically necessary and that the Respondent's denial of the requested additional personal care hours was incorrect.

### **DECISION**

Respondent's denial of an additional five (5) hours per week of homemaker services (Case No. 23-FH0693) is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's denial of an additional thirteen (13) hours of personal care services per week (Case No. 23-FH0694) is **REVERSED**. Petitioner's appeal based on Respondent's denial is **APPROVED**.

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

Alan J. Leifer

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FH0794

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**ALAN J. LEIFER, 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:**



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