



FILED

Jul 10, 2023, 8:08 am

OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0941

[REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0946

[REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0947

[REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH0948

[REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 24, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner’s Authorized Representative

For the Respondent: Christian Pacheco
Senior Manager for Quality Improvement
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny Petitioner’s request for personal care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny Petitioner’s request for homemaker services was incorrect.

The third issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny Petitioner’s request for adult companion care services was incorrect.

The fourth issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny Petitioner’s request for respite care services was incorrect.

PRELIMINARY STATEMENT

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

Christian Pacheco, Senior Manager for Quality Improvement for Sunshine State Health Plan, Inc. (“Sunshine”) appeared on behalf of Respondent. The following appeared as witnesses

for Respondent: Dr. Vincent Jarvis (“Dr. Jarvis”), Long Term Care Medical Director for Sunshine; Charles Hill-Ortiz, Case Manager for Sunshine; Jacklyn Alvarez, Supervisor for Sunshine; and Katie Maldonado, Utilization Management for Sunshine.

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

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 145-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “MFH packet [Petitioner Surname].pdf”. Absent an objection from the Petitioner undersigned admitted the 145-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

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

2. Petitioner is [REDACTED]. *Id.* at 14. Petitioner lives alone. *Id.* at 47.

3. Petitioner suffered a fall on February 10, 2023. *Id.* at 50. Petitioner is diagnosed with the following: [REDACTED]

[REDACTED]

[REDACTED] *Id.* at 51, 52 – 53. Petitioner “requires supervision at all time due to risk of falls.” *Id.* at 73.

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

[REDACTED], Petitioner needs

assistance (but not total help). *Id.* at 50. Petitioner [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] *Id.* at 51.

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

[REDACTED] Petitioner needs assistance (but not total help). *Id.* at 51.

6. Petitioner talks to friends, relatives, or others (by phone, computer, or other means) two (2) to six (6) times per week. *Id.* at 60. Petitioner spends time with someone who does not live with [REDACTED] two (2) to six (6) times per week. *Id.* Petitioner never participates in activities outside the home that interest [REDACTED]. *Id.*

7. Petitioner requested twenty-five (25) hours of personal care services, weekly, three (3) hours of homemaker services, weekly, five (5) hours of adult companion care services, weekly, and twenty-five (25) hours of respite care services, weekly. *Id.* at 4 – 6. In the Notice of Adverse Benefit Determination (“NABD”), dated April 7, 2023, Respondent approved four (4) hours of personal care services, and two (2) hours of homemaker services, but denied the remainder. *Id.*

The NABD explained the basis of the decision as follows:

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

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:

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

and one of the following:

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

The facts that we used to make our decision are: The request for an extra 25 hours per week of Personal Care Services, an extra 3 hours per week of Homemaker Services, an extra 5 hours per week of Companion Care Services, and the addition of 25 hours per week of In Home Respite Care Services is partially approved. The member's present care plan includes:

- 17 hours per week of Personal Care Services
- 7 hours per week of Homemaker Services
- 5 hours per week of Companion Care Services
- 5 meals per week of Home Delivered Meals

Based on the assessment of the member's care needs and household and caregiver status Sunshine Health will approve an extra 4 hours per week of Personal Care Services and an extra 2 hours per week of Homemaker Services and will deny the remaining requested 21 hours per week of Personal Care Services, 1 hour per week of Homemaker Services, 5 hours per week of Companion Care Services, and the addition of 25 hours per week of In Home Respite Care Services. The updated care plan approved by Sunshine Health will include:

- 21 hours per week of Personal Care Services
- 9 hours per week of Homemaker Services
- 5 hours per week of Companion Care Services
- 5 meals per week of Home Delivered Meals

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Pages 4 – 5 of RCE 1.

8. Petitioner requested a plan appeal. *Id.* at 84. Petitioner’s provider, Emanuel Naccarato, MD (“Dr. Naccarato”), wrote a letter in support of Petitioner’s plan appeal. *Id.* at 82. The letter stated as follows:

Please be advised that [Petitioner] has been functionally decline rapidly and is requiring more hours of [assistance] than what she is receive at the present time. She is unable to care for herself without supervision and cannot be home alone at home anymore.

...

Page 82 of RCE 1.

9. Respondent issued a Notice of Plan Appeal Resolution (“NPAR”), dated April 25, 2023, upholding the denial. *Id.* at 91 – 93.

10. On April 25, 2023, Petitioner requested a Fair Hearing to challenge the denial of personal care, homemaker, adult companion care, and respite care services. On May 10, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 24, 2023, at 1:00 p.m. EST.

11. [REDACTED] testified to the following:

a. Petitioner fell two (2) months prior to the Fair Hearing and broke [REDACTED] hip.

Petitioner was hospitalized for ten (10) days. [REDACTED]

[REDACTED]

[REDACTED] approximately seven (7) weeks.

b. Petitioner requested additional hours following the discharge from the rehabilitation facility.

c. Asserts that Petitioner needs the “maximum amount of hours”.

d. [REDACTED] has been sleeping at Petitioner’s house to supervise [REDACTED] at night.

12. Dr. Jarvis is a Medical Director for Sunshine. Dr. Jarvis testified to the following:

- a. The plan relied on the 701B in making its decision.
- b. The home delivered meals allow for the caregivers to give more hands-on care.
- c. Dr. Jarvis approved an additional seven (7) hours of personal care services prior to the hearing.

13. Petitioner's current plan of care includes the following: twenty-eight (28) hours of personal care services, weekly; nine (9) hours of homemaker services, weekly; five (5) hours of companion care services, weekly; and five (5) home delivered meals. *Id.* at 5 and ¶ 12.

14. LT.UM.09 provides as follows in regards to adult companion care, homemaker services, personal care services, and respite care services:

2. Adult Companion Care

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

- a) Trigger diagnosis include:
 - Advanced Alzheimer's disease & dementia
 - Mental illness requiring supervision
 - Parkinson's disease
 - Multiple sclerosis
 - ALS
 - Congestive Heart Failure
 - COPD
 - Cancer
 - End State Renal Disease
 - TBI

- Other diagnosis as deemed medically necessary by Medical Director
- b) Four (4) Dimensions of Determination
 - Need for Supervision – safety risk if left without supervision
 - See Section C.1.c for more details
 - Informal supports
 - None
 - Few friends/family in area
 - Family nearby
 - Living Situation
 - Lives alone
 - Lives with other but is alone for extended periods of time due to the necessary absence of a caregiver
 - Lives with caregiver and others
 - Services in Place
 - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations Adult Companion Care include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.
5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

...

6. Homemaker Services

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

Approval Criteria

Homemaker Service reviews include four (4) criteria:

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

...

7. Personal Care Services

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

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

...

Approval Criteria

Personal Care Services reviews include four (4) criteria:

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

d) Available Supports

...

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

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

...

9. Respite Care

The provision of services on a short-term basis due to the absence of, or need to relieve, the member's natural supports on a planned or an emergency basis. Services are provided to members unable to care for themselves. Respite care does not substitute for the care usually provided by a registered nurse, a licensed practical nurse, or a therapist. Respite care is provided in the home/place of residence, Medicaid licensed hospital, nursing facility or assisted living facility.

In-home Respite Care services are to provide short-term, temporary relief to the informal, unpaid caregiver in order to support and preserve the primary caregiving relationship. The service provides general supervision, meal preparation, and hands-on assistance with personal care that are incidental to supervision during the period of service delivery. Respite services can be provided on a planned or emergency basis and shall only be furnished in the member's home. The provider must be awake during the provision of respite services and the services shall not be provided overnight. Member must reside in a non-facility based setting with his or her informal, unpaid primary caregiver.

Approval Criteria

To be considered for In-Home Respite Services, a member must have a primary caregiver as defined below, have a qualifying trigger diagnosis, and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) A primary caregiver is defined as any person who lives with the member and regularly provides or arranges help as needed with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). This person may or may not be related by birth or marriage.

b) Trigger diagnosis include:

1. Advanced Alzheimer's disease & dementia
2. Advanced Parkinson's disease

3. Multiple Sclerosis
4. ALS
5. Congestive Heart Failure
6. COPD
7. Cancer
8. End Stage Renal disease
9. TBI
10. Other diagnoses as deemed medically necessary by Medical Director

c) Four (4) Dimensions of Determination

1. Level of functioning for safety reasons
 - Independent
 - Supervision
 - Minimal Assistance – ADL’s require one of the following:
Moderate Assistance – ADL’s require two of the following:
Total Assistance – ADL’s require total hands on assistance
2. Caregiver Stress – defined by responses for caregiver assessment questions on the 701B
 - Minimal Stress
 - Moderate Stress
 - Major
 - Sudden Absence
 - a. Defined by documented absence of caregiver due to medical emergency
3. Informal Supports
 - Alone
 - Lives with caregiver
 - Lives with caregiver and others
 - Lives with 2 caregivers
4. Services in Place
 - Sunshine Health provided
 - Provided by other provider/insurance

Exclusions and Limitations for In-Home Respite Services include but are not limited to:

1. Service must be provided at member’s residence.
2. Member must reside in a non-facility based setting.
3. Member resides with his or her informal, unpaid primary caregiver.
4. In-home Respite Care services provides short-term, temporary relief to the informal, unpaid caregiver.
5. In-home Respite Care provides relief to member’s primary caregiver when member care is causing stress for caregiver.
6. Service is provided when caregiver is absent.

7. The service is not provided when other family members resides in the home who are able to provide care.
8. Respite services can be provided on a planned or emergency basis.
9. The provider must be awake during the provision of respite services, and the services shall not be provided overnight.
10. In-home Respite Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
11. Services are to substitute the care that is provided by the caregiver, independent of the other services being provided to the member.
12. Provision of services provided during the respite period are within the respite provider's scope of practice.

...

Pages 125 – 140 of Respondent's Composite Exhibit 1.

CONCLUSIONS OF LAW

15. 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).

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

17. 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.)

18. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care, homemaker, adult companion care, and respite care services:

1.1 Description and Program Goal

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and

community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

...

4.1 General Criteria

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

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

...

4.2.1.1 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.

...

4.2.1.15 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.

...

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.

19. The LTC Policy also addresses medical necessity:

1.3.14 Medically Necessary or Medical Necessity

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

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

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

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

And, one of the following:

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

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

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

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

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

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

A. Personal Care Services

21. Petitioner requested an additional twenty-five (25) hours of personal care services, weekly. See ¶ 7. In an NABD, dated April 7, 2023, Respondent approved four (4) hours of the request, but denied the remaining twenty-one (21) hours. *Id.* Respondent explained that the request was not medically necessary, but did not specify which prong of medical necessity was not met by Petitioner's request. *Id.* Prior the hearing, Respondent approved an additional seven (7) hours of personal care services. See ¶ 12. Thus, the issue involves the denial of fourteen (14) hours of personal care services.

22. As approved in the LTC Policy, personal care services are intended to provide "assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the

enrollee.” As provided in the record, Petitioner needs assistance (but not total help), which [REDACTED] See ¶ 4.

Petitioner needs total assistance (cannot do at all) with all IADLs. See ¶ 5. Petitioner currently is approved for twenty-eight (28) hours of personal care services, nine (9) hours of homemaker services, five (5) hours of companion care services, and five (5) home delivered meals. See ¶ 13.

23. As Petitioner bears the burden of proof, Petitioner must show that it is medically necessary for Petitioner to receive the requested personal care services. Here, the record shows that Petitioner has significant medical issues, see ¶¶ 3 – 5, however, there is little evidence showing that [REDACTED] and IADLs are not being met with the services already in place. For example, no evidence was provided of which services were not completed with the twenty-eight (28) hours of personal care services.

24. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of additional personal care services was incorrect.

B. Homemaker Services

25. Petitioner requested an additional three (3) hours of homemaker services, weekly. See ¶ 7. In an NABD, dated April 7, 2023, Respondent approved two (2) hours of the request, but denied the remaining one (1) hour. *Id.* Respondent explained that the request was not medically necessary, but did not specify which prong of medical necessity was not met by Petitioner’s request. *Id.*

26. As provided in the LTC Policy, homemaker services are the “provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.” As shown by the record, Petitioner needs total assistance (cannot do at all) with [REDACTED]. See ¶ 5. Further, Petitioner currently receives twenty-eight (28) hours of personal care services and nine (9) hours of homemaker services, weekly. See ¶ 13.

27. As Petitioner bears the burden of proof, Petitioner must show that the denial of homemaker services was incorrect. Here, Petitioner provided little evidence to show that the approved services are inadequate to provide for [REDACTED] homemaker tasks. Although it is clear that Petitioner has severe medical limitations, ultimately it was not demonstrated that the approved services are insufficient to meet Petitioner’s needs.

28. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of additional homemaker services was incorrect.

C. Adult Companion Care Services

29. Petitioner requested an additional five (5) hours of adult companion care services, weekly. See ¶ 7. In an NABD, dated April 7, 2023, Respondent denied the request. *Id.* Respondent explained that the request was not medically necessary, but did not specify which prong of medical necessity was not met by Petitioner’s request. *Id.*

30. As provided in the LTC policy, ACC services are intended for “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.” As shown by the record, Petitioner has twenty-eighty (28) hours of personal care services, nine (9) hours of homemaker services, and five (5) hours of adult companion care services, weekly. See ¶ 13. Further, as shown by the record, Petitioner talks to friends, relatives or others two (2) to six (6) times per week; spends times with someone who does not live with her two (2) to six (6) times per week; but does not participate in activities outside ■■■ home that interest ■■■. See ¶ 6.

31. As shown above, Petitioner appears to have ample opportunity to socialize, however, the record reflects that Petitioner needs supervision due to risk for falls. See ¶ 3. As adult companion care is to provide supervision, and Petitioner is shown to need, Petitioner’s request is “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment”. Moreover, as Petitioner receives forty-three (43) hours of care, but needs supervision, Petitioner’s request is not in excess of ■■■ needs.

32. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner proved by a preponderance of the evidence that Respondent’s denial of five (5) hours of adult companion care services, weekly, was incorrect.

D. Respite Care Services

33. Petitioner requested twenty-five (25) hours, weekly, of respite care services. In an NABD, dated April 7, 2023, Respondent denied Petitioner’s request. See ¶ 7. Respondent explained that

the request was not medically necessary, but did not specify which prong of medical necessity was not met by Petitioner's request. *Id.*

34. As provided in Respondent's policy, LT.UM.09, respite care is the "provision of services on a short-term basis due to the absence of, or need to relieve, the member's natural supports on a planned or emergency basis." As shown by the record, [REDACTED] has been sleeping at Petitioner's home to supervise [REDACTED] at night. This is due to Petitioner's well documented need for supervision. See ¶¶ 3, 8. As such, Petitioner showed that the requested respite care services "are individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment" and "not in excess" of [REDACTED] needs to provide relief for [REDACTED] caregiver.

35. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner proved by a preponderance of the evidence that Respondent's denial of twenty-five (25) hours of respite care services, weekly, was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

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

Respondent's denial of adult companion care is **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**.

Respondent's denial of respite care is **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**.

DONE and ORDERED this 10th day of July, 2023, in Tallahassee, Leon County, Florida.



Joseph Mabry
23-FH0941, 23-FH0946, 23-
FH0947 & 23-FH0948
2023.07.10 07:51:47 -04'00'

JOSEPH MABRY, Hearing Officer
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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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SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com