



**FILED**

Aug 01, 2023, 9:24 am  
OFFICE OF FAIR HEARINGS

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

[REDACTED],

**PETITIONER,**

**AHCA Case No.: 23-FH1053**

**Plan ID No.: [REDACTED]**

**vs.**

**HUMANA MEDICAL PLAN, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on April 25, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Michael Moens  
Grievance & Appeals Fair Hearing Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s termination of eight (8) hours of adult companion care Participant Direction Option (“PDO”) services was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] Petitioner's Authorized Representative, [REDACTED] and direct service worker ("DSW") under the PDO program, appeared for the Fair Hearing to provide testimony on Petitioner's behalf.

Michael Moens, Grievance & Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana") represented Respondent. Dr. Avra Carpousis-Bowers ("Dr. Bowers"), Medical Director for Humana, provided testimony on behalf of the Respondent.

Sandra Durden, Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the hearing, Respondent filed with the Office of Fair Hearings and Petitioner a two hundred and eighty-three (283)-page evidence packet. The two hundred and eighty-three (283)-page evidence packet appears in the Office of Fair Hearings document management system as files titled "Evidence Packet 23-FH1053\_Part1.pdf", "Evidence Packet 23-FH1053\_Part2.pdf", and "Evidence Packet 23-FH1053\_Part3.pdf". Absent an objection from the Petitioner, the undersigned admitted the two hundred and eighty-three (283)-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") plan. See RCE 1, page 1. Humana is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in the State of Florida.
2. As of the time of the hearing, Petitioner was a [REDACTED] who lives with [REDACTED] *Id.* at 4, 23, 31, and 36.

3. Petitioner has the following health conditions: Petitioner sometimes [REDACTED] [REDACTED] *Id.* at 4. Petitioner does not [REDACTED] [REDACTED] *Id.* Petitioner does not [REDACTED] *Id.* at 23. Petitioner [REDACTED] [REDACTED] *Id.* Petitioner has [REDACTED] [REDACTED] *Id.* at 41 – 42.

4. [REDACTED] provided the responses to the questions on Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated October 28, 2022 (“701B Assessment”). *Id.* at 36.

5. According to the 701B Assessment, regarding Petitioner’s Activities of Daily Living (“ADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED] [REDACTED] *Id.* at 39. Petitioner needs [REDACTED] Petitioner always has assistance with [REDACTED] ADLs. *Id.*

6. According to the 701B Assessment, regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, using the telephone, managing money, preparing meals, shopping, managing medication, and using transportation. *Id.* at 40. Petitioner always has assistance with her IADLs. *Id.*

7. The notes and summary of the 701B Assessment observe:  
Member has assistance with ADLs and IADLs from PDO caregiver, member’s [REDACTED] manages [REDACTED]. Member receives PDO Homemaker services 2 hours (8units), Sunday, Monday, Tuesday, Wednesday, Thursday and Saturday.

RCE 1 at 40.

8. Aside from the services at issue in the instant action, Petitioner is authorized to receive the following LTC services: 12 hours per week of homemaker services; 20 hours per week of personal care services; 7 home delivered meals per week; 96 units monthly [REDACTED] [REDACTED] 3 boxes per month [REDACTED] [REDACTED] 150 units per month of [REDACTED] 36 [REDACTED]; and 3 units per month [REDACTED]. *Id.* at 71 – 79, 85.

9. Petitioner’s primary caregiver is [REDACTED]. *Id.* at 4. Petitioner is enrolled in the PDO program and [REDACTED] is Petitioner’s DSW. [REDACTED] administers Petitioner’s personal care services, homemaker services, and adult companion care services.

10. On March 22, 2023, Respondent issued a Notice of Adverse Benefit Determinations (“NABD”) terminating eight (8) hours weekly of adult companion care PDO services. *Id.* at 3 – 7.

The NABD stated as follows, in pertinent part:

We determined that your requested services are **not medically necessary** because the services do not meet either of the reason(s) 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 currently receive 8 hours of direct service worker (DSW) Adult Companion Care (non-medical care for supervision and socialization) each week. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status.

You live with [REDACTED]. Your [REDACTED] helps to care for you and is your direct service worker (DSW). You sometimes [REDACTED] [REDACTED] You do not [REDACTED] The service of 8 hours of direct service worker (DSW) Adult Companion Care each week is being terminated. You live with others who should be able to meet your companionship needs.

*Id.* at 3 – 4.

11. On March 31, 2023, Petitioner requested a plan appeal. *See* RCE 1 at 23 – 25. On April 27, 2023, Respondent issued a Notice of Plan Appeal Resolutions (“NPAR”), upholding the termination of eight (8) hours weekly of adult companion care PDO services. *Id.* The NPAR states as follows, in pertinent part:

On March 31, 2023, we received your timely plan appeal request regarding Humana Healthy Horizons Long-Term Care Plan’s Notice of Adverse Benefit Determination dated March 22, 2023, authorization 164134389, terminating the 8 adult companion care Participant Direction Option (PDO) hours weekly provided to [Petitioner].

On April 21, 2023, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is a DO and board certified in Internal Medicine, who, hereby denies your plan appeal. The reason for the decision was based on the information received. You have requested that the 8 hours of direct service worker (PDO) adult companion care service each week that was terminated (stopped) be reconsidered (appeal).

[Petitioner] has several (multiple) medical problems. [redacted] does not have t [redacted] sometimes has [redacted] lives with [redacted]. [redacted] helps care for [redacted] uses a [redacted] [redacted] needs help transferring (move from bed to chair). [redacted] requires a Hoyer lift for transferring. [redacted] needs [redacted]. [redacted] needs help with [redacted].

The termination of 8 hours of direct service worker (PDO) adult companion care service each week is being upheld. [redacted] lives with others who should be able to meet [redacted] companionship 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.

*Id.* at 23 – 24.

12. Petitioner requested a Fair Hearing due to the termination of adult companion care PDO services. On May 23, 2023, the undersigned scheduled the Fair Hearing for June 15, 2023, at 9:00 a.m. EST and all parties were duly notified.

13. Dr. Bowers, a Medical Director for Humana, testified as follows:

- a. Prior to the instant action, [redacted] was reimbursed for forty (40) hours of DSW care per week.
- b. Respondent terminated the eight (8) hours weekly of adult companion care PDO services because Petitioner lives with [redacted].
- c. Thirty-two (32) hours of home health care services, consisting of personal care services and homemaker care services, meet Petitioner's needs. This maximum number of hours is appropriate because Petitioner does not live alone. Petitioner lives with other people and that should meet Petitioner's companionship needs.

- d. Petitioner has [REDACTED] but does not [REDACTED]  
[REDACTED] Petitioner has the [REDACTED]
- e. In response to [REDACTED] questions, Dr. Bowers defined supervision with an example of a member with severe dementia who maybe wanders and needs someone to keep them safe because the caregiver who works outside of the home is unavailable.
- f. Dr. Bowers clarified that in this situation it would not be appropriate for [REDACTED] [REDACTED] to provide the eight (8) hours of adult companion care PDO services at issue because [REDACTED] is not available to provide the hours of supervision when [REDACTED] is not in the home.

14. [REDACTED], Petitioner's Authorized Representative, testified as follows:

- a. Petitioner is over three hundred (300) pounds and it takes two people to assist [REDACTED] in the morning. Petitioner uses [REDACTED].
- b. Petitioner cannot [REDACTED].  
Petitioner's voice and speech is not clear anymore.
- c. Petitioner's doctors stated that Petitioner needs someone with [REDACTED] for [REDACTED] safety 24/7.
- d. [REDACTED] is a lawyer who works from home and is also an elder in [REDACTED] church.
- e. [REDACTED] is a school teacher and is also [REDACTED] legal secretary.
- f. [REDACTED] have been married for thirty-one (31) years. [REDACTED] stated there has to be justification for them to leave the house together in regards to them switching off caring for Petitioner in the home.

- g. It is hard to find people to come and help or stay with Petitioner during the week and weekends.
- h. [REDACTED] testified that taking away the eight (8) hours of PDO will create a hardship.
- i. [REDACTED] are unable to be home to supervise Petitioner's safety at all times.
- j. In response to a question from Dr. Bowers, [REDACTED] testified that [REDACTED] is home with Petitioner throughout the day. [REDACTED] stated [REDACTED] was not aware of traditional home health care.
- k. [REDACTED] clarified that [REDACTED] works from home some days but that [REDACTED] travels to courthouses and to other counties. When [REDACTED] is traveling, either [REDACTED] or other friends, church members are with Petitioner.
- l. In regards to [REDACTED] schedule, [REDACTED] testified that [REDACTED] leaves home around 9:00 a.m. and between church and work, [REDACTED] is gone for fifteen (15) hours each day. If [REDACTED] is working locally then [REDACTED] stops by the home to check on Petitioner. Friends and church members are with Petitioner every day for three (3) to four (4) hours each day. Some of them volunteer and some are paid by [REDACTED]. [REDACTED] said they do not have a lot of family members where they moved about four years ago (West Palm Beach) so they rely on friends and neighbors.
- m. In response to questions from Mr. Moens, [REDACTED] confirmed that he is the only one assigned and authorized to work as Petitioner's caregiver, and that [REDACTED] assists him. [REDACTED] also confirmed that Petitioner receives twenty (20)

hours per week of personal care PDO services and twelve (12) hours per week of homemaker PDO services. [REDACTED] has considered finding someone else to be Petitioner's PDO but training people to use the medical equipment, such as a hoyer lift, for Petitioner has been an issue. Petitioner [REDACTED] [REDACTED]. [REDACTED] stated the additional eight (8) hours of PDO funds are additional funds to pay someone else for the additional care of Petitioner. After Mr. Moens clarified that PDO funds are to pay [REDACTED], not someone else, [REDACTED] testified that he is already providing the service and pays others out of pocket.

#### **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 Respondent is terminating a previously authorized service, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.)

18. The Statewide Medicaid Managed Care Long-term Care Coverage Policy (March 2017) ("LTC Policy"), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term

Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services:

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

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

...

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

ADLs include:

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

...

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

When necessary for the recipient to function independently, including:

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

...

### **4.1 General Criteria**

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

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

...

### **4.2 Specific Criteria**

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

when the recipient meets the following criteria:

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

#### **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 functionality impaired enrollee. This includes assistance or supervision with meal preparing, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

RCE 1 at 94 – 97.

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.

RCE 1 at 95 – 96.

20. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

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

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

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

Definitions Policy at page 7.

21. Respondent terminated Petitioner’s eight (8) hours weekly of adult companion care PDO services. *See supra* ¶ 10. In the NABD, dated March 22, 2023, Respondent denied Petitioner’s request to overturn the termination, and upheld the termination in the NPAR, dated April 27, 2023. *See supra* ¶¶ 10, 11. Respondent explained that Petitioner’s request was not medically necessary based on the plan’s review criteria and guidelines but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. *Id.*

22. As provided in the LTC Policy, adult companion care services are intended to provide “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.” See supra ¶ 18. Adult companion care service is differentiated under the rules governing LTC services under Florida Medicaid. For instance, the service of personal care for LTC members is defined as provided “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.” *Id.*

23. Petitioner currently receives twenty (20) hours per week of personal care PDO services and twelve (12) hours per week of homemaker PDO services. See supra ¶ 14. Petitioner lives with [REDACTED]. See supra ¶ 2, 10, 11, and 13. The 701B indicates that Petitioner always has assistance with [REDACTED] ADLs and IADLs. See supra ¶ 5, 6, and 7.

24. Dr. Bowers provided persuasive and convincing testimony regarding the termination of adult companion care PDO services. Dr. Bowers defined supervision with an example of a member with severe dementia who maybe wanders and needs someone to keep them safe because the caregiver who works outside of the home is unavailable. See supra ¶ 13. Dr. Bowers clarified that adult companion care PDO services are not appropriate in this case because [REDACTED], Petitioner’s DWS and PDO, testified [REDACTED] that [REDACTED] is out of the house at least 15 hours per day as [REDACTED] is active in [REDACTED] church and travels to other counties.

25. [REDACTED] provided testimony that Petitioner’s doctor stated that Petitioner needs someone with [REDACTED] 24/7. See supra ¶ 14. However, “[t]he 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.”


See supra ¶ 19.

26. Based on the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent has proved by a preponderance of the evidence that Respondent’s termination of adult companion care PDO services was correct.

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

Respondent’s termination of Petitioner’s adult companion care PDO services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s termination of adult companion care PDO services is **DENIED**.

**DONE AND ORDERED** this 1st day of August, 2023 in Tallahassee, Leon County, Florida.

 Kameisha Presley  
23-FH1053  
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**KAMEISHA PRESLEY, 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]

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