



**FILED**

Aug 10, 2023, 8:50 am  
OFFICE OF FAIR HEARINGS

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

[REDACTED]

**PETITIONER,**

**AHCA Case No.: 23-FH1065**

[REDACTED]

**vs.**

**MOLINA HEALTH CARE OF FLORIDA, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 30, 2023, at 10:03 a.m. and June 28, 2023, at 1:04 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Melissa Hedrick  
Counsel for Respondent  
Molina Health Care of Florida, Inc.

**STATEMENT OF ISSUE**

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

**PRELIMINARY STATEMENT**

All parties appeared telephonically. [REDACTED]

Petitioner’s Authorized Representative and [REDACTED], appeared for the Fair Hearing to

provide testimony on behalf of the Petitioner. [REDACTED] Petitioner's [REDACTED] appeared for the Fair Hearing as a witness for Petitioner.

Melissa Hedrick, Counsel for Molina Health Care of Florida, Inc. ("Molina"), appeared for the Fair Hearing convened on June 28, 2023, as representative for Respondent. Kathia Matos ("Ms. Matos"), Utilization Management Director, appeared for both hearings as a witness for Respondent. Caridad Bello, Government Contract Specialist, appeared for both hearings as a witness for Respondent. Yuneisy Cruz, Director for Health Care Services for the Long Term Care Program, appeared for both hearings as a witness for Respondent. Dr. Gabriel Novoa ("Dr. Novoa"), Medical Director for Molina, appeared for the Fair Hearing as a witness for Respondent.

The following appeared as observers: Linda Latson, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared at the Fair Hearing convened on May 30, 2023. Doris Rivera, Medical Health Care Program Analyst for the Agency, appeared at the Fair Hearing convened on June 28, 2023.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent the following items:

1. a twenty-one (21)-page evidence packet, which appears in the Office of Fair Hearings' case management system as file title "Fair Hearing Request [Petitioner].pdf.pdf;"

2. six (6) photos with 2 corresponding email cover pages, which appear in the Office of Fair Hearings' case management system as file titles "23-FH1065 and 23-FH1066 Photo Evidence.pdf<sup>1</sup>" and "23-FH1065 & 23-FH1066 Photo Evidence(2).pdf<sup>2</sup>;"
3. two (2) video files with 2 corresponding email cover pages, which appear in the Office of Fair Hearings' case management system as file titles "23-FH1065 and 23-FH1066 - Email with Video(2).pdf.pdf<sup>3</sup>," "[Petitioner] - Video of Petitioner scratching [REDACTED] skull.MOV<sup>4</sup>," "23-FH1065 and 23-FH1066 - Email Video Close up.pdf<sup>5</sup>," and "[Petitioner] - Petitioner's close-up video scratching [REDACTED] skull.mov<sup>6</sup>;"
4. a one-hundred and thirty-four (134)-page evidence packet, which appears in the Office of Fair Hearings' case management system as file titles "23-FH1065 & 23-FH1066 Emailed Correspondence.pdf<sup>7</sup>," "23-FH1065 & 23-FH1066 Evidence Part 1.pdf<sup>8</sup>," "23-FH1065 & 23-FH1066 Evidence Part 2.pdf<sup>9</sup>," and "23-FH1065 & 23-FH1066 Evidence Part 3.pdf<sup>10</sup>."

---

<sup>1</sup> This file was received on May 22, 2023, and contains one (1) still image identified as "Picture of Petitioner with Clothespin."

<sup>2</sup> This file was received on May 22, 2023, and contains five (5) still images identified collectively as "Pictures of Petitioner's skull showing damage to [REDACTED]"

<sup>3</sup> This email was received on May 22, 2023, related to the corresponding video file identified as "[Petitioner] – Video of Petitioner Scratching [REDACTED] Skull.MOV."

<sup>4</sup> This file was received on May 22, 2023, and contains the video file identified as "[Petitioner] - Video of Petitioner Scratching [REDACTED] Skull."

<sup>5</sup> This email was received on May 22, 2023, related to the corresponding video file identified as "[Petitioner] – Petitioner's close-up video scratching [REDACTED] skull.mov."

<sup>6</sup> This file was received on May 22, 2023, and contains the video file identified as "[Petitioner] - Petitioner's close-up video scratching [REDACTED] skull.mov."

<sup>7</sup> This file contains pages 1 – 13 of PCE 4.

<sup>8</sup> This file contains pages 14 – 55 of PCE 4.

<sup>9</sup> This file contains pages 56 – 102 of PCE 4.

<sup>10</sup> This file contains pages 103 – 134 of PCE 4.

Absent an objection from Respondent, the undersigned admitted into evidence the twenty-one (21)-page evidence packet as Petitioner’s Composite Exhibit 1 (“PCE 1”), the six (6) photos with corresponding email cover pages as Petitioner’s Composite Exhibit 2 (“PCE 2”), the two (2) video files with corresponding email cover pages as Petitioner’s Composite Exhibit 3 (“PCE 3”), and the one-hundred and thirty-four (134)-page evidence packet as Petitioner’s Composite Exhibit 4 (“PCE 4”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty-nine (89)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “MFH Package Office 23FH1065\_ 23FH1066\_1.pdf<sup>11</sup>,” “MFH Package Office 23FH1065\_ 23FH1066\_2.pdf<sup>12</sup>,” “MFH Package Office 23FH1065\_ 23FH1066\_3.pdf<sup>13</sup>,” “MFH Package Office 23FH1065\_ 23FH1066\_4.pdf<sup>14</sup>,” “MFH Package Office 23FH1065\_ 23FH1066\_5.pdf<sup>15</sup>,” “MFH Package Office 23FH1065\_ 23FH1066\_6.pdf<sup>16</sup>,” and “MFH Package Office 23FH1065\_ 23FH1066\_7.pdf<sup>17</sup>.” The undersigned overruled Petitioner’s objection and admitted the eighty-nine (89)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

### **FINDINGS OF FACT**

---

<sup>11</sup> This file contains pages 1 – 10 of RCE 1.

<sup>12</sup> This file contains pages 11 – 21 of RCE 1.

<sup>13</sup> This file contains pages 22 – 33 of RCE 1.

<sup>14</sup> This file contains pages 34 – 44 of RCE 1.

<sup>15</sup> This file contained pages 45 – 52 of RCE 1.

<sup>16</sup> This file contains pages 53 – 63 of RCE 1.

<sup>17</sup> This file contains pages 64 – 89 of RCE 1.

1. Petitioner is an enrolled member of Molina’s Long-term Care (“LTC”) program. See RCE 1 at pages 1, 3. Molina is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] *Id.* at 22. Petitioner lives alone in the community. *Id.* at 23. According to Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), dated April 25, 2023, Petitioner has the following health conditions [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 28 – 31. As testified by [REDACTED] Petitioner is diagnosed with [REDACTED] See *infra* ¶ 13.

3. As provided in the 701B, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: Petitioner needs assistance (but not total help) for all ADLs. *Id.* at 24. Petitioner uses an [REDACTED]. *Id.* In regard to [REDACTED] instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) with all IADLs. *Id.* at 27.

4. By letter dated May 1, 2023, Petitioner’s primary care physician, Dr. Carlos Sabates, recommended support due to Petitioner’s health status. The letter stated:

The present is to certify that [Petitioner] is not able to stay home alone due to [REDACTED] condition like [REDACTED] and depends in a wheelchair which increases the risk of falling frequently. [REDACTED] has sufficient criteria to solicitate additional hours in [REDACTED] daily care.

...  
See PCE 1 at page 6.

5. By letter dated May 3, 2023, Petitioner’s psychiatrist, Dr. Evelio H Sosa, recommended additional services for Petitioner. The letter stated:

I am writing this letter on behalf of [Petitioner] who is a patient under my care. [Petitioner] suffers, and is being treated, for [REDACTED] is prescribed [REDACTED]. [Petitioner] has other health issues that also affect [REDACTED] ability to function. [REDACTED] certainly would need, and benefit from; assistance to carry out [REDACTED] activities of daily life.

...  
See PCE 1 at page 7.

6. In a Notice of Adverse Determination (“NABD”) dated May 2, 2023, Respondent reduced Petitioner’s personal care services. The NABD explained the basis of the reduction 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 decision was based on medical necessity (as defined by Agency for Health Care Administration’s Medical Necessity as defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332)

The reason why the request was not approved is: There is a reduction Effective 05/12/2023 of personal care services from 32 hours to 19 hours per week by the Medical Director because the additional services are not medically necessary. You are already receiving other services that should meet your needs. You are going to continue to receive a total of 40 hours of Home Care. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

...

See RCE 1 at 65 – 66.

7. In a Notice of Adverse Determination (“NABD”) dated May 2, 2023, Respondent reduced Petitioner’s homemaker services. The NABD explained the basis of the reduction as follows:

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 decision was based on medical necessity (as defined by Agency for Health Care Administration's Medical Necessity as defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332)

The reason why the request was not approved is: There is a reduction Effective 05/12/2023 of homemaker services from 10 hours to 7 hours per week by the Medical Director because the additional services are not medically necessary. You

are already receiving other services that should meet your needs. You are going to continue to receive a total of 40 hours of Home Care. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

...

*Id.* at 74 – 75.

8. At Fair Hearing, Petitioner's Authorized Representative and Respondent clarified that no reduction of personal care services or homemaker services took place. Petitioner's thirty-two (32) hours per week of personal care services and ten (10) hours per week of homemaker services remained as originally approved, in consideration of Petitioner's new request for an additional thirty-eight (38) hours per week of personal care services. Respondent subsequently approved ten (10) of the thirty-eight (38) hours requested.

9. Petitioner requested a plan appeal for the denial of additional twenty-eight (28) hours per week of personal care services. Respondent issued a Notice of Plan Appeal Resolution ("NPAR") dated May 3, 2023, upholding the denial of personal care services. The NPAR explained as follows, in pertinent part:

We made our decision based on the Florida Agency for Health Care Administration's Long-Term Care (LTC) Program Policy (Rule 59G-4.192) and the Molina Clinical Policy for Medical Necessity (332). It shows rules that you must meet to show medical necessity (need). Part of the rules is having an evaluation (test) to find out what you need. These tests are done the first time a member needs a test. They are also done annually (every year) and when there is a significant (big) change in the member's care. A significant (big) change may involve a change in the member's state of health or the person taking care of them. Your recent test does not show a significant (big) change in your care. The extra notes sent by E & R Health Care Inc, does not mention a significant (big) change in your care to show you need a change to your plan of care. You are already receiving services that should meet your needs. For this reason, the extra 28 hours of Personal Care Services is not approved. Please talk to your doctor and/or Case Manager about your options.

While we are denying the extra 28 hours of Personal Care Services, you will still receive 42 hours of Personal Care Services and 14 hours of Homemaker Services per week.

...

*Id.* at 83.

10. On May 5, 2023, the Office of Fair Hearings received Fair Hearing requests on behalf of Petitioner to challenge the denial of additional personal care services in AHCA Case Number 23-FH1065 and the denial of additional homemaker services in AHCA Case Number 23-FH1066. On May 15, 2023, the undersigned issued a notice, to all parties of record, consolidating both cases and an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions (“Scheduling Order”), setting the hearing for May 30, 2023, at 10:00 a.m. EST.

11. Accordingly, as of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: forty-two (42) hours per week of personal care services, fourteen (14) hours per week of homemaker services, fourteen (14) hours per week of adult companion care services, and seven (7) home delivered meals, weekly. *Id.* at 51 – 52, 89.

12. On May 30, 2023, the Fair Hearing convened with the Petitioner’s Authorized Representative and Respondent in attendance. On the record, Petitioner’s Authorized Representative withdrew the Fair Hearing request for case 23-FH1066 regarding additional homemaker services. As the Fair Hearing request for case 23-FH1066 was withdrawn, the undersigned deconsolidated the cases, proceeding solely as to the remaining issue under case 23-FH1065 regarding additional personal care services.

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

a. Petitioner cannot [REDACTED]

[REDACTED]

[REDACTED] argues that Petitioner's condition has worsened and [REDACTED]. The home health aide's schedule is from 7 a.m. to 3 p.m. [REDACTED] argues that Petitioner has had a recent diagnosis of [REDACTED] contends was not considered in Respondent's decision.

- b. [REDACTED] passed away in April 2023. Petitioner lived with [REDACTED] at their home where [REDACTED] provided supervision and companionship. After [REDACTED] passing, [REDACTED] and requested additional hours for [REDACTED].
- c. Another private caretaker was hired by Petitioner's family to care for Petitioner in the times the home health aide is not present.
- d. Petitioner does not have a primary caregiver. [REDACTED] does not provide personal care for Petitioner. M [REDACTED] role involves preparing [REDACTED] for [REDACTED]. [REDACTED] does not have employment outside of the home and has a family of her own.

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

- a. The service hours provided are based on medical necessity. The responses within the 701B and LTC supplemental assessment for Petitioner's ADLs and IADLs were used to make a determination on medical necessity. See RCE 1 at 46 – 47. Petitioner is approved for forty-two (42) hours of personal care services and fourteen (14) hours of homemaker services, weekly. *Id.* at 51 – 52, 83.

- b. Based on the fact that Petitioner' [REDACTED] passed away, Petitioner requested thirty-eight (38) additional personal care hours per week. In consideration of this event, Molina approved ten (10) hours per day of personal care services to meet Petitioner's needs and accommodate for the transition of care, denying the remaining twenty-eight (28) hours per week. *Id.* at 83. [REDACTED] asserts that in review of the request, Molina considered the member's clinical condition, ADLs and IADLs, cognition level, and caregiver status. [REDACTED] argues that Molina did not identify any changes in Petitioner's needs for assistance. *Id.* at 3 – 19, 22 – 38, 41 – 45, 46 – 47.
- c. [REDACTED] asserts that the passing of Petitioner' [REDACTED] was not considered as a "significant change" directly affecting Petitioner's care because he was an informal support, not a participating caregiver listed on the 701B. *Id.* at 3-4, 46.
- d. Molina is aware of Petitioner's [REDACTED] diagnosis. *Id.* at 5. The LTC supplemental assessment was completed with Petitioner and [REDACTED]. *Id.* at 46 – 47. The 701B lists Petitioner's primary caregiver and [REDACTED] as [REDACTED] [REDACTED] *Id.* at 36. [REDACTED] is listed as Petitioner's informal support/caregiver in the care plan signed by [REDACTED]. *Id.* at 48 – 52.

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

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

**1.1 Description and Program Goal**

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

...

**1.3 Definitions**

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

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

ADLs include:

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

...

**1.3.5 701-B Comprehensive Assessment**

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

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

When necessary for the recipient to function independently, including:

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

...

### **1.3.14 Medically Necessary or Medical Necessity**

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

- a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
- b) All other LTC supportive services must meet all of the following:
  - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
  - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
  - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

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

...

### **1.3.16 Natural Supports**

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

#### **4.0 Coverage Information**

##### **4.1 General Criteria**

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

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

##### **4.2 Specific Criteria**

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

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least restrictive setting

...

##### **4.2.2 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.

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

##### **2.83 Medically Necessary or Medical Necessity**

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs

- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

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

20. The Agency’s Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Policy”) has been incorporated, by reference, into Rule 59G-4.215, F.A.C. The PC Policy provides as follows:

**1.1 Description**

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

**1.1.2 Statewide Medicaid Managed Care Plans**

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

**4.0 Coverage Information**

**4.1 General Criteria**

Florida Medicaid reimburses for services that meet all of the following:

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

**4.2 Specific Criteria**

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

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

...

### **5.1 General Non-Covered Criteria**

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

### **5.2 Specific Non-Covered Criteria**

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
  - Hospitals

- Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
- Prescribed pediatric extended care centers
- Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

## 7.0 Authorization

### 7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid’s General Policies on authorization requirements.

...

Personal Care Task	General Time Allowances
<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, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy at pages 3 – 8, and 10.

21. In the instant case, Petitioner requested an additional thirty-eight (38) hours per week of personal care services. See ¶ 8, 9. Respondent approved ten (10) additional hours per week of personal care services while denying the remaining twenty-eight (28) hours. See ¶¶ 8, 9, 14.

Respondent determined that the additional twenty-eight (28) hours per week of personal care services were in excess of Petitioner's needs. See ¶ 9. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. See ¶ 17.

22. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. See ¶ 18. The Definitions Policy requires that the requested personal care services must "[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." See ¶ 19. Under Florida's Medicaid program, personal care services are "[t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." See ¶ 18.

23. As previously recognized, Petitioner suffers from multiple medical problems and needs significant support with [REDACTED] ADLs and IADLs. See ¶¶ 2, 3, 13. The record demonstrates that Petitioner needs assistance (but not total help) for all ADLs. See ¶ 3. Petitioner also needs total assistance (cannot do at all) with all IADLs. See ¶ 3. [REDACTED] also testified that Petitioner's condition [REDACTED] when the home health aide leaves. See ¶ 13. [REDACTED] both testified that an additional thirty-eight (38) hours of personal care services were requested following the passing of Petitioner's [REDACTED]. See ¶ 13, 14. According to [REDACTED] testimony, the 701B and LTC supplemental assessment were used to make a determination on medical necessity. See ¶ 14. In review of the request, [REDACTED] explained that Respondent considered the member's clinical condition, ADLs

and IADLs, cognition level, and caregiver status from a new 701B and LTC supplemental assessment, both dated on April 25, 2023. See ¶ 14.

24. [REDACTED] testified that Petitioner lived with [REDACTED] who provided supervision and companionship. See ¶ 13. The record does not reflect that Petitioner's [REDACTED] assisted Petitioner with [REDACTED] ADLs and IADLs. See RCE 1 at 3 – 4, 7 – 8, 17 – 19, 46. [REDACTED] explained that Respondent did not consider the passing of Petitioner's [REDACTED] as a "significant change" in Petitioner's care and is not listed on the 701B because [REDACTED] was an informal support, not a participating caregiver. See ¶ 14. As such, the record does not support a loss of care with respect to Petitioner's ADLs and IADLs due to [REDACTED] absence. Additionally, [REDACTED] testified that another private caretaker was hired to care for Petitioner in the time periods the home health aide is not present. See ¶ 13. The record is not consistent in regard to [REDACTED] [REDACTED] role as Petitioner's caregiver. [REDACTED] provides assistance to Petitioner with only some IADLs on a limited basis. To illustrate, although [REDACTED] name is listed as caregiver on the 701B and care plan, [REDACTED] testified that [REDACTED] role only involves preparing [REDACTED] [REDACTED] for Petitioner. See ¶ 13. The LTC Policy provides that natural supports are "[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports." See ¶ 18. The Definitions Policy also provides that medically necessary services "be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." See ¶ 19. All in all, it appears from the record that [REDACTED] served roles as natural supports in regard to Petitioner's care, not as primary caregivers. Accordingly, the undersigned has to agree with Respondent that the absence of a natural support, who did

not assist with ADLs and IADLs, did not significantly affect the needs of Petitioner's personal care in this case. *See* ¶ 14.

25. Briefly, Petitioner argued that Respondent did not consider a diagnosis of [REDACTED] in their determination. The 701B includes the [REDACTED] and was considered in review of the service request. *See* ¶ 2, 14. [REDACTED] testified that Petitioner's health condition has worsened, but Petitioner did not introduce evidence to demonstrate which specific needs are unmet due to this condition even with the increase of personal care hours. *See* ¶ 13. Thus, the undersigned does not find this as a credible argument for support of the additional personal care hours.

26. Further, in the letter introduced from Petitioner's primary care physician, Dr. Carlos Sabates, it indicates that Petitioner's medical conditions, including [REDACTED] [REDACTED] a fall risk in need of additional support. *See* ¶ 4. Petitioner's psychiatrist, Dr. Evelio Sosa, also wrote a letter in support of the request for services stating "[Petitioner] suffers, and is being treated, [REDACTED]... [REDACTED] certainly would need, and benefit from, assistance to carry out [REDACTED] activities of daily life." *See* ¶ 5. The LTC Policy states that the fact that a provider has prescribed or recommended medical services does not, alone, make such services medically necessary. *See* ¶ 18. As such, although both letters present credible insight into Petitioner's functional capacity from a medical standpoint, these recommendations in themselves do not make the requested services medically necessary. Even assuming *arguendo* that these physicians' letters had that footing, neither identify any observed unmet needs for the medical conditions raised that the additional services could be allocated to address. *See* ¶ 4, 5. Aside from these letters from both physicians, the undersigned has not found much supporting


evidentiary value in Petitioner’s exhibits in addressing the unmet needs to “provide assistance with ADLs and IADLs” beyond what was already considered in the 701B and LTC supplemental assessment. Nonetheless, as previously discussed, the record does not support a finding for additional unmet needs individualized, specific, and consistent with Petitioner’s current medical conditions. See ¶ 23 – 25. Accordingly, the undersigned does not find that Petitioner demonstrated that an additional twenty-eight (28) hours of personal care services are not in excess of Petitioner’s needs. Therefore, the additional twenty-eight (28) hours per week of personal care services were not shown to be medically necessary.

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

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

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

**DONE AND ORDERED** this 10th day of August, 2023 in Tallahassee, Leon County, Florida.

 Kimberly Roche  
23-FH1065  
2023.08.10 08:44:15  
-04'00'

---

**KIMBERLY ROCHE, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**COPIES FURNISHED TO:**

[REDACTED]  
[REDACTED]

**Molina Health Care of Florida, Inc.**  
**MedicaidFairHearings@MolinaHealthCare.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**