



**FILED**

Sep 19, 2023, 10:00 am

OFFICE OF FAIR HEARINGS

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

[REDACTED],

**PETITIONER,**

**AHCA Case No.: 23-FH1079**

[REDACTED]

**vs.**

**SUNSHINE STATE HEALTH 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 August 29, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantal Pierre  
Clinical Appeals Coordinator  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional twenty-one (21) hours per week of personal care services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED]

[REDACTED] appeared on behalf of Petitioner.

Chantal Pierre, Clinical Appeals Coordinator, for Sunshine State Health Plan, Inc. (“Sunshine Health”) appeared on behalf of Respondent. Dr. John Carter (“Dr. Carter”), Long-Term Care Medical Director for Sunshine Health, attended as a witness for Respondent. The following employees of Sunshine Health attended as witnesses but did not testify at the Fair Hearing: Katie Maldonado, Utilization Management; Alicia Swarts, Manager of Case Management; Tammi Swan, Director of Case Management; Joy Hannah, Care Coordinator; Alshenetha Williams-Jamerson, Care Coordinator Supervisor; and Andrea Hoffman, Long-Term Care Coordinator 2.

Doris Rivera, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as an observer.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eight (8)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as “[Petitioner] Fair Hearing request.pdf.” Absent an objection from the Respondent, the undersigned admitted the eight (8)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-two (132)-page evidence packet. The evidence appears in the Office of Fair Hearings’ document management system as “MFH packet [Petitioner’s surname].pdf.” Absent an objection from Petitioner, the undersigned admitted the one hundred and thirty-two (132)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of UnitedHealthcare. See RCE 1 at page 2. Sunshine Health is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] *Id.* at 13. Petitioner lives [REDACTED]. *Id.* at 64. Petitioner has [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 70.

Petitioner receives the following monthly specialty care: [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 71. Petitioner needs supervision. *Id.* at 72.

3. According to the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment”), dated May 12, 2023, Petitioner needs the following assistance with [REDACTED] activities of daily living (“ADLs”): needs total assistance (cannot do at all) with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 67. Regarding [REDACTED] ADLs, Petitioner has assistance most of the time with all of [REDACTED] ADLs. *Id.*

4. According to the 701B Assessment, Petitioner needs the following assistance with [REDACTED] instrumental activities of daily living (“IADLs”): needs total assistance (cannot do at all) with heavy

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 68. Regarding [REDACTED] ADLs, Petitioner rarely has assistance with [REDACTED]

[REDACTED]

*Id.*

5. The notes and summary of the 701B Assessment observe:

The visit was completed at member's apartment on this date. Member reportedly lives alone. Member is authorized to receive 106 hours per week of Personal Care and 6 hours per week of Homemaker Services. Member is also authorized to receive PERS (1 unit-monthly), Briefs (3 cases monthly), Wipes (2 packs-monthly), Gloves (1 Box-monthly) and Underpads (1 Case-monthly).

Member is alert and oriented. Member has not reportedly been diagnosed with Dementia or Alzheimer's Disease.

Member had [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Member reported no mental health concerns. Member needs supervision due to member's physical limitations.

Member lives [REDACTED] currently does not have a primary caregiver.

RCE 1 at 63 – 79.

6. Petitioner requested an additional seventy-seven (77) hours per week of personal care services. *Id.* at 4. In the Notice of Adverse Benefit Determination (“NABD”), Respondent denied

Petitioner’s request as of January 4, 2023. *Id.* at 4 – 10. 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.

...

- Other Authority

The facts that we used to make our decision are: The request for an additional 77 hours per week of Personal Care Services is denied for lack of medical necessity. Based on the assessment, the member’s currently approved services are adequate to meet the member’s care needs. The member’s present care plan includes 50 hours per week of Personal Care Services and 6 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated January 20, 2023, partially approving Petitioner’s request for additional personal care services. *Id.* at 86 – 102. The NPAR states, in pertinent part:

On 01/20/2023 we received your timely plan appeal request regarding Sunshine Health's Notice of Adverse Benefit Determination dated 01/04/2023, Notice of Adverse Benefit Determination Number OP3268924366, denying the service to be provided to [Petitioner].

On 01/20/2023, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby partially approves your plan appeal. As a result, [Petitioner] will receive an extra 56 hours/week of Personal Care Services. The denial of the remaining requested 21 hours/week of Personal Care Services is upheld, effective 1/20/2023.

The reason for our decision was based on additional clinical information from the case management notes regarding the member's multiple physical assistance needs, along with the absence of a live-in caregiver. The denial of extra services is partially overturned. Sunshine Health will not approve an extra 56 hours/week of Personal Care Services to meet the member's care needs. The denial of the remaining requested 21 hours/week of Personal Care Services is upheld. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

...

8. On May 4, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. After a continuance, on August 7, 2023, the Hearing Officer issued a Third Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 29, 2023, at 9:00 a.m. EST.

9. Petitioner's authorized representative and [REDACTED], testified as follows:

a. Petitioner had [REDACTED] in [REDACTED], and [REDACTED] believes Petitioner needs more personal care hours.

b. [REDACTED] asserted that Petitioner needs total care with [REDACTED] Petitioner tried

unsuccessfully to use a [REDACTED] Petitioner is often sitting in [REDACTED] [REDACTED] while waiting for the next caregiver. This is why extra hours were requested.

- c. Petitioner lived with [REDACTED] for over a year but has returned to [REDACTED].
- d. [REDACTED] currently lives three and a half to four hours from Petitioner. Petitioner's [REDACTED] lives in the same city, [REDACTED] but works two jobs, is recently married, and visits when [REDACTED] can. Petitioner's [REDACTED] is not available to visit or help.
- e. [REDACTED] is a certified nursing assistant (CNA).
- f. Petitioner utilizes a Hoyer lift to get out of bed and is unable to use the bathroom when there is no one to help with the Hoyer lift. The Hoyer lift is needed to get Petitioner into [REDACTED] power chair.
- g. Petitioner receives care and assistance on the following schedule: 8:00 a.m. to 12:00 p.m.; 3:00 p.m. to 7:00 p.m.; and 9:00 p.m. to 5:00 a.m. Petitioner uses the bathroom in between the hours of care.
- h. [REDACTED] is concerned that if there is an emergency (such as a fire) Petitioner will not be able to get out of the apartment.
- i. Petitioner has [REDACTED] at all times.
- j. Petitioner has been in the [REDACTED]

10. [REDACTED] referred to a letter from Petitioner's primary doctor, Dr. Yvette Mignon with Health & Wellness Centers of North Florida. The letter states, in pertinent part:

The above referenced patien[t] is under my medical care. [Petitioner] is diagnosed with [REDACTED] [REDACTED] is currently receiving home health aide services of 56 hours weekly. This was approved when [REDACTED] [REDACTED] At this time [REDACTED] is no longer living with [REDACTED] and requires more supervision

due to this high risk of ulcers and falling. I am requesting an increase to a minimum 126 hours weekly.

PCE 1 at 4.

11. Dr. Carter is a Long-Term Care Medical Director for Sunshine Health. Dr. Carter testified as follows:

- a. Petitioner has family members in the community.
- b. Petitioner receives one hundred and twelve (112) hours per week of combined services: 106 hours per week of personal care services and 6 hours per week of homemaker services. If distributed equally, that is 16 hours per day of care. Petitioner also receives five (5) home delivered meals each week.
- c. Dr. Carter reviewed Petitioner's ADLs and IADLs, noting that Petitioner has assistance most of the time or rarely has assistance with [REDACTED] ADLs and IADLs.
- d. Petitioner is medically compromised and lives alone but has family in the community. Petitioner's presently approved services are enough to meet Petitioner's medical needs.

12. As Dr. Carter testified, Sunshine relied on its LTC (Long Term Care) Ancillary Service Criteria Policy and Procedure, FL.LT.UM.09.00 in making its determination in this case. The criteria state:

**Determinants for Services**

When considering the level of support the member requires and which of the ancillary services may support the member's cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member's support needed due to ADL deficits, living situation, and supervision needs.

...

**7. Personal Care Services**

In accordance with Rule 59G-4.215, F.A.C., for member under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparing of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the member. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years. 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. Personal care services include but may not be limited to 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 not administer any medications, but may bring medications to the member and remind the member to take the medicine 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.

RCE 1 at 109-110, 121.

### **CONCLUSIONS OF LAW**

12. 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).

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

14. 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.)

15. The Statewide Medicaid 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. The LTC Policy provides the following with respect to personal care and homemakers:

**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)

...

### **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.

...

## **4.1 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.

...

#### **4.2.2.6 Personal Care**

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

#### **6.2 Specific Criteria**

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

LTC Policy at 2 – 8.

16. The Personal Care Services Coverage Policy (“PC Policy”), which is incorporated by reference in Rule 59G-4.215, F.A.C., states 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.

...

#### **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.

...

#### **1.3.6 Home Health Services**

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

...

#### **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 1, 3 – 5.

17. 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.

Definitions Policy at page 7.

18. Petitioner requested an additional seventy-seven (77) hours per week of personal care services, supra ¶ 6, and was approved for fifty-six (56) additional hours of personal care services. See supra ¶ 7. The additional twenty-one (21) hours per week of personal care services were denied based on medical necessity. See supra ¶ 7. Respondent explained that Petitioner’s request was not medically necessary based on the information provided but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. *Id.*

19. 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 supra ¶ 15. Further, in order

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

20. The evidence presented reflects that Respondent’s denial of an additional twenty-one (21) hours per week of personal care services is warranted under the circumstances of this case. As provided in the LTC Policy, personal care is 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.” *See supra* ¶ 15.

21. The record reflects that Petitioner lives alone but does have family in the community. *See supra* ¶ 9, 10. With regard to [REDACTED] ADLs, Petitioner needs total assistance (cannot do at all) with dressing; needs assistance (but not total help) with [REDACTED]

[REDACTED]

[REDACTED] *See supra* ¶ 3. Petitioner answered the 701B Assessment stating that [REDACTED] has assistance most of the time with all of [REDACTED] ADLs. *Id.* However, during the hearing, [REDACTED] testified that Petitioner uses the bathroom in between the hours of care. *See supra* ¶ 9. With regard to [REDACTED] IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED]

[REDACTED]; needs assistance (but not total help) with [REDACTED]

[REDACTED]

[REDACTED]; and uses an [REDACTED]. *See supra* ¶ 4. Petitioner

answered the 701B Assessment stating that [REDACTED] has assistance with [REDACTED]

[REDACTED]. *Id.*

21. Dr. Carter testified that Petitioner's presently approved services are enough to meet Petitioner's medical needs. *See supra* ¶ 10. Petitioner currently receives one hundred and six (106) hours of personal care services each week, six (6) hours of homemaker services each week, and five (5) home delivered meals each week, which comes to a total of one hundred and twelve (112) hours of care per week. *See supra* ¶ 11. Dr. Carter testified that Petitioner would have sixteen (16) hours per day of services if his hundred and twelve (112) hours per week of combined services were distributed equally. *See supra* ¶ 11.

22. The PC Policy provides general guidance concerning the time allotted for personal care tasks. *See supra* ¶ 16. As [REDACTED] testified, Petitioner has many medical conditions that may impact [REDACTED] ability to complete [REDACTED] ADLs and IADLs. *See supra* ¶ 9. However, neither Petitioner nor [REDACTED] provided a schedule of ALDs/IADLs and/or any estimate of the time it takes to complete each ADL/IADL task. Allotting thirty (30) minutes of time for each of Petitioner's ADLs [REDACTED] [REDACTED] and taking into account Petitioner's medical conditions, the current one hundred and six (106) hours of personal care services per week appear to be reasonable. Petitioner also has six (6) hours of homemaker services per week, which closely align with the documented IADL tasks that Petitioner needs assistance with. [REDACTED] testified that Petitioner has been in the hospital at least six (6) times in the last two (2) months but provided no documents concerning the hospital visits. [REDACTED] also testified that Petitioner needs [REDACTED]. *See supra* ¶ 9. However, Petitioner completed [REDACTED] 701B Assessment and indicated that [REDACTED] only needs assistance (but not

total help) with [REDACTED]. See supra ¶ 3. In reviewing Petitioner’s medical conditions and [REDACTED] needs for assistance with [REDACTED] ADLs and IADLs, and based on Respondent’s LTC Ancillary Service Criteria Policy and Procedure, FL.LT.UM.09.00, Dr. Carter provided credible and persuasive testimony that Petitioner’s current service hours are enough to meet Petitioner’s medical needs. See supra ¶ 11.


23. [REDACTED] testified that the additional hours of personal care services were requested because Petitioner’s primary doctor recommended that Petitioner needs more supervision. See supra ¶ 10. However, the fact that a provider prescribed, recommended, or approved medical or allied care, goods, or services does not, itself, make such care, goods, or services medically necessary or a medical necessity or a covered service. See supra ¶ 17.

24. Therefore, upon consideration of the testimony provided, Respondent’s Composite Exhibit 1, and the applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of an additional twenty-two (22) hours per week of personal care services was incorrect.

**DECISION**

Respondent’s denial of an additional twenty-one (21) hours per week of personal care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial in this matter is **DENIED**.

**DONE AND ORDERED** this 19th day of September, 2023 in Tallahassee, Leon County, Florida.

 Kameisha Presley  
23-FH1079  
2023.09.19  
09:26:14 -04'00'

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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]

**Sunshine State Health Plan, Inc.  
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**AHCA Medicaid Hearing Unit  
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