



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

FILED

Sep 15, 2023, 1:12 pm
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1081

[REDACTED]

vs.

HUMANA MEDICAL PLAN INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1082

[REDACTED]

vs.

HUMANA MEDICAL PLAN INC.,

RESPONDENT

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1083

[REDACTED]

vs.

HUMANA MEDICAL PLAN INC.,

RESPONDENT

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 27, 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 and Appeals, Fair Hearing Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The first issue (AHCA Case No. 23-FH1081) is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to terminate Petitioner’s adult companion care services was correct.

The second issue (AHCA Case No. 23-FH1082) is whether the Respondent proved by a preponderance of the evidence that Respondent’s decision to reduce Petitioner’s personal care services was correct.

The third issue (AHCA Case No. 23-FH1083) is whether Respondent’s denial of Petitioner’s request for additional respite care services was incorrect.

PRELIMINARY STATEMENT

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

Michael Moens (“Mr. Moens”), Grievance and Appeals Fair Hearing Specialist, for Humana Medical Plan, Inc., (“Humana”), appeared on behalf of Respondent. Dr. Wayne Sherman (“Dr. Sherman”), Medical Director for Humana, attended as a witness for Respondent.

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

Armida, translator number 348784, provided translation services for the Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a sixteen (16)-page evidence packet. This evidence packet is identified in the Office of Fair Hearings’ document management system as follows: “23-FH1081, 23-FH1082 and 23-FH1083 Supporting Evidence.pdf.” Absent an objection by Respondent, the sixteen (16)-page packet was entered into evidence as Petitioner Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and ninety (290)-page evidence packet. This packet is identified in the Office of Fair Hearings Document Management system as follows: “Evidence Packet 23-FH1081, 23-FH1082, 23-FH1083_Part1.pdf” and “Evidence Packet 23-FH1081, 23-FH1082, 23-FH1083_Part2.pdf.” Absent an objection from the Petitioner, the two hundred and ninety (290)-page packet was entered into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana Long Term Care (“LTC”) plan. RCE 1 at 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED]. *Id.* Petitioner lives in a private residence with [REDACTED] primary caregiver, [REDACTED] who are available to supervise Petitioner in the evenings and some weekends. *Id.* at 51-52.

3. Petitioner has been diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED], *Id.* at 53, 57-58, 60, 62.

4. The Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated April 20, 2023, reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”): for

[REDACTED]
[REDACTED], Petitioner needs total assistance (cannot do at all); [REDACTED]

Petitioner needs supervision or prompt. *Id.* at 55.

5. Petitioner needs the following assistance with instrumental activities of daily living (“IADLs”): for [REDACTED]

[REDACTED] Petitioner needs total assistance (cannot do at all); and for [REDACTED] Petitioner needs supervision or prompt. *Id.* at 56.

6. Prior to Petitioner’s requests in this case, Petitioner was approved for: thirty (30) hours per week of personal care services, three (3) hours per week of homemaker services, seventeen and a half (17.5) hours per week of adult companion care services, and eighty-three (83) total hours of respite care ending on February 14, 2023. *Id.* at 26.

7. On April 12, 2023, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) terminating Petitioner’s adult companion care services (17.5 hours weekly) in AHCA Case No. 23-FH1081. The NABD explained the basis for the termination 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 use to make our decision are:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law specifically checked box above) and reflects the application of the plans approved review criteria and guidelines.

You currently receive 3 hours of homemaker service each week, 30 hours of personal care service each week and 17.5 hours of adult companion service each week. You have requested 40 hours of adult daycare each week. You have several (multiple) medical problems. You do not have trouble [REDACTED]. You [REDACTED]. You do not leave [REDACTED]. You have had recent changes in your health. You have not recently been [REDACTED]. [REDACTED] who help care for you. [REDACTED] works outside of the home. You [REDACTED]. [REDACTED]. [REDACTED]. You're being approved for 40 hours of adult daycare each week. Your 17.5 hours of adult companion service for each week is being terminated stopped as not medically necessary. Your personal care service is being reduced to 22 hours per week. The hours you are receiving should be

enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

RCE 1 at 9-10.

8. On April 12, 2023, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) reducing Petitioner’s personal care services from thirty (30) hours per week to twenty-two (22) hours per week in AHCA Case No. 23-FH1082. The NABD explained the basis for 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 use to make our decision are: this determination of the Medical Director has been made based on medical necessity (as defined by Florida law specifically seat checked box above) and reflects the application of the plans approved review criteria and guidelines. You currently receive 3 hours of homemaker service each week, 30 hours of personal care service each week and 17.5 hours of adult companion service each week. You have requested 40 hours of adult daycare each week.

You have several (multiple) medical problems. You do not have trouble making your needs known. You [REDACTED]. You do not leave [REDACTED]. You have had recent changes in your health. You have not recently been [REDACTED]. You [REDACTED] who help care for you. Your [REDACTED] works outside of the home. You use [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED]. [REDACTED].

You are being approved for 40 hours of adult daycare each week. Your 17.5 hours of adult companion care service each week is being terminated stopped as not medically necessary. Your personal care service is being reduced to 22 hours each week. The hours you are receiving should be enough to meet your medical needs can be divided into shifts to better meet your medical needs.

RCE 1 at 17-18.

9. Petitioner requested one hundred and thirty-six (136) additional hours of respite care services in AHCA Case No. 23-FH1083. On February 13, 2023, Humana issued an NABD approving thirty-six (36) additional hours of respite care services and denying one hundred (100) hours. *Id.* at 25. The NABD explained the basis for the denial as follows:

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

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

The facts that we used to make our decision are:

This determination of the medical director has been based on medical necessity (as defined by Florida law specifically see checked box above) and reflects the application of the plans approved review criteria and guidelines.

You currently have 3 hours of homemaker service each week; 30 hours of personal care service each week; 17.5 hours of adult companion care each week; and 83 hours of respite care hours until 2/14/2023. You have requested an additional 136 hours of respite care services until 3/8/2023. [REDACTED]

You have not had any recent changes in your health. You have not recently been [REDACTED]. You [REDACTED] helps care for you. [REDACTED] is scheduled for [REDACTED]. [REDACTED] will not be able to take care of you until [REDACTED]. You use a move a Walker to move around (walk). You need [REDACTED]

You are allowed 300 hours of respite care yearly. You have used 264 hours of respite care hours so far. You have been approved for the remaining 36 hours of respite care services as per your plan.

Id. at 25-26.

10. Petitioner requested a plan appeal regarding the termination of adult companion care services in AHCA Case No. 23-FH1081. In a Notice of Plan Appeal Resolution (“NPAR”) dated May 3, 2023, Respondent denied Petitioner’s plan appeal. *Id.* at 41-42. The NPAR explained as follows:

On May 1, 2023, after consideration of the information you provided to Humana Long Term Care Plan in support of your plan appeal, was reviewed by medical director who is an MD and board certified in Internal Medicine hereby denies your plan appeal.

The reason for the decision was based upon the information received. You have requested that the termination of 17.5 hours of adult companion care each week be reconsidered (appeal).

You have several (multiple) medical problems. You do not have trouble making your needs known. You have trouble [REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The termination of 17.5 hours of adult companion care each week is being upheld you attend adult daycare 40 hours each week. Adult companion care is provided at adult daycare. You also live with others who should be able to meet your companionship needs.

RCE 1 at 41.

11. Petitioner requested a plan appeal regarding the reduction of personal care services in AHCA Case No. 23-FH1082. On May 3, 2023, Respondent issued an NPAR denying Petitioner's plan appeal. The NPAR explained as follows:

On May 1, 2023, after consideration of the information you provided to Humana Long Term Care Plan in support of your plan appeal, was reviewed by medical director who is an MD and board certified in Internal Medicine hereby denies your plan appeal.

The reason for the decision was based on the information received. You have requested the reduction of personal care services from 30 hours to each week to 20 to 22 hours each week be reconsidered (appeal.)

You have several (multiple) medical problems. You do not have trouble making your needs known. You have trouble [REDACTED]. Do you live with [REDACTED] helps to care for you. You use a wheelchair to move around. You need some help [REDACTED]
[REDACTED] You need some help [REDACTED]
[REDACTED]

The reduction of personal care service from 30 hours each week to 22 hours each week is being upheld. You can you attend adult daycare 40 hours each week. Personal care services are provided at adult daycare. The hours you are currently

receiving should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

RCE 1 at 44 - 45.

12. Petitioner requested a plan appeal regarding the denial of additional respite care services in AHCA Case No. 23-FH1083. On March 13, 2023, Respondent issued an NPAR upholding the denial of additional respite care services. The NPAR stated as follows:

On March 10, 2023, after consideration that the information you provided to Humana Long Term Care Plan in support of your plan appeal was reviewed by a medical director who is an MD and board certified in Family Medicine hereby denies your plan appeal.

The reason for the decision was based on the information received. You are appealing the denial 100 hours of respite care. You have requested 136 hours of respite care of which only 36 hours were approved for [Petitioner]. Prior to the request [Petitioner] was receiving 3 hours of homemaker (HMK), 30 hours of personal care (PC) and 17.5 hours of adult companion care (ACC.) She also used 83 hours of respite care until February 14, 2023. You have requested an additional 136 hours of respite care service until March 8, 2023, for [Petitioner].

Petitioner lives with [REDACTED] [REDACTED] Petitioner. As there are only 300 hours of respite care available each year, and Petitioner has used 264 hours of respite care already this year. [REDACTED] was only approved for the remaining 36 hours of respite care. It was suggested to have other arrangements made to care provide have care provided for Petitioner while you are recovering. Petitioner refused adult daycare and placement at any other facility for the duration of your recovery. We are upholding the decision of the medical director and denying your appeal.

RCE 1 at 47.

13. On May 5, 2023, Petitioner requested a Fair Hearing to challenge the termination of adult companion care services, the reduction of personal care services, and the denial of additional respite care services. On May 24, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 27, 2023, at 1:00 p.m. EST.

14. At the Fair Hearing, Petitioner testified to the following:
- a. Petitioner has no current issue with the respite care service hours that have now been given. Forty (40) hours of respite have been agreed to by Humana and Petitioner.
 - b. Petitioner agreed to withdraw [REDACTED] request for Fair Hearing in AHCA Case No. 23-FH1083 regarding additional respite care services.
 - c. [REDACTED] is Petitioner's primary caregiver. [REDACTED] is in a wheelchair following [REDACTED], and [REDACTED] expects to be fully recovered [REDACTED]. The surgery has [REDACTED] from providing the same level of care for Petitioner as before the surgery.
 - d. [REDACTED] is unable to help Petitioner with transferring or walking while [REDACTED] is in a wheelchair.
 - e. [REDACTED] is concerned that they do not have enough hours for Petitioner to get care over the weekend.
15. At the Fair Hearing, Dr. Sherman testified to the following:
- a. Petitioner originally received a total of forty-seven (47) hours per week of the following home and community-based services: thirty (30) hours per week of personal care services and seventeen-and-a-half (17.5) hours per week of adult companion care services.
 - b. Petitioner requested a total of forty (40) hours per week of adult day care services i.e., eight (8) hours per day for five (5) days per week. Humana approved the request for adult day care services.

- c. Adult companion care services are non-medical services primarily used for supervision and socialization. Petitioner's adult companion care services were terminated because [REDACTED] is receiving supervision and socialization at adult day care.
- d. Petitioner's personal care hours were reduced from thirty (30) hours per week to twenty-two (22) hours per week because Petitioner receives personal care services at adult day care.
- e. Petitioner's plan of care currently includes a total of sixty-five (65) hours per week of services as follows: forty (40) hours per week of adult day care, twenty-two (22) hours per week of personal care services, and three (3) hours per week of homemaker services. The approved services are sufficient to meet Petitioner's needs.

CONCLUSIONS OF LAW

16. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

18. With regard to adult companion care services (AHCA Case No. 23-FH1081), because Respondent is terminating previously approved services, Fla. Admin. Code R. 59-1.100(17)(g) assigns the burden of proof to Respondent. With regard to personal care services (AHCA Case No. 23-FH1082), because Respondent is reducing a previously approved service, Fla. Admin. Code

R. 59-1.100(17)(g) assigns the burden of proof to Respondent. With regard to respite care services (AHCA Case No. 23-FH1083), because Respondent is denying additional services, Fla. Admin. Code R. 59-1.100(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.)

19. The Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“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, 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.

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene

- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

4.1 General Criteria

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

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

...

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.2 Adult Day Health Care

The provision of social and health related therapeutic services and activities, self-care training, nutritional services, and respite, in accordance with Chapter 420, Part III, F.S. Nutritional meals are included as part of this service when the enrollee is at the adult day health care center during meal times. This service includes medical screening emphasizing prevention and continuity of care, including routine blood pressure checks and diabetic maintenance checks. Physical, occupational, and speech therapies indicated in the enrollee's plan of care are furnished as components of this service. Nursing services, which include periodic evaluation, medical supervision of self-care services directed toward activities of daily living, and personal hygiene are also a component of this service.

...

4.2.1.7 Home Accessibility Adaptation

The provision of physical adaptations to the home to ensure the health, safety, and welfare of the enrollee, or to enable the enrollee to function with greater independence in the home, without which an enrollee would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems to accommodate the medical equipment and supplies necessary for the welfare of the enrollee. All adaptations must be compliant with applicable state and local building codes.

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the

Unites [sic] States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.1.14 Personal Emergency Response System

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

...

4.2.1.15 Respite Care

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

...

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.

Id. at 105-109.

20. 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.

Id. at 103-104.

21. The Florida Medicaid Definitions Policy ("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.

Adult Companion Care Services (AHCA Case No. 23-FH1081)

22. In the instant case, Respondent terminated Petitioner's adult companion services. See supra ¶8. As established on the record by the evidence and testimony, Respondent terminated Petitioner's adult companion care services because the services were deemed to not be medically necessary. See supra ¶ 7 and 10.

23. 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 ¶ 19.

24. Section 4.2.1.1 of the LTC Policy reflects that adult companion care services are "[t]he 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." See supra ¶ 19.

25. In [REDACTED] testimony, [REDACTED] stated that the adult companion care services were needed for help on the weekends. See supra ¶14. However, the record reflects that Petitioner lives with [REDACTED] who are able to provide some degree of supervision on week-nights and weekends. See supra ¶ 2. Further, Petitioner receives forty (40) hours per week of adult day care services. Adult day care services include "[t]he provision of social and health related therapeutic services and activities, self-care training, nutritional services, and respite, in accordance with Chapter 429, Part III, F.S." See supra ¶19. Thus, Petitioner receives weekly social services and activities at adult day care. See supra ¶ 7, 9, 10, 11. Finally, the record reflects that Petitioner also receives twenty-two (22) hours per week of personal care services and three (3) hours per week of homemaker services. Petitioner has the opportunity to socially engage with

the provider of these services. As Dr. Sherman testified, adult companion care in conjunction with Petitioner's living arrangement and (40) forty hours per week of adult day care would be duplicative and in excess of Petitioner's needs.

26. Considering the totality of the circumstances, including the authorization of adult day care, level of functional need for assistance with ADLs and IADLs, in-home socialization that Petitioner receives, Respondent established that the adult companion care services at issue are in excess of Petitioner's needs. Therefore, the evidence presented in this case shows that adult companion care services are no longer medically necessary.

27. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did prove by a preponderance of the evidence that Respondent's termination of adult companion care services was correct.

Personal Care Services (AHCA Case No. 23-FH1082)

28. Respondent reduced Petitioner's personal care hours from thirty (30) hours per week to twenty-two (22) hours per week. *See supra* ¶ 9. As established on the record by the evidence and testimony, Respondent reduced Petitioner's personal care services because the services were deemed to not be medically necessary. *See supra* ¶ 8 and 11.

29. 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* ¶ 19.

30. As provided in the LTC Policy, personal care services provide assistance with ADLs and IADLs. See supra ¶ 19. The 701B addresses Petitioners' needs for ADL's and IADL's. For ADL's Petitioner's needs are as follows: [REDACTED] Petitioner needs assistance (but not total help); [REDACTED] [REDACTED] See supra ¶4.

31. For IADLs, the 701B states: for [REDACTED] [REDACTED] [REDACTED], Petitioner needs supervision or prompt See supra ¶ 5.

32. Petitioner was previously authorized to receive thirty (30) hours per week of personal care services. See supra ¶ 8 and 11. However, Respondent added forty (40) hours weekly of adult day care services to Petitioner's plan of care. See supra ¶7, 9, 10 , 11. As Doctor Sherman explained in [REDACTED] testimony, personal care services are provided while Petitioner is at adult day care. See supra ¶15. Additionally, Petitioner continues to receive twenty-two (22) hours weekly of personal care services. As such, Dr. Sherman's testimony is credible and persuasive that the currently authorized level of personal care services are sufficient to meet Petitioner's needs.

33. Respondent established in the record that Petitioner does not have trouble making [REDACTED] [REDACTED], has not recently been [REDACTED] and lives [REDACTED] [REDACTED]. See supra ¶18.

34. Considering the totality of the circumstances, including the authorization of forty (40) hours weekly of adult day care, Petitioner's living situation, level of functional need for assistance

with ADL's and IADL'S, and the remaining twenty-two (22) hours weekly of personal care that Petitioner will continue to receive, the evidence presented by Respondent reflects that the previously approved thirty (30) hours weekly of personal care services are in excess of Petitioner's needs. Therefore, the personal care services at issue are no longer medically necessary. See ¶22.

35. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did prove by a preponderance of the evidence that Respondent's reduction of Petitioner's personal care services was correct.

Respite Care Services (AHCA Case No. 23-FH1083)

36. On May 5, 2023, [REDACTED] requested a Fair hearing based on Respondent's denial of additional respite care services. Pursuant to Rule 59G-1.100(9)(b)(5)(a), Florida Administrative Code, a Hearing Officer may deny or dismiss a Fair Hearing request if the Recipient files a written withdrawal of the request. A Hearing Officer may also deny or dismiss a Fair Hearing request if the Recipient testifies on the record that he or she wishes to withdraw the request. See Rule 59G-1.100(9)(b)(5)(a), Florida Administrative Code.

37. On June 27, 2023, the Fair hearing was held before the undersigned Hearing Officer, with the Petitioner's Authorized Representative and the Respondent in attendance. At that time and on the record, Petitioner's Authorized Representative withdrew their request for a Fair Hearing with regard to respite care services in Case No. 23-FH1083.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

With regard to AHCA Case No. 23-FH1081, Respondent's termination of Petitioner's adult companion care is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

With regard to AHCA Case No. 23-FH1082, Respondent's reduction of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction is **DENIED**.

With regard to AHCA Case No. 23-FH1083, Petitioner's Fair Hearing request regarding respite care services is hereby **WITHDRAWN**, and this matter is now **CLOSED**.

DONE and **ORDERED** this 15th day of September 2023, in Tallahassee, Leon County, Florida.



LYNNE RINGERS
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FH1082 23-FH1083
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LYNNE RINGERS, 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]

Humana Medical Plan, Inc.

GAMedicaidRightFax@humana.com

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