



**FILED**

Aug 08, 2023, 10:15 am

OFFICE OF FAIR HEARINGS

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

[REDACTED]

**PETITIONER,**

**AHCA Case No.: 23-FH1106**

[REDACTED]

**vs.**

**HUMANA MEDICAL PLAN, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on June 26, 2023, at 1:10 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Markeeshi Lee

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

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of twelve (12) hours of adult companion care Participant Direction Option (“PDO”) service hours was incorrect.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] Petitioner's Authorized Representative, [REDACTED], and Direct Service Worker ("DSW") under the PDO Program, appeared at the hearing and provided testimony on Petitioner's behalf.

Markeeshi Lee, Grievance & Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana"), represented Respondent. Dr. Wayne Sherman ("Dr. Sherman"), Medical Director for Humana, provided testimony on behalf of the Respondent.

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

Prior to the hearing, Petitioner filed with the Office of Fair Hearings and Respondent a three (3)-page evidence packet. The three (3)-page evidence packet appears in the Office of Fair Hearings document management system as a file titled "23-FH1106 Petitioner Correspondence.pdf". Absent an objection from the Petitioner, the undersigned admitted the three (3)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent filed with the Office of Fair Hearings and Petitioner a two hundred and eighty-one (281)-page evidence packet. The two hundred and eighty- one (281)-page evidence packet appears in the Office of Fair Hearings document management system as files titled "Evidence Packet 23-FH1106\_Part1.pdf", "Evidence Packet 23- FH1106\_Part2.pdf", and "Evidence Packet 23- FH1106\_Part3.pdf". Absent an objection from the Petitioner, the undersigned admitted the two hundred and eighty- one (281)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana’s Long Term Care (“LTC”) plan. *See* RCE 1, page 1. Humana is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in the State of Florida.

2. As of the time of the hearing, Petitioner is [REDACTED]. *Id.* Petitioner lives with [REDACTED] *Id.* at 29.

3. Petitioner has the following health conditions: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] *Id.* at 36.

4. [REDACTED] provided the responses to the questions on Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated March 17, 2023 (“701B Assessment”). *Id.* at 29.

5. According to the 701B Assessment, regarding Petitioner’s Activities of Daily Living (“ADLs”), Petitioner needs assistance (but not total help) with [REDACTED]  
[REDACTED]). *Id.* at 33. Petitioner needs supervision or prompting [REDACTED] Petitioner always has assistance with [REDACTED] ADLs. *Id.*

6. According to the 701B Assessment, regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]  
[REDACTED] *Id.* at 34. Petitioner needs assistance (but not total help) with [REDACTED]  
[REDACTED]. *Id.* Petitioner always has assistance with [REDACTED]

[REDACTED]

[REDACTED] *Id.*

7. According to the 701B, question 82, Petitioner has the problem behavior or recurring problem of [REDACTED]

[REDACTED]. *Id.* at 39. Petitioner does not have the following problem behaviors or recurring problems: [REDACTED]

[REDACTED] *Id.* at 40.

8. According to the 701B, Petitioner talks to friends, relatives, or others (by phone, computer, or other means) two to six times a week; spends time with someone who does not live with [REDACTED] once a week; participates in activities outside the home that interests [REDACTED] a few times a year; never volunteers inside or outside [REDACTED] residence; and does not want help finding volunteer opportunities. *Id.* at 45.

9. Prior to the instant action, Petitioner was authorized to receive the following LTC services: eleven (11) hours per week of homemaker PDO hours; seventeen (17) hours per week of personal care PDO hours; one (1) box of wipes per month; a personal emergency response system and monthly maintenance; three hundred (300) units per month of Chux Underpads; two (2) boxes per month of gloves; and one hundred and forty-four (144) units monthly of Large pull ups; *Id.* at 59 – 70.

10. Petitioner’s primary caregiver is [REDACTED]. *Id.* at 13, 25, 29, and 35. Petitioner is enrolled in the PDO program and [REDACTED] is Petitioner’s DSW. *Id.* at 17. [REDACTED] administers Petitioner’s natural support, personal care services, and homemaker services. *Id.* at 13, 17, 25, and 30. [REDACTED] does not work outside of the home. *Id.* at 46.

11. On March 22, 2023, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) denying Petitioner’s request for twelve (12) hours weekly of adult companion care PDO services. *Id.* at 3 – 7. The NABD stated as follows, in pertinent part:

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

...

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

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

And one of the following:

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

...

The facts that we used to make our decision are:

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

You have requested 12 hours of direct service worker (PDO) adult companion care each week. You have several (multiple) medical problems. You do not have trouble [REDACTED]. You do not have trouble [REDACTED]. You have not had any recent changes in your health. You have not recently been in the hospital.

You live with [REDACTED] who helps take care of you and shares in household responsibilities. [REDACTED]  
[REDACTED]  
[REDACTED]

Your request for 12 hours of direct service worker (PDO) adult companion care each week is being denied as not medically necessary.

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.

*Id.* at 3 – 4.

12. On March 31, 2023, Petitioner requested a plan appeal. See RCE 1 at 12 – 14. On April 26, 2023, Respondent issued a Notice of Plan Appeal Resolutions (“NPAR”), upholding the denial of twelve (12) hours weekly of adult companion care PDO services. *Id.* The NPAR stated as follows, in pertinent part:

On March 31, 2023, we received your timely plan appeal request regarding Humana Healthy Horizons Long-Term Care Plan’s Notice of Adverse Benefit Determination dated March 22, 2023, 170405777, denying the 12 adult companion care Participant Direction Option (PDO) hours weekly provided to [Petitioner].

On April 24, 2023, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is a 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 that the 12 hours of direct service worker (DSW) personal care service each week that was denied in your initial request be reconsidered (appeal).

[Petitioner] has several (multiple) medical problems. [REDACTED] does [REDACTED]. [REDACTED] does not have trouble [REDACTED]. [REDACTED] lives with you. You help to care for [REDACTED] and are [REDACTED] direct

service worker (DSW). [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The denial of 12 hours of direct service worker (DSW) personal care service each week is being upheld. [REDACTED] lives with others who should be able to meet [REDACTED] companionship needs. The hours [REDACTED] is currently receiving should be enough to meet [REDACTED] medical needs and can be divided into shifts to better meet [REDACTED] needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the Plan's approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

*Id.* at 17 – 18.

13. Petitioner requested a Fair Hearing due to the denial of adult companion care PDO services. On May 31, 2023, the undersigned scheduled the Fair Hearing for June 26, 2023, at 1:00 p.m. EST and all parties were duly notified.

14. [REDACTED], Petitioner's Authorized Representative and [REDACTED], argued that Petitioner deserves the requested services because Petitioner has worked all [REDACTED] life in this county. [REDACTED] testified that [REDACTED] has changed [REDACTED] life and has dedicated [REDACTED] life to caring for Petitioner. [REDACTED] also testified that [REDACTED] complies with all of Petitioner's needs and wants to be paid for the service and, as such, does not have the freedom [REDACTED] used to have. [REDACTED] stated that Petitioner has fallen three (3) times within six (6) months. Finally, [REDACTED] stated that [REDACTED] has a contract to be paid for forty (40) hours of service per week from Humana.

15. Dr. Sherman, a Medical Director for Humana, testified that a member's service hours are based on medical necessity, not how long someone has worked in the country. Dr. Sherman testified that the twelve (12) hours requested of adult companion care hours were denied because Petitioner lives with [REDACTED]. Dr. Sherman explained that the service

Petitioner requested is a nonmedical service primarily used for socialization and supervision, and that this service does not give any medical treatment. Further, Dr. Sherman explained that the PDO program does pay for members to be taken care of, but that it is not a supplemental income; the program is there for what are determined medical needs. Dr. Sherman clarified that Petitioner has a service agreement that she can get up to forty (40) hours of PDO service hours but only if there is a medical need for it. Dr. Sherman testified that service hours for many people vary, and that Petitioner's service hours are based on information received for Petitioner. Dr. Sherman opined that Petitioner does not qualify for adult companion care hours because there is no medical need.

#### **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 Fla. Admin. Code R. 59G-1.100(17)(b).

18. 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.)

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

## 1.1 Description and Program Goal

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

...

### 1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

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

When necessary for the recipient to function independently, including:

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

...

## 4.1 General Criteria

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

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

...

## 4.2 Specific Criteria

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

x Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care

- x Is under the care of a physician and has a physician's order for personal care services
- x Requires more extensive and continual care than can be provided through a home health visit
- x Requires services that can be safely provided in their home or the community

#### 4.2.1.1 Adult Companion Care

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

...

RCE 1 at 92 – 95.

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.

RCE 1 at 93 – 94.

21. Respondent denied Petitioner’s request for twelve (12) hours weekly of adult companion care PDO services. See supra ¶ 11. In the NABD, dated March 22, 2023, Respondent denied Petitioner’s request to overturn the denial, and upheld the termination in the NPAR, dated March 31, 2023. See supra ¶¶ 11, 12. Respondent explained that Petitioner’s request was not medically necessary based on the plan’s review criteria and guidelines but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. *Id.*

22. As provided in the LTC policy, adult companion care services are intended to provide “non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.” See supra ¶ 19. Adult companion care service is differentiated under the rules governing LTC services under Florida Medicaid. For instance, the service of personal care for LTC members is defined as provided “assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” *Id.*

23. Petitioner currently receives seventeen (17) hours per week of personal care PDO services and eleven (11) hours per week of homemaker PDO services. See supra ¶ 8. Petitioner lives with [REDACTED]. See supra ¶ 2, 11, 13, and 14. [REDACTED] does not work outside of the home. See supra ¶ 10. Regarding [REDACTED], Petitioner needs assistance (but not total help) with [REDACTED] needs supervision or prompting with [REDACTED] and Petitioner always has assistance with all of [REDACTED] ADLs. See supra ¶ 5. Regarding [REDACTED] IADLs, Petitioner always [REDACTED] assistance with light

[REDACTED]

[REDACTED] See supra ¶ 6.

24. [REDACTED] testified that Petitioner fell three (3) times within six (6) months. See supra ¶ 13. However, [REDACTED] did not clarify when this six-month period of time occurred.

25. Dr. Sherman explained that adult companion care is a nonmedical service primarily used for socialization and supervision. See supra ¶ 15. Further, Dr. Sherman provided clarity that the requested services are in excess of Petitioner's needs because [REDACTED] with Petitioner, providing socialization and supervision. See supra ¶ 15. Dr. Sherman provided persuasive and convincing testimony regarding the medical necessity requirement for adult companion care services. See supra ¶ 15. The record does not reflect that the requested services are medically necessary. Petitioner failed to show how the requested twelve (12) hours of adult companion care PDO service hours are not in excess of Petitioner's needs.


26. [REDACTED] testified that Petitioner should receive the requested services because [REDACTED] [REDACTED] life to caring for Petitioner and does not have the freedom [REDACTED] used to have. See supra ¶ 14. However, as stated above, services may not be furnished in a manner primarily intended for the convenience of the recipient, *the recipient's caretaker*, or the provider. See supra ¶ 11 and 20. (Emphasis added). Here, the requested service hours are primarily intended for the convenience of the caretaker. Petitioner failed to show how the requested services are medically necessary.

27. Based on the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner has failed to prove by a preponderance of the evidence that Respondent's denial of adult companion care PDO services was incorrect.

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

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

**DONE AND ORDERED** this 8th day of August, 2023 in Tallahassee, Leon County, Florida.

 Kameisha Presley  
23-FH1106  
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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:**



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