

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



FILED

Jul 28, 2023, 10:57 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1141

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 6, 2023, at 2:00 p.m. EST.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Christian Pacheco  
Senior Director for Quality Improvement  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUES**

The issue in this matter is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of thirty-five (35) additional hours of adult companion care was incorrect.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] the Petitioner's Authorized Representative and [REDACTED] represented Petitioner at the Fair Hearing and provided

testimony on Petitioner’s behalf.

Christian Pacheco, Senior Director of Quality Improvement, for Sunshine State Health Plan, Inc. (“Sunshine” or “Respondent”), represented Respondent at the hearing. Dr. Michael Silverman (“Dr. Silverman”), Medical Director for Sunshine, appeared as a witness for Respondent. The following also appeared for Respondent: Ariana Pozo, Case Manager Supervisor, Maikel Munoz, Case Manager and Kenny Casteneda, Director of Case Management.

Chrissie Simmons, Medical Healthcare Program Analyst & Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

The Petitioner did not introduce any exhibits at the Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty-four (164)-page evidence packet that was admitted into evidence without objection, shall be identified as “Respondent’s Composite Exhibit 1”, and appears in the Office of Fair Hearings’ case management system as: “MFH packet [Petitioner].pdf”.

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine. See Respondent’s Composite Exhibit 1 at page 111. Sunshine 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] [REDACTED] [REDACTED]. See Respondent’s Composite Exhibit 1, pages 50 and 51. [REDACTED] that serves as the Petitioner’s primary caregiver, and [REDACTED] [REDACTED]. See Respondent’s Composite Exhibit 1, page 64.

3. The most recent Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), is dated March 22, 2023, which reflects the Petitioner health conditions include the [REDACTED]. [REDACTED]. See Composite Exhibit 1, pages 56 and 57. The member [REDACTED]. [REDACTED]. See Respondent’s Composite Exhibit 1, pages 54 and 73. In addition, the Petitioner has experienced [REDACTED]. See Respondent’s Composite Exhibit 1, pages 53 and 54.

4. The March 22, 2023, 701B form reflects the Petitioner requires some assistance but not total help with all the Activities of Daily Living (“ADLs”) including [REDACTED]. [REDACTED]. See Respondent’s Composite Exhibit 1, page 54. The Petitioner [REDACTED]. *Id.* In addition, the March 22, 2023, 701B form reflects the Petitioner always has assistance when performing [REDACTED] ADLs. *Id.*

5. With respect to the Petitioner’s Instrumental Activities of Daily Living (“IADLs”), the 701B Assessment reflects the Petitioner [REDACTED] (cannot do at all) [REDACTED], and needs some assistance (but not total help) [REDACTED]. [REDACTED]. See Respondent’s Composite Exhibit 1, page 55. In addition, the March 22, 2023, 701B form reflects the Petitioner always has assistance in performing [REDACTED] ADLs. *Id.*

6. On March 17, 2023, the Petitioner requested an additional thirty-five (35) hours per week of adult companion care services per week. See Respondent’s Composite Exhibit 1, pages 4-16. On March 20, 2023, the Respondent issued a Notice of Adverse Benefit Determination (“NABD”) that denied Petitioner’s request for an additional thirty-five (35) hours of adult companion care services per week. *Id.* The NABD states, in pertinent part, as follows:

We made our decision because:

We made our decision because:  
(Check all boxes that apply)

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

Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR

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: The request for extra hours (35 hours a week of Adult Companion Care services) is denied. Based on the assessment of the member’s care needs and household and caregiver status the current services meet the member’s needs. Member’s current assessment does not reflect a change in member’s need for adult companion care. This decision was made with Florida Care Management Services Utilization Management Policy QA-012.

See Respondent's Composite Exhibit 1, pages 4 and 16.

7. Petitioner requested a plan appeal challenging the denial of an additional thirty-five (35) hours of adult companion care services per week. See Respondent's Composite Exhibit 1, pages 104-107. On April 29, 2023, the Respondent issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial. *Id.* The NPAR explains as follows:

The reason for our decision was based on the assessment of the members care needs and household and caregiver status, the denial of the request for an extra 35 hours/week of Companion Care Services is upheld. The presently approved services are enough to meet the member's care needs. 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 Board Certified in Internal Medicine.

*Id.*

8. Petitioner is currently authorized to receive the following home and community-based services: fourteen (14) hours per week of personal care services; seven (7) hours per week of homemaker services; seven (7) hours of adult companion care services, seven (7) home delivered meals per week, and a Personal Emergency Response System ("PERS"). See Respondent's Composite Exhibit 1, page 24.

9. The Petitioner's authorized representative testified that [REDACTED] and wants [REDACTED] to have a "safe and calm environment" and that [REDACTED] has expressed the desire to remain independent and remain in [REDACTED] home. The Authorized Representative states that [REDACTED] is [REDACTED], is [REDACTED], and has begun to demonstrate [REDACTED]. The Authorized Representative testified [REDACTED] works full-time,



- Member ambulates with assistance of a person or device
- Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
  - Member has ADLs requiring total assistance
  - Member is non-ambulatory
  - Member transfers require one (1) to two (2) person assist
  - Member's treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone.
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member). Lives with non-family (with consideration of the number of days and hours that nonfamily members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

Services in Place

- Provided by Simply Health
- Provided by other Provider insurance

**2. Adult Companion Care**

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

#### Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental Illness requiring supervision
- Parkinson's disease
- Multiple Sclerosis
- ALS
- Congestive Heart Failure
- COPD
- Cancer
- End Stage Renal disease
- TBI
- Other diagnosis as deemed medically necessary by Medical Director

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
  - See Section C.1.c. for more details
- Informal Supports
  - None
  - Few friends/family in area
  - Family nearby
- Living Situation
  - Lives alone
  - Lives with others but is alone for extended periods of time due to the necessary absence of a caregiver
  - Lives with caregiver and others
- Services in Place
  - Simply Health provided and provided by other provider/insurance

Exclusions and Limitations for Adult Companion Care include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.

3. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.
5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal care tasks.
6. The member has memory deficits, which prevent him or her from managing care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Simply Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in and comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home

See Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, Respondent's Composite Exhibit 1, pages 142-145.

#### **CONCLUSIONS OF LAW**

13. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of the Agency under section 409.285(2)(a).

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

15. Because Petitioner is requesting new services, 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.)

16. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2018) (“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 adult companion care, 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

...

#### **4.2.1.1. 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.

...

### **6.2 Specific Criteria**

In order to receive LTC services, services must be documented on an individualized 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.

LTC Policy at pages 1 - 8.

17. 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.

LTC Policy at pages 2 – 3.

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

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

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

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

19. As provided in the LTC Policy, the purpose of adult companion care services is 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.” See supra ¶ 15. Companion care is designed to prevent social isolation or to provide supervision and are not designed to address the performance of ADLs. See supra ¶ 15.

20. The letter from Andrew Harris, DO states the Petitioner "... requires 24/7 assistance with walking, changing her cloths, eating, taking medications, showering and supervision for fall prevention." However, section 2.83 of the Definitions Policy mandates that "[t]he fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods, or services medically necessary." See supra ¶ 17. Therefore, the letter from Dr. Pardo does not, *in itself*, make the requested additional services medically necessary.

21. With regard to social isolation, Petitioner lives [REDACTED] and currently receives fourteen (14) hours per week of personal care services, seven (7) hours of homemaker services, and seven (7) hours of adult companion care services. See *supra* ¶ 8. Thus, Petitioner has opportunities to [REDACTED], and Petitioner is not at risk for social isolation.

22. Petitioner suffers from the late onset of [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED] See supra ¶ 3.

Here, the Petitioner has the burden of proof to demonstrate the Respondent's decision to deny thirty-five (35) hours per week of adult companion care is incorrect. The Authorized Representative testified of [REDACTED] wish that [REDACTED] be supervised more hours per week. The Petitioner did not demonstrate that Petitioner's need for adult companion care supervision cannot be met with the currently approved fourteen (14) hours per week of personal care services, seven (7) hours per week of homemaker services, and seven (7) hours of adult companion care services.

23. Dr. Michael Silverman, Medical Director for the Respondent testified the Petitioner's cognitive, functional, environmental and social needs, in conjunction with the ADL deficits, living situation and supervisory needs were all considered and supports the conclusion that an additional thirty-five (35) hours of personal care services were in-excess of the Petitioner's needs and not medically necessary. *See supra* ¶ 12. The Petitioner has failed to provide compelling testimony beyond the preponderance of the evidence that the Respondent's conclusion was incorrect.

24. Based on the foregoing, the Petitioner is not at risk of social isolation. As such, the Petitioner failed to demonstrate that the requested additional thirty-five (35) hours per week of adult companion care services are not in-excess of the Petitioner's needs and medically necessary. *See supra* ¶ 11, 15, 16 and 17.

25. Therefore, upon consideration of both parties' testimony, Respondent's Composite Exhibit 1, and the LTC Policy, the undersigned finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of an additional thirty-five (35) hours per week of adult companion care services was incorrect.

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

Respondent's denial of an additional thirty-five (35) hours of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE and ORDERED** this 28th day of July 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer

23-FH1141

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**ALAN LEIFER, Hearing Officer**  
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**Sunshine State Health Plan, Inc.**  
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**AHCA Medicaid Hearing Unit**  
**[MedicaidHearingUnit@ahca.myflorida.com](mailto:MedicaidHearingUnit@ahca.myflorida.com)**

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