



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

**FILED**

Sep 08, 2023, 11:25 am

OFFICE OF FAIR HEARINGS

[Redacted]

**PETITIONER,**

**AHCA Case No.: 23-FH1184**

**Plan ID No.: [Redacted]**

**vs.**

**HUMANA MEDICAL PLAN, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on July 20, 2023, at 10:01 a.m. and August 11, 2023, at 10:01 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Markeshi Lee  
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 additional personal care services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED]

[REDACTED] Petitioner’s Authorized Representative and [REDACTED], appeared for both hearings to provide testimony on behalf of Petitioner, and did not call any witnesses.

[REDACTED] (“Ms. Lee”), Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”), appeared for the Fair Hearing convened on August 11, 2023, on behalf of Respondent. Michael Moens (“Mr. Moens”), Grievance and Appeals for Humana, appeared for the Fair Hearing convened on July 20, 2023, on behalf of Respondent. Manohar Chenchugalla, M.D. (“Dr. Chenchugalla”), Medical Director for Humana, appeared for both hearings as a witness for Respondent.

Diana Hearod, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing convened on August 11, 2023, as an observer.

Prior to the Fair Hearing, the Office of Fair Hearings received a one hundred and thirty-five (135)-page evidence packet from Petitioner. The evidence packet appears in the Office of Fair Hearings’ case management system as file titles “23-FH1184 Emailed Correspondence.pdf<sup>1</sup>,” “23-FH1184 Case Evidence.pdf<sup>2</sup>,” “23-FH1184 Additional Case Evidence.pdf<sup>3</sup>,” “23-FH1184 Faxed Evidence.pdf<sup>4</sup>,” “23-FH1184 Faxed Evidence(2).pdf<sup>5</sup>,” and “23-FH1184 Evidence.pdf<sup>6</sup>.” Absent an objection from Respondent, the evidence packet was admitted into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

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<sup>1</sup> This file contains pages 1 – 2 of PCE 1.

<sup>2</sup> This file was received on July 24, 2023, and contains pages 3 – 32 of PCE 1.

<sup>3</sup> This file was received on July 24, 2023, and contains pages 33 – 37 of PCE 1.

<sup>4</sup> This file was received on July 26, 2023, and contains pages 38 – 42 of PCE 1.

<sup>5</sup> This file was received on July 26, 2023, and contains pages 43 – 70 of PCE 1.

<sup>6</sup> This file was received on August 1, 2023, and contains pages 71 – 135 of PCE 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and three (303)-page evidence packet. The evidence packet appears in the Office document management system as the file titles "Evidence Packet 23-FH1184\_Part1.pdf," "Evidence Packet 23-FH1184\_Part2.pdf," and "Evidence Packet 23-FH1184\_Part3.pdf." Absent an objection from the Petitioner, the three hundred and three (303)-page packet was admitted 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") program. See RCE 1 at pages 1, 41. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. Petitioner is [REDACTED]. *Id.* at 1. According to Petitioner's LTSS Comprehensive Assessment (hereinafter referred to as "701B"), dated June 19, 2023, Petitioner has the following health conditions: [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 48 – 51. Petitioner's medical history includes

[REDACTED]

[REDACTED]. *Id.* Petitioner is on oxygen 24/7. *Id.* at 50 – 51. Petitioner [REDACTED]

[REDACTED]

3. Petitioner [REDACTED], [REDACTED]

[REDACTED]. *Id.* at 47, 88. [REDACTED]

[REDACTED]. *Id.*

4. As provided in the 701B, Petitioner needs assistance (but not total help) with the following Activities of Daily Living (“ADLs”): [REDACTED] [REDACTED]. at 46. Petitioner needs supervision or prompt for [REDACTED] *Id.* Petitioner needs total assistance with [REDACTED]. *Id.* at 46. With regard to Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]. *Id.* at 47. Petitioner needs assistance (but not total help) with [REDACTED] [REDACTED]. *Id.*

5. Since discharge from the skilled nursing facility, Petitioner has had the following emergency room (ER) and/or hospitalizations: on [REDACTED] [REDACTED] [REDACTED] [REDACTED]. *Id.* at 45 and PCE 1 at pages 2, 5, 8.

6. Petitioner requested one hundred and twenty-eight (128) hours per week of personal care services. Petitioner’s request was denied in a Notice of Adverse Determination (“NABD”), dated April 12, 2023. *Id.* at 3-7. The NABD explained the basis of the denial 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 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:

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 40 hours of personal care (PC) PDO and 128 hours of traditional PC per week. You currently are in a skilled nursing facility and are transitioning to come home to [REDACTED]. You are [REDACTED]. [REDACTED] You have multiple medical problems including [REDACTED]. You need some assistance with all the activities of daily living (PC) except [REDACTED] and maximum assistance [REDACTED]. You [REDACTED].

Based on your need we are approving 25 hours of PC PDO per week which should be sufficient for your PC needs. We also recommend that you consider going to adult day care so that [REDACTED]. Going to ADC may result in reduction of hours approved. The current 25 hours of PC PDO should be sufficient for your PC needs. We are denying your request for 128 hours of traditional PC hours.

*Id.* at 3-4.

7. On April 12, 2022, Petitioner requested a plan appeal. On May 9, 2023, Respondent issued a Notice of Plan Appeal Resolution ("NPAR") denying Petitioner's request for personal care services. *Id.* at 17 – 19. The NPAR states the following, in pertinent part:

The reason for the decision was based on the information received. You have

requested that the 128 hours of personal care service each week that was denied in your initial request be reconsidered (appeal).

[Petitioner] has several (multiple) medical problems. [redacted] does not have trouble making [redacted] needs known. [redacted] has trouble [redacted].  
[redacted]  
[redacted]  
[redacted]  
[redacted].

The denial of the 128 hours of personal care service each week is being upheld. 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 27-36.

8. On May 16, 2023, Petitioner requested a Fair Hearing regarding the denial of personal care services. *Id.* at 41. On June 26, 2023, the Office issued a notice, to all parties of record, scheduling the Fair Hearing to be convened by telephone on July 20, 2023, at 10:00 a.m. EST. By stipulation of both parties, the Office issued a second notice scheduling the Fair Hearing to be convened by telephone on August 11, 2023, at 10:00 a.m. EST.

9. Petitioner is authorized to receive the following Florida Medicaid LTC services: twenty-five (25) hours per week of personal care PDO services; two (2) days of adult day care services; as well as monthly incontinence supplies. *Id.* at 79, 85-87.

10. [redacted] testified at the Fair Hearing as follows:

- a. Petitioner transitioned out of a skilled nursing facility to home. [redacted] argues that under the Medicaid-managed care plan Petitioner was supposed to receive

comparable care hours and caregivers. [REDACTED] explained that this has not happened and there was a lapse in support services.

- b. Once Petitioner arrived home in April of 2023 from the skilled nursing facility, [REDACTED] became sick and was hospitalized a few times. At that time, [REDACTED] contends that Petitioner did not have personal care hours to hire care. Petitioner's condition has not changed drastically since the transition.
- c. Petitioner is currently in a rehab facility.

11. Dr. Chenchugalla testified at the Fair Hearing as follows:

- a. For this service request in April, Humana took into consideration Petitioner's medical history when Petitioner was transitioning out of the skilled nursing facility. *See ¶ 4.*
- b. Dr. Chenchugalla contends that Humana had limited records after Petitioner's discharge, but the information in the 701B shows Petitioner only needs some help and therefore, Humana approved twenty-five (25) hours per week of personal care PDO services. *See RCE 1 at 46.* Further, Dr. Chenchugalla asserts that there was no evaluation provided from the skilled nursing facility to support the number of hours Petitioner needs.

#### **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 section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

13. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule (“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 Florida Medicaid Statewide Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. *Id.* at 125 – 146. The Florida Medicaid LTC Policy provides the following, in pertinent part:

**1.0 Description and Program Goal**

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

...

**1.3 Definitions**

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

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

ADLs include:

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

**1.3.5 701-B Comprehensive Assessment**

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

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

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- 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   choice.

### **1.3.16 Natural Supports**

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

...

#### **4.0 Coverage Information**

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

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

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

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

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

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

...

##### **4.2.2 Mixed Services**

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

###### **4.2.2.6 Personal Care**

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

*Id.* at 125 – 146. (Emphasis added).

16. 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.

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

**1.1 Description**

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

...

**1.1.2 Statewide Medicaid Managed Care Plans**

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

...

**4.0 Coverage Information**

**4.1 General Criteria**

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

- Are determined medically necessary

- Do not duplicate another service
- Meet the criteria as specified in this policy

#### **4.2 Specific Criteria**

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

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

...

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

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

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

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

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act

- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
  - Hospitals
  - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
  - Prescribed pediatric extended care centers
  - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

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

...

## 7.0 Authorization

### 7.1 General Criteria

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

...

Personal Care Task	General Time Allowances
<b>Bathing</b>	
<b>Full-body Bath:</b> Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
<b>Partial Bath:</b> A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
<b>Dressing</b>	

Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
<b>Grooming and Skin Care</b>	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
<b>Positioning</b>	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
<b>Transfers</b>	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
<b>Toileting and Maintaining Continence</b>	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
<b>Eating</b>	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
<b>Delegated Medical Monitoring and Activities</b>	

<p>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.</p>	<p>15–30 minutes day for all monitoring tasks performed</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------

PC Policy at pages 3 – 8, and 10.

18. In the instant case, Petitioner requested an additional one hundred and twenty-eight (128) hours per week of personal care services. *See* ¶ 6. In the NABD, dated April 12, 2023, Respondent denied Petitioner’s request. *See* ¶ 6. Respondent cited to the medical necessity as the basis for their decision. However, Respondent did not specify which prong of medical necessity it used to makes its decision. *See* ¶ 6-7. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. *See* ¶ 14.

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* ¶ 15. The Definitions Policy requires that the requested personal care services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” *See* ¶ 16.

20. According to the 701B dated June 19, 2023, Petitioner needs assistance (but not total help) with [REDACTED]. *See* ¶ 4. Petitioner needs supervision or prompt for [REDACTED]. *See* ¶ 4. Petitioner needs total assistance with [REDACTED]. *See* ¶ 4. With regard to Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED].

[REDACTED]. See ¶ 4. Petitioner needs assistance (but not total help) with [REDACTED]. See ¶ 4. Petitioner has been [REDACTED] ¶ 5.

21. Petitioner is currently authorized to receive the following Florida Medicaid LTC services: twenty-five (25) hours per week of personal care PDO services; two (2) days of adult day care services; as well as monthly incontinence supplies. See ¶ 9. Petitioner is currently in a rehab facility. See ¶ 10.

22. [REDACTED] argued that under Petitioner's Medicaid-managed care plan [REDACTED] was supposed to receive comparable care hours and caregivers following the transition from the skilled nursing facility to home. See ¶ 10. At that time, [REDACTED] stated that Petitioner did not have personal care hours to hire care. See ¶ 10. Dr. Chenchugalla contends that Respondent had limited records after Petitioner's discharge, but that the information in the 701B showed Petitioner only needs some help with ADLs and IADLs so Respondent approved twenty-five (25) hours per week of personal care PDO services. See ¶ 9, 11. Skilled nursing services are not equivalent to personal care services. See ¶ 17. Personal care services administered under the Florida Medicaid program are "[t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." See ¶ 15. The record is clear that Petitioner has complex medical issues that require significant support to address limitations with [REDACTED] daily activities. See ¶ 2, 4-5. Where the PC Policy provides general guidance for general allowances for ADLs, see ¶ 17, Petitioner's supporting evidence lacks records specific to the hands-on care [REDACTED] requires at home

(e.g., a daily schedule, frequency of ADLs and IADLs, duration of each ADL and IADL, etc.) to justify the approval of an additional one hundred and twenty-eight (128) hours of personal care services per week. As Petitioner is on oxygen 24/7 and experienced multiple recent hospitalizations, Petitioner has not made clear how these events may have impacted [redacted] ability to perform daily ADLs and IADLs. See ¶ 10. Moreover, since Petitioner is currently in a rehab facility, the record is not clear if or how the two (2) days of adult day care per week are being utilized as part of [redacted] combined LTC services. See ¶ 10. Absent detailed documentation, it is difficult to determine how the requested additional hours of personal care services will be utilized to meet Petitioner's needs if approved in this case. It appears that, perhaps, Petitioner could benefit from additional services than [redacted] is currently receiving; however, the record does not demonstrate that the requested one hundred and twenty-eight (128) personal care hours are "not in excess of [redacted] needs."

23. Petitioner introduced [redacted] medical records for the period between [redacted] [redacted], from [redacted] primary care provider and rehab facility follow-up visits, each noting the general need for close monitoring of Petitioner's multiple comorbidities. See PCE 1 at 3-32. 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. See ¶ 16. Nonetheless, as previously discussed, the undersigned cannot find that the evidence provided substantiates approval of the requested services at this time. See ¶ 21-22.

24. Considering the totality of Petitioner's circumstances, including [redacted] diagnoses, level of need for ADLs and IADLs, currently approved services, Petitioner failed to meet [redacted] burden of

proof that an additional one hundred and twenty-eight (128) hours per week of personal care services are not in excess of Petitioner's needs.

25. In light of both parties' testimony and evidence, the LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet [redacted] burden of proving that an additional one hundred and twenty-eight (128) hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional personal care services was incorrect.

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

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

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

Kimberly Roche  
23-FH1184  
2023.09.08  
09:35:21 -04'00'

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

**ENCLOSURE:**  
**Notice of Nondiscrimination Policy**

**COPIES FURNISHED TO (w/ enclosure):**



**Humana Medical Plan, Inc.**  
**GAMedicaidRightFax@humana.com**

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

## Notice of Nondiscrimination Policy

The Agency for Health Care Administration (“AHCA”) is committed to providing all people with an equal opportunity to participate in its programs, services, and activities. AHCA complies with applicable Federal civil rights laws and does not exclude people or treat them differently in admission to, access to, or employment in its programs, services, or activities on the basis of race, color, national origin, age, disability, or sex. Communication aids and services, such as: qualified sign language interpreters, qualified foreign language interpreters, and written information in alternative formats (i.e.: Braille, large print, foreign language, etc.) are provided free of charge, in accordance with federal law, when necessary to ensure equal opportunity and effective communication.

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Civil Rights Compliance Coordinator  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, FL 32308  
Voice: (850) 412-3661  
TTY: (800) 955-8771



**Spanish ATENCIÓN:** si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-(888) 419-3456 (TTY: 1-800-955-8771).

**French Creole Atansyon:** Si w pale Kreyòl Ayisyen, gen sèvis èd pou lang ki disponib gratis pou ou. Rele 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Vietnamese CHÚ Ý:** Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Portuguese ATENÇÃO:** Se fala português, encontram-se disponíveis serviços linguísticos, grátis. Ligue para 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Chinese 注意 :** 如果您使用繁體中文, 您可以免費獲得語言援助服務。請致電 1-(888) 419-3456 (TTY: 1-800-955-8771)

**French ATTENTION:** Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-(888) 419-3456 (ATS: 1-800-955-8771).

**Tagalog PAUNAWA:** Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Russian ВНИМАНИЕ:** Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-(888) 419-3456 (телетайп: 1-800-955-8771).

#### **Arabic**

**ملحوظة:** إذا كنت تتحدث العربية، فإن خدمات المساعدة اللغوية متاحة لك بالمجان. اتصل برقم 1-(888) 419-3456 (التحويلة: 1-800-955-8771)

**Italian ATTENZIONE:** In caso la lingua parlata sia l'italiano, sono disponibili servizi di assistenza linguistica gratuiti. Chiamare il numero 1-(888) 419-3456 (TTY: 1-800-955-8771).

**German ACHTUNG:** Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Korean 주의:** 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-(888) 419-3456 (TTY: 1-800-955-8771) 번으로 전화해 주십시오.

**Polish UWAGA:** Jeżeli mówisz po polsku, możesz skorzystać z bezpłatnej pomocy językowej. Zadzwoń pod numer 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Gujarati નોંધ:** જો તમે ગુજરાતી બોલતા હો, તો નિ:શુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Thai 注意:** หากคุณพูดภาษาไทย, เราให้บริการช่วยเหลือภาษาฟรี. โทร 1-(888) 419-3456 (TTY: 1-800-955-8771).