



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

FILED

Aug 17, 2023, 11:52 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1196

Plan ID No.: [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 30, 2023, at 9:11 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner

For the Respondent:

Joshua Mitchell  
Grievance and 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 decision to deny Petitioner’s request for an additional twenty-four (24) hours per week of personal care services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner appeared on her own behalf.

Joshua Mitchell, Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Avra Carpouss-Bowers (“Dr. Bowers”), Medical Director for Humana, attended as a witness for Respondent.

Marielisa Amador, Medical Healthcare Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”) appeared as an observer.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent a two (2)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as “23-FH1196 Evidence.pdf.” Absent an objection from the Respondent, the undersigned admitted the two (2)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE1”).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-two (272)-page evidence packet. The evidence appears in the Office of Fair Hearings’ document management system as “Evidence Packet 23-FH1196\_Part1.pdf” and “Evidence Packet 23- FH1196\_Part2.pdf”. Absent an objection from Petitioner, the undersigned admitted the two hundred and seventy-two (272)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE1”).

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana. *See* RCE 1 at page 1. Humana 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 [REDACTED]. *Id.* Petitioner lives in a private residence with [REDACTED]. *Id.* at 28. Petitioner’s [REDACTED] caregiver.

*Id.* at 41. Petitioner has [REDACTED]. *Id.* at 33.

Petitioner has not been diagnosed with [REDACTED]

[REDACTED] *Id.* at 35. Petitioner does not have trouble [REDACTED]

[REDACTED]. *Id.* at 8. Petitioner [REDACTED]

[REDACTED].

3. As provided in the Florida Department of Elder Affairs 701B Comprehensive Assessment, dated March 9, 2023, (“701B Assessment”) Petitioner needs assistance (but not total help) with

[REDACTED]

[REDACTED]. *Id.* at 31. Petitioner uses assistive devices with [REDACTED]

[REDACTED]. *Id.* Petitioner rarely has assistance with

[REDACTED] *Id.*

4. Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: for

[REDACTED]

[REDACTED]. *Id.* at 32. Petitioner needs assistance (but not total help)

with [REDACTED]. *Id.* Petitioner uses assistive devices with

[REDACTED]. *Id.* Petitioner needs no assistance with [REDACTED]

[REDACTED]. *Id.* Petitioner rarely has assistance with [REDACTED]

[REDACTED]. *Id.* Petitioner has assistance most of the time

with [REDACTED]. *Id.* Petitioner needs no assistance with [REDACTED]

[REDACTED].

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

CIC was completed with member on 03/09/2023. [Petitioner] is a married,

[REDACTED]

in a privately owned condo. Member receives benefits from Medicare and Medicaid. [Petitioner] advised that [REDACTED]. Member reported that [REDACTED] will remain in the home in the event of a hurricane or natural disaster. [Petitioner] reported that [REDACTED]

[Petitioner] does not report any diagnosis of [REDACTED]. [REDACTED] [Petitioner] is able to effectively communicate [REDACTED] needs and wants.

Due to member's diagnosis of [REDACTED], [REDACTED] requires assistance with [REDACTED] ADL's. [Petitioner] needs assistance (but not total) with [REDACTED]. [REDACTED] relies on [REDACTED] [REDACTED] is able to [REDACTED] (set-up). [REDACTED] uses a raised commode to assist with using the bathroom. [Petitioner] receives 15 hours of PC services weekly and 9 hours of HM services weekly from Humana LTC to assist with [REDACTED]. Member requested for an additional of 24 hours. [REDACTED] got approved for only 4 hours and got denied for the 20 hours. Member stated that [REDACTED] has to do [REDACTED]. [REDACTED] reported that [REDACTED] husband postpones the surgery to stay home with member. Member is in appeal process right now. Member also reported that that [REDACTED] ahs some help from [REDACTED] friends who come to [REDACTED]. Member verbalized that [REDACTED] does know what [REDACTED].

Due to member's diagnosis of [REDACTED], [REDACTED] requires some assistance with [REDACTED] IADL's. [Petitioner] [REDACTED]. [REDACTED]. Member's [REDACTED]. Member requires assistance with all of [REDACTED] other IADL's due to physical decline. [Petitioner] receives 15 hours of PC services weekly and 9 hours of HM services weekly from Humana LTC to assist with [REDACTED]. Member requested for an additional of 24 hours. [REDACTED] got approved for only 4 hours and got denied for the 20 hours. Member stated that [REDACTED]. [REDACTED] reported that [REDACTED]. Member is in appeal process right now. [REDACTED]. However, they [REDACTED].

[Petitioner] has been diagnosed with [REDACTED], history of a [REDACTED]  
[REDACTED]. Member reports having an [REDACTED]  
[REDACTED]. Member went to [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Member reported [REDACTED] overall satisfaction with [REDACTED] quality of life as [REDACTED]  
[REDACTED] [Petitioner] requires supervision due [REDACTED]. Member does not have a mental health diagnosis. [REDACTED]. Member reports that [REDACTED]. [Petitioner] appears to be well adjusted and able to remain optimistic about [REDACTED] future regardless of [REDACTED] health conditions.

[Petitioner] denies having any concerns with [REDACTED] home on the exterior or interior. Member lives in a 55 + gated community [REDACTED] [REDACTED]. [REDACTED] advised that [REDACTED] has many friends in the community and feels safe. [Petitioner] advised that [REDACTED] enjoys [REDACTED] neighborhood and the fact that it is close to many stores and shopping centers. Member takes advantage of the pool and other amenities available within the community. [Petitioner] denied ever feeling segregated or discriminated against.

[Petitioner] has been able to maintain [REDACTED] weight at home . Member relies on [REDACTED] or Humana HHA to [REDACTED]. [REDACTED] has all working appliances in the home. Member reports that [REDACTED]  
[REDACTED]. [REDACTED]. No gaps identified.

[Petitioner] [REDACTED]. [Petitioner] sees [REDACTED]. Member advised that [REDACTED]. [Petitioner] denied needing any special accommodations due to religious beliefs or practices.

Member's [REDACTED]. Member stated that [REDACTED]  
[REDACTED]. [REDACTED]. [Petitioner's]  
[REDACTED].  
[REDACTED]  
[REDACTED].



RCE 1 at 28 – 43.

6. Petitioner requested an additional twenty-eight (28) hours per week of personal care services. In the Notice of Adverse Benefit Determination (“NABD”), dated January 9, 2023, Respondent partially denied Petitioner’s request, granting four (4) hours of personal care services and denying twenty-four (24) hours of personal care services. *Id.* at 7 – 9. The NABD explained the basis of the decision as follows:

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

...

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

and one of the following:

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

...

- Other Authority

...

The facts that we used to make our decision are:

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 currently have 9 hours of homemaker service each week; 11 hours of personal care service each week. You have requested an additional 28 hours of personal care service each week.

[REDACTED]

[REDACTED]

You are being approved for an additional 4 hours of personal care service each week. This will give you 2 hours of personal care on the weekend.

The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated February 9, 2023, upholding the denial of additional twenty-four (24) hours of personal care services. *Id.* at 19 – 21. The NAPR states, in pertinent part:

On January 23, 2023, we received your timely plan appeal request regarding Humana Healthy Horizons Comprehensive Plan’s Notice of Adverse Benefit Determination dated January 9, 2023, authorization 166825747 partially denying the request for additional personal care hours provided to you.

On February 8, 2023, after consideration of the information you provided to Humana Healthy Horizons Comprehensive Plan in support of your plan appeal, was reviewed by a medical director who is a MD and board certified in Family Medicine hereby denies your plan appeal.

The reason for the decision was based on information received. You are appealing the denial of additional 24 hours of 28 hours of personal care (PC) service you

requested per week. You were approved additional 4 of the 28 hours requested. You currently receive 9 hours of homemaker and 15 (11+4 recently approved) hours of PC services weekly. We have reviewed your documents and re-assessed your needs. You did not have any recent change in your health condition or have any ER visits or hospitalization recently. The current 24 hours of care provided by home health (HH) aides weekly should be sufficient for your needs. We are upholding the decision of the medical director and denying your appeal.

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.

8. On May 19, 2023, Petitioner requested a Fair Hearing to challenge the denial of the additional personal care services. On May 26, 2023, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 30, 2023, at 9:00 a.m. EST.

9. Petitioner currently receives nine (9) hours of homemaker services and fifteen (15) hours of personal care services. *Id.* at 19.

10. Petitioner testified as follows:

a. [REDACTED]

b. Petitioner is reliant on friends, family, and neighbors who help [REDACTED] twice a day.

c. Petitioner's aid comes Monday through Friday and stays late one day. Petitioner needs help in the evening. Petitioner does not currently have weekend help.

d. It takes Petitioner two (2) hours to get in and out of the bathroom and into bed in the evening.

e. [REDACTED]

f. [REDACTED]

g. [REDACTED]

11. Dr. Bowers, Medical Direct for Humana, testified as follows:

a. Petitioner was receiving twenty (20) hours of home health services, broken down into nine (9) hours of homemaker services and eleven (11) hours of personal care services each week.

b. Petitioner lives with [REDACTED]

- c. [REDACTED]  
[REDACTED] g.
- d. Petitioner has a [REDACTED]  
[REDACTED]
- e. Petitioner now has fifteen (15) hours of personal care services each week that can be broken into two (2) hours each day with an extra hour left over that could be used elsewhere.
- f. Respondent is able to provide home health aids who are able to split into shifts for Petitioner and can do two (2) hour shifts however Petitioner would want it.
- g. The most recent 701B assessment still lists Petitioner's [REDACTED] primary caregiver.
- h. Dr. Bowers reviewed Petitioner's ADLs and IADLs, noting that Petitioner needs assistance but not total help with all of [REDACTED] ADLs and needs total assistance for most of [REDACTED] IADLs.
- i. [REDACTED]
- j. [REDACTED]  
[REDACTED].
- k. Dr. Bowers recommended that [REDACTED]  
[REDACTED]  
[REDACTED]
- l. Dr. Bowers concluded that on a daily basis the medical needs of Petitioner are being met.

12. Petitioner provided a letter written by [redacted] neurologist, Dr. Crystal Dixon. See PCE 1 at 2.

The letter states as follows:

[Petitioner] is under my care for the management of Multiple Sclerosis. [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]

**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 Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

15. 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.)

16. The Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care and homemakers:

**1. 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.

...

### **4.2.2.6 Personal Care**

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or

are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

## **6.2 Specific Criteria**

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

RCE 1, LTC Policy at pages 82 – 92

17. The LTC Policy also provides the following regarding 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 85 – 86.

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. Respondent partially denied Petitioner's request, granting four (4) hours of personal care services and denying twenty-four (24) hours of personal care services. *See supra* ¶ 6. On January 9, 2023, Respondent denied Petitioner's request to overturn the partial denial, and upheld the denial in the NPAR, dated February 9, 2023. *See supra* ¶¶ 6, 7. Respondent explained that Petitioner's request was not medically necessary based on the information provided but did not specify which of the five medical necessity criteria Petitioner's request failed to meet. *Id.*

20. 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* ¶ 16. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the

completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.  
*Id.*

21. The evidence presented reflects that Respondent’s denial of an additional twenty-four (24) hours per week of personal care services is warranted under the circumstances of this case.

As provided in the LTC Policy, personal care is to provide “assistance with ADLs and IADLs,

[REDACTED] which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” *See supra* ¶ 16.

The record reflects that Petitioner [REDACTED], and that [REDACTED], and that Petitioner does have friends or family who visit

up to twice a day to help. *See supra* ¶¶ 2, 5, 6, 7, 10, 11, and 12. With regard to ADLs, Petitioner needs assistance (but not total help) with [REDACTED]

[REDACTED]. *See supra* ¶ 3. The 701B Assessment states that Petitioner uses assistive devices with [REDACTED]

[REDACTED]. *Id.* Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED].

*See supra* ¶ 4. Petitioner needs assistance (but not total help) with [REDACTED]

[REDACTED]. *Id.* Petitioner rarely has

–assistance [REDACTED]

[REDACTED] has assistance most of the time with [REDACTED]

[REDACTED]. *Id.*


22. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PCS Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides general guidance concerning the time allotted for personal care tasks. As Dr. Bowers testified regarding Petitioner’s ADLs and IADLs, Petitioner uses assistive devices with [REDACTED] [REDACTED] rarely has assistance with [REDACTED] [REDACTED]; rarely has assistance with [REDACTED]; has assistance most of the time with [REDACTED]; and needs no assistance with using the [REDACTED]. See supra ¶¶ 3, 4. However, Petitioner currently receives nine (9) hours of homemaker services and eleven (11) hours of personal care services each week. See supra ¶¶ 9, 11. Petitioner testified that [REDACTED] needs assistance [REDACTED] [REDACTED] and that this process takes two hours. See supra ¶ 10. However, Dr. Bowers clarified through testimony and questioning Petitioner that Petitioner’s [REDACTED] [REDACTED]. See supra ¶ 11. Dr. Bowers provided credible and persuasive evidence and testimony that the approved services are adequate to meet Petitioner’s medical needs.

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

**DECISION**

Respondent's denial of an additional twenty-four (24) hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

**DONE** and **ORDERED** this 17th day of August 2023, in Tallahassee, Leon County, Florida.

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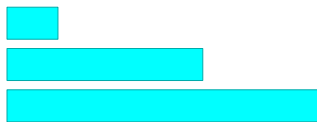
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**KAMEISHA PRESLEY, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**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:**



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

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