



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

**FILED**

Sep 12, 2023, 10:47 am

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1262

[Redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[Redacted]

PETITIONER,

AHCA CASE NO.: 23-FH1263

[Redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1264

[Redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1265

[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 June 21, 2023, at 1:00 p.m. Eastern Standard Time.

**APPEARANCES**

For the Petitioner:	P.A. Petitioner
For the Respondent:	Kimberly Bouchette Clinical Appeals Coordinator Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional personal care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional adult companion care services was incorrect.

The third issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional respite services was incorrect.

The fourth issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional homemaker services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. All parties appeared telephonically. Petitioner appeared on [redacted] own behalf. The [redacted] and primary caretaker of Petitioner, [redacted]

██████████ attended as a witness for Petitioner. Petitioner's provider agency caregiver, Maury Vasquez ("Ms. Vasquez"), attended as a witness for Petitioner.

Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine Health" or "Respondent") appeared on behalf of Respondent. The following persons attended as witnesses for Sunshine Health: Dr. Erin O'Brien ("Dr. O'Brien"), Long-Term Care Medical Director for Sunshine; Agaitha Durr, Long-Term Care Coordinator for Sunshine; Josephine Alvarez, Long-Term Care Supervisor for Sunshine; and Monique Blissepp, Care Coordinator for Sunshine.

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

Certified Interpreter, Norma, identification number 339235, provided interpretation services at the hearing.

Prior to the 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 file title "23-FH1262, 23-FH1263, 23-FH1264, 23-FH1265 Doctor's Letter.pdf." Absent an objection from the Respondent, the undersigned admitted the two (2)-page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and fifty-six (156)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner's name].pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred and fifty-six (156)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine Health. See page 1 of RCE 1. Sunshine Health is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED]. *Id.* at 52. Petitioner lives with [REDACTED], [REDACTED] who is [REDACTED] primary caregiver, and [REDACTED] lives nearby. *Id.* at 53, 61. [REDACTED] primary caregiver, works full-time outside the home, with varying hours of work, and does not return home until after 5:00 p.m. *Id.* at 36.

3. Petitioner is diagnosed with the following: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] *Id.* at 57 – 58. In the past, Petitioner has had [REDACTED]  
[REDACTED] *Id.* at 58 – 60. Petitioner has [REDACTED]. *Id.* at 34.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated May 3, 2023, (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED] Petitioner needs no assistance; for transferring, Petitioner needs supervision or prompting; and for transferring and walking/mobility, Petitioner uses a walker as an assistive device. *Id.* at 57. Petitioner always has assistance with [REDACTED] ADLs. *Id.* In the 701B, it is indicated that Petitioner does not need supervision. *Id.* at 61. In the Long Term Care Person Centered Care Plan (“POC”), signed on May 3, 2023, by the care coordinator

and [REDACTED] it indicates that member “needs supervision and hands on assistance with [REDACTED]. *Id.* at 39.

5. As provided in the 701B, Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: [REDACTED], Petitioner needs total assistance (cannot do at all); and for using the [REDACTED], Petitioner needs assistance (but not total help). *Id.* at 57. Petitioner always has assistance with [REDACTED] IADLs. *Id.*

6. Petitioner requested an additional eight (8) hours of personal care services, an additional eighteen (18) hours of homemaker services, an additional eight (8) hours of in-home respite care services, and an additional eight (8) hours of adult companion care services. Petitioner’s requests were denied in the Notice of Adverse Benefit Determination (“NABD”), dated December 9, 2022. The NABD explained the basis of the denial as follows:

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

...

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

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or

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

...

The facts that we used to make our decision are: The request for an additional 8 hours a week of Personal Care Services, an additional 18 hours per week of Homemaker Services, the additional of 8 hours a week of In-Home Respite Care, and the additional of 8 hours a week of Companion Care services is denied as not medically needed. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 14 hours a week of Personal Care Services and 4 hours a week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Pages 5 - 6 of RCE 1.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated February 16, 2023, partially upholding the denial, but authorizing an additional four (4) hours a week of personal care services, and an additional three (3) hours a week of homemaker services. *Id.* at 100 – 103. The NPAR explained, as follows:

The reason for our decision was based on the information provided that the member needs additional assistance because of [REDACTED] failing health and [REDACTED] is left alone while [REDACTED] caregiver works outside the home, the denial of an additional 8 hours a week of Personal Care Services, an additional 18 hours a week of Homemaker Services, the addition of 8 hours a week of In-Home Respite Care Services, and the addition of 8 hours a week of Companion Care Services is partially overturned. Sunshine Health will approve an extra 4 hours a week of Personal Care Services and an extra 3 hours a week of Homemaker Services. Sunshine Health will deny the remaining requested 4 hours a week of Personal Care Services, 15 hours a week of Homemaker Services, the addition of 8 hours a week of In-Home Respite Care Services, and the addition of 8 hours a week of Companion Care Services. Respite is provided on a short term basis to relieve the caregiver to prevent burnout. It is not intended to be a weekly, ongoing service.

Companion Care is provided to prevent social isolation. The member lives with family and sees [REDACTED] Home Health Aides regularly and is at low risk of social isolation. The updated care plan approved by Sunshine Health will include 18

hours a week of Personal Care Services and 7 hours a week of Homemaker Services. 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 who is a Board Certified Physician in Internal Medicine.

Page 101 of RCE 1.

8. On May 24, 2023, Petitioner requested a Fair Hearing to challenge the denial of personal care, homemaker, in-home respite, and adult companion care services. On June 2, 2023, the undersigned issued an Order of Consolidating and an Order Scheduling Consolidated Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for June 21, 2023, at 1:00 p.m. EST. At the Fair Hearing convened on June 21, 2023, it was discovered that May 24, 2023, Fair Hearing request is identical to another made by Petitioner on March 20, 2023, in AHCA Fair Hearing Case Number 23-FH0616, which resulted in a Final Order being rendered on July 5, 2023, denying Petitioner's appeal for additional personal care services and affirming Respondent's determination to deny the additional personal care services.

9. [REDACTED] testified that Petitioner lives with [REDACTED], and [REDACTED] and Petitioner's [REDACTED] live nearby, but they all either work full-time or are in school. [REDACTED] contends that Petitioner should not be left alone when [REDACTED] family is not home, that [REDACTED] needs additional services, such as assistance with [REDACTED] and other activities. [REDACTED] explained that petitioner's physician has increased [REDACTED] medications for [REDACTED] but [REDACTED] condition has not improved, rather it is deteriorating. Petitioner recently went for an MRI, and [REDACTED] neurologist recommended therapy because [REDACTED] is losing [REDACTED] balance. Petitioner will be getting x-rays soon. [REDACTED] testified that [REDACTED] often forgets things, and [REDACTED] vision is not great.

10. Ms. Maury Vasquez is Petitioner's provider agency caregiver in the mornings. Ms. Maury Vasquez testified that Petitioner cannot transfer from [REDACTED] bed to the wheelchair by [REDACTED] to go to the bathroom, and [REDACTED] put diapers on by [REDACTED]. In the mornings, [REDACTED] cannot sit up by [REDACTED] from bed. Ms. Maury Vasquez testified that Petitioner needs to be reminded of things, more and more. Ms. Maury Vasquez further testified that Petitioner is getting noticeably sicker: for instance, not long ago, [REDACTED] used to be able to move [REDACTED] arms to do [REDACTED] exercises, but now [REDACTED] cannot; and [REDACTED] legs are getting stiffer. Ms. Maury Vasquez testified that some days following a day off from taking care of Petitioner, [REDACTED] notices that Petitioner has bruises due to falling.

11. Petitioner provided a letter from [REDACTED] doctor, Dr. Guzman, dated June 19, 2023, which stated, in part:

[Petitioner] was seen today due to shortness of breath. The patient has been diagnosed with [REDACTED]

Due to the denial of medication (Camzyos) by [REDACTED] insurance in which would have been beneficial to the patient[s] conditions/health, [REDACTED] will be in need of assistance at home. The patient is currently having difficulties with performing [REDACTED] daily activities and should have an additional 18 hours of homemaker services/week, 8 hours of companionship services and 8 hours of personal care/week.

Page 2 of PCE 1.

12. Dr. O'Brien is a Long-Term Care Medical Director for Sunshine Health. Dr. O'Brien's testimony established the following facts: Petitioner is a member of the Sunshine Health LTC (Long Term Care) Ancillary Service Criteria Polity and Procedure, FL.LT.UM.09.00 ("Sunshine Health Policy"). Under the Sunshine Health Policy, personal care, adult companion care, respite care, and homemaker services are ancillary services that are meant to supplement a member's

household or family member support. Other elements to be considered are member's level of functioning, living situation considerations, informal supports, and family in area or nearby. Dr. O'Brien explained that her decision to uphold the denial of additional personal care, adult companion care, respite care, and homemaker services was based on Petitioner's health condition, and on [REDACTED] family and support circumstances. Dr. O'Brien testified that Petitioner currently receives eighteen (18) hours of personal care services and seven (7) hours of homemaker services. Dr. O'Brien explained that since Petitioner lives with family, [REDACTED] does not need more personal care or homemaker services for assistance with [REDACTED] ADLs and IADLs. Dr. O'Brien further explained that homemaker services are for specific areas of the house, such as a member's bedroom and one bathroom, that respite care is for emergencies, not for ongoing services, and that adult companion care is for socialization. Dr. O'Brien testified that Petitioner has sufficient care because [REDACTED] lives with [REDACTED], and [REDACTED] has daily visits with [REDACTED] [REDACTED] who live nearby, and home health aides coming into the home. Therefore, Dr. O'Brien concluded, the existing care plan, including eighteen (18) hours a week of personal care services, and seven (7) hours a week of homemaker services, is appropriate in Petitioner's situation. Dr. O'Brien testified that [REDACTED] spoke with Petitioner's primary care doctor and agrees that skilled services therapy may be appropriate and beneficial for fall risk. The Long Term Care agency currently sends a skilled nurse out once a month. Dr. O'Brien contends that adult day care may be an appropriate option of additional care services for Petitioner.

13. In making its decision in this case, Respondent relied upon the Sunshine Health LTC (Long Term Care) Ancillary Service Criteria Polity and Procedure, FL.LT.UM.09.00 (“Sunshine Health Policy” or “Policy”), which states, in pertinent part, as follows:

**DESCRIPTION OF BENEFITS:**

LTC ancillary services are non-skilled services covered under the LTC program. Services include:

- Adult Companion Care
- Adult Day Care Services
- Home Accessibility Adaptation Services
- Home Delivered Meals
- Homemaker Services
  - o Pest Control Services
  - o Chore Services
- Personal Care Services
- Personal Emergency Response Services (PERS)
- Respite Care Services

...

**C. Criteria for Type of Service:**

Criteria for each of the benefits noted in the Policy section will be used when reviewing the medical necessity of any ancillary services. In addition, the Medical Necessity Review policy FL.UM.02.01 is considered when determining medical necessity of ancillary services. The AHCA SMMC Contract and the Florida Coverage Policies and Limitations Handbooks are used to determine benefits, any benefit limitations, and additional criteria.

The ancillary services of this policy are intended to augment and support the existing informal care and community services being provided to allow the member to remain safely in their home.

**D. Determinants for Services:**

When considering the level of support the member requires and which of the ancillary services may support the member’s cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member’s support needed due to ADL deficits, living situation, and supervision needs.

a) Level of functioning with Activities of Daily Living (ADL’s)/Instrumental Activities of Daily Living (IADL’s)

- Independent where member is able to provide the task without support, with or without assistive devices

- Minimal functional impairment where the ADL's require one of the following:
  - o Supervision
  - o At least minimum assistance
  - o Member ambulates with assistance of a person or a device
  - o Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply
  - o Member has ADLs requiring at least minimal assistance
  - o Member ambulates with assistance of a person or device
  - o Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
  - o Member has ADLs requiring total assistance
  - o Member is non-ambulatory
  - o Member transfers require one (1) to two (2) person assist
  - o 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 non-family members are not available to assist the member).

d) 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.

e) Available Supports

- No assistance needed or always has assistance
- Has assistance most of the time
- Rarely has assistance

- Never has assistance

e) Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

...

The criteria for each ancillary service is described below:

...

## 2. Adult Companion Care

Adult Companion Care the provision of non-medical care, supervision, and socialization when necessary to protect the health, safety, and well-being of the member, 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 member. 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 Directors

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
  - See Section 2.1.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
  - Sunshine Health provided and provided by other provider insurance

## 6. Homemaker Services

Homemaker the provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. These services are provided to members who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Chore services, including heavy chore services and pest control may be included in this service. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Covered Homemaker service may include:

- a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Housekeeping considerations:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member.
- . . .
- For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.

- b) Shopping for the recipient's food and essential household items, picking up prescriptions and needed medical supplies

Shopping considerations:

- . . .
- Member lives with family who does the shopping for the member and puts away groceries, household goods and medications

- Member has other supports who do the shopping for the member and puts away groceries, household goods and medications.

c) Meal preparation includes menu planning, storing, preparing, cooking, and serving food (buttering bread and cutting food into bite size pieces, plating). Meal preparation does not include the cost of the food.

Meal Preparation considerations:

- Number of meals per days eaten by member or number of meals the member should eat per day Number of daily meals prepared by a caregiver and left in a location that the member can access, heat if necessary, and get to the table to eat.
- Meal preparation tasks member is able to complete independently. Is member able to use the microwave stove or oven?
- Amount of assistance needed in the preparation and cleanup, such as:
  - Meal planning
  - Meal preparation
  - Special diets
  - Special food preparation
  - Assembling food on plates
  - Getting food to the table
- Will additional supports allow the member to eat more often or improve nutritional status

d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all Laundromat and/or cleaning fees.

Laundry considerations:

- Identify the amount of laundry to be done on a weekly basis, including washing, drying, folding and putting away member's clothes, bed linens and towels, including:
- Amount of clothing and other items to be laundered
- Identify if member soils their clothing or bedding due to incontinence, therefore more frequent laundry is needed, which results in more smaller loads
- Preparing clothes and other items to be washed
- Putting the clothes and other items in the washer and dryer
- Hanging clothes and other items to dry
- Other chores could be done while the member's clothes or other items are being washed, dried, folded, and put away.
- If laundry must be done in an apartment laundry room or a community laundry, additional time can be given for waiting for the laundry to be done.
- Routine changing of bed linens is considered part of bedroom housekeeping

...

Homemaker Service Determination Tables [in pertinent part:]

Support needed for housekeeping:

The following guide assists in determining the amount of support needed by the member:

...

- Lives with family who is able to provide all of member's housekeeping: 0 minutes
- Lives with family who provide a minimum or moderate amount of the member's housekeeping: 15- 90 minutes/week

...

Support needed for shopping:

The following guide assists in determining the amount of support needed by the member:

...

- Lives with family who is able to provide all of member's shopping: 0 minutes
- Lives with family who provide a minimum or moderate amount of the member's shopping: 15- 75 minutes/week

...

Support needed per meal:

The following guide assists in determining the amount of support needed by the member:

- Breakfast by self –1-15 min/day
- Breakfast with others –1-5 min/day
- Lunch by self –1-20 min/day.
- Lunch with others –1-5 min/day
- Dinner by self –1-30 min/day.
- Dinner with others –1-5 min/day
- Additional Meal –1-10 min per meal.

Support needed for laundry:

The following guide assists in determining the amount of support needed by the member:

...

- Lives with family who is able to do all of member's laundry: 0 minutes
- Lives with family who provide a minimum or moderate amount for the member's laundry: 15-90 minutes/week
- Has informal supports who do all of member's laundry: 0 minutes
- Has informal supports who do a minimum or moderate amount of the member's laundry: 15- 90 minutes/week.
- Member requires maximum support for laundry: up to 120 minutes.

...

## **6b. Chore Services**

Those services needed to maintain the member in a home that is clean and sanitary and provides a safe environment. Chore services include heavy household chores such as washing floors, windows and walls, tacking down rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress. . . .

## **7. Personal Care Services**

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member. Personal care services include but may not be limited to the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders  
The Personal Care provider cannot administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e., housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

### **Approval Criteria**

Personal Care Services reviews include four (4) criteria

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

## **9. Respite Care**

In-home Respite Care services are to provide short-term, temporary relief to the informal, unpaid caregiver in order to support and preserve the primary caregiving relationship. The service provides general supervision, meal preparation, and hands-on assistance with personal care that are incidental to supervision during the period of service delivery. Respite services can be provided on a planned or emergency basis and shall only be furnished in the member's home. The provider must be awake during the provision of respite services and the services shall not be provided overnight. Member must reside in a non-facility based setting with his or her informal, unpaid primary caregiver.

### **Approval Criteria**

To be considered for In-Home Respite Services, a member must have a primary caregiver as defined below, have a qualifying trigger diagnosis, and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) A primary caregiver is defined as any person who lives with the member and regularly provides or arranges help as needed with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). This person may or may not be related by birth or marriage.

b) 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 Directors

c) Four (4) Dimensions of Determination

1. Level of functioning for safety reasons

- Independent
- Supervision
- Minimal Assistance – ADL's require one of the following:
- Moderate Assistance – ADL's require two of the following:
- Total Assistance – ADL's require total hands on assistance

See Section 2.1. for more details

2. Caregiver Stress – defined by responses for caregiver assessment on the 701B

- Minimal Stress
- Moderate Stress
- Major Stress
- Sudden Absence
  - a. Defined by documented absence of caregiver due to medical emergency.

3. Informal Supports

- Alone
- Lives with caregiver
- Lives with caregiver and others
- Lives with 2 caregivers

4. Services in Place

- Sunshine Health provided

- Provided by other provider insurance

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### **CONCLUSIONS OF LAW**

14. 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).

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

16. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

17. In the instant case, Petitioner is requesting new services. As such, 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.)

18. The Long Term Care (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

...

#### **1.3.5 701-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
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

#### **1.3.16 Natural Supports**

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

#### **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.

...

##### **4.2.1.1 Adult Companion Care**

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

##### **4.2.1.9 Homemaker Services**

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

...

##### **4.2.1.15 Respite Care**

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

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

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

...

## **6.0 Documentation**

...

### **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.

19. 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.

20. The Florida Medicaid 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.

#### **A. Personal Care Services**

21. Petitioner requested eight (8) additional hours of personal care services, weekly. *See supra* ¶ 6. In the NABD, dated December 9, 2022, Respondent denied Petitioner's request, but subsequently authorized an additional four (4) hours per week of personal care services in the NPAR, dated February 16, 2023. *See supra* ¶¶ 6, 7. Respondent explained that remaining four (4) four additional hours of personal care services in 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. *See supra* ¶ 6, 7.

22. On May 24, 2023, Petitioner requested a Fair Hearing based on [REDACTED] appeal to Respondent's denial of personal care services. This request is identical to another made on March 20, 2023, in AHCA Fair Hearing Case Number 23-FH0616, which resulted in a Final Order

being rendered on July 5, 2023. See supra 8. The Supreme Court of the United States holds that Res Judicata “is a rule of fundamental and substantial justice, 'of public policy and of private peace,' which should be cordially regarded and enforced by the courts”. *Federated Department Stores, Inc.*, 452 U.S. 394, 401, 398, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981). The Supreme Court further explained that, “[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Id.* 452 U.S. at 398, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981). “[R]es judicata does not require the precluded claim to actually have been litigated; its concern, rather, is that the party against whom the doctrine is asserted had a full and fair opportunity to litigate the claim.” *EDP Med. Comput. Sys., Inc. v. United States*, 480 F.3d 621, 624 (2d Cir. 2007). In other words, rehearing issues of fact or law is prohibited if the parties already had an opportunity to litigate those issues and a valid and final determination was made with respect to those issues. *B & B Hardware, Inc. v. Hargis Indus., Inc.*, 135 S.Ct. 1293, 1303 (2015). The test to determine whether an order is final in nature is whether the case is disposed of by the order. *Taylor v. Dept. of Children and Families*, 81 So. 3d 566 (Fla. 4th DCA 2012); citing *Hill v. Div. of Retirement*, 502 So. 2d 456 (Fla. 1st DCA 1986). “It is now well settled that res judicata may be applied in administrative proceedings.” *Thomson v. Department of Environmental Regulation*, 511 So.2d 989, 991 (Fla. 1987); and see Restatement (Second) of Judgments § 83 Adjudicative Determination by Administrative Tribunal (1982). Rule 59G-1.100(18)(h), Florida Administrative Code, states that “[r]ehearing or reconsideration of a Final Order is prohibited under this rule.” Consistent with Res Judicata, this prevents duplicative testimony and judgments made with respect to a Final Order already rendered.

23. In the instant case, the Notice of Adverse Benefit Determination (“NABD”) is dated December 9, 2022, and the Notice of Plan Appeal Resolution (“NPAR”) is dated February 16, 2023. However, the records of the Office of Fair Hearings show that on March 20, 2023, Petitioner requested a Fair Hearing based on the same denial of personal care services in AHCA Case Number 23-FH0616. The relevant NABD is dated December 9, 2022, and the NPAR is dated February 16, 2023, which are identical to the instant case. A Final Order was rendered in AHCA Case Number 23-FH0606 on July 5, 2023, after a Fair Hearing scheduled on May 24, 2023, was conducted. Because the Fair Hearing of May 24, 2023, afforded Petitioner a full and fair opportunity to litigate the issues raised in the subject NABD and NPAR, the undersigned concludes that the doctrine of Res Judicata bars the rehearing of the claim in the instant case.

24. Based on the foregoing, the record shows that a rehearing on Petitioner’s appeal of Respondent’s denial of additional personal care services is barred by the rule of Res Judicata, and therefore it is dismissed and closed.

#### **B. Adult Companion Care Services**

25. Petitioner requested eight (8) hours a week of personal care services. See supra ¶ 6. In the NABD, dated December 9, 2022, Respondent denied Petitioner’s request, as upheld in the NPAR, dated February 16, 2023. See supra ¶ 6, 7. 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. See supra ¶ 6.

26. As provided in the LTC Policy, adult companion care is to provide, in part, “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* ¶ 18. It appears that Petitioner has adequate social enrichment, as Petitioner resides in the home with [REDACTED], who is [REDACTED] primary caregiver, and [REDACTED] and [REDACTED] live nearby and visit daily, and home health aides are occasionally in the home. However, Petitioner's [REDACTED] either work full-time or are in school, and the home health aides are not in [REDACTED] home at certain times during the day when [REDACTED] family supports are not at home or nearby. *See supra* ¶ 2, 9. Petitioner is a fall risk. *See supra* ¶ 3, 9. Petitioner needs supervision due to health conditions. *See supra* ¶ 4.

27. As Petitioner bears the burden of proof, Petitioner must show that Respondent's denial of adult companion care services was incorrect. Here, the Petitioner is a member of the Sunshine Health LT Policy. *See supra* ¶ 1. Pursuant to the Sunshine Health LT Policy, the approval criteria for adult companion care services include a member having a trigger diagnosis and meeting the minimal criteria for the four (4) dimensions of determination. *See supra* ¶ 12.

28. The record shows that Petitioner has a [REDACTED], and that [REDACTED] meets the minimal criteria of the four (4) dimensions of determination in that [REDACTED] has a need for supervision because [REDACTED] is at risk for fall if left without supervision, [REDACTED] lives with family and has family nearby but [REDACTED] is left alone for extended periods of time when they are working or in school, or when a home health aide is not at the home, and [REDACTED] provider insurance is Sunshine Health. *See supra* ¶¶ 9 - 12.

29. Based on the foregoing, the record shows that the addition of eight (8) hours a week of adult companion care services are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of [Petitioner's]

needs.” See supra ¶ 19. Accordingly, the record shows that the addition of adult companion care services at issue are medically necessary.

30. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has proven by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for additional homemaker care services was incorrect.

### **C. Respite Care Services**

31. Petitioner requested eight (8) additional hours of respite care services, weekly. See supra ¶ 6. In the NABD, dated December 9, 2023, Respondent denied Petitioner’s request, as upheld in the NPAR, dated February 16, 2023. See supra ¶ 6, 7. 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. See supra ¶ 6.

32. As provided in the LTC Policy, respite care is to provide “The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee’s natural supports on a planned or emergency basis.” See supra ¶ 18. The record does not show the need for a short-term or emergency respite care necessity. As provided in the Sunshine Health LT Policy, “the provider must be awake during the provision of respite services and the services shall not be provided overnight.” See supra ¶ 13.

33. As Petitioner bears the burden of proof, Petitioner must show that Respondent’s denial of respite care services was incorrect. Here, the primary caregiver, [REDACTED] works outside the home and returns home after 5:00 p.m. In addition to [REDACTED]

and [REDACTED] live nearby, and [REDACTED] also provide support. See supra ¶ 2, 11. There is nothing in the record to show that Petitioner would require short-term respite care from 5:00 p.m. to when [REDACTED] to bed at night.

34. Based on the foregoing, the record does not show that in-home respite care services are “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of [Petitioner’s] needs.” See supra ¶ 18. Accordingly, the record does not show that in-home respite care services at issue are medically necessary.

35. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for in-home respite care services was incorrect.

#### **D. Homemaker Services**

36. Petitioner requested an additional eighteen (18) hours a week of homemaker services. In the NPAR, dated February 16, 2023, Respondent partially denied Petitioner’s request, but approved an additional three (3) hours a week of homemaker services. See supra ¶ 7.

37. As provided in the LTC policy, homemaker services are the “provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.” See supra ¶ 18.

38. In regards to [REDACTED] IADLs, Petitioner’s needs total assistance (cannot do at all) for [REDACTED]  
[REDACTED] and [REDACTED] needs

assistance (but not total help) for using the [REDACTED]

[REDACTED]. Petitioner always has assistance with [REDACTED] IADLs. See supra ¶ 5.

39. Petitioner bears the burden of proof to show that it is medically necessary for Petitioner to receive the additional homemaker services. At the Fair Hearing, Petitioner did not prove that five (5) additional hours of homemaker services at week were necessary. For instance, as set forth in the Sunshine Health LT Policy, the time it would take for assisting Petitioner with [REDACTED] start at zero (0) minutes considering that [REDACTED] lives with family, and has family living close by. See supra ¶ 13. Additionally, the Sunshine Health LT Policy provides homemaker services for members sharing a residence, including housekeeping that applies only to the areas used by the member, such as the member's bedroom and one bathroom. See supra ¶ 12.

40. At the Fair Hearing, Dr. O'Brien provided credible and persuasive testimony that based on the 701B and the Sunshine Health Policy, seven (7) hours of homemaker services per week is more than adequate to meet the medical necessity criteria, see supra ¶ 12, considering that Petitioner lives with family who share in the household activities, and that [REDACTED] receives eighteen (18) hours of personal care services per week. See supra ¶ 7, 12.

41. Based on the foregoing, the record does not show that additional homemaker services are "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of [Petitioner's] needs." See supra ¶ 19. Accordingly, the record does not show that the additional homemaker services at issue are medically necessary.

42. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of Petitioner's request for additional homemaker services was incorrect.

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

Petitioner's appeal based on Respondent's denial of personal care services is **DISMISSED** based on the rule of Res Judicata, and the appeal is **CLOSED**.

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

Respondent's denial of respite services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of homemaker services is **DENIED**.

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

**DONE** and **ORDERED** this 12th day of September 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki  
23-FH1262, 23-FH1263, 23-  
FH1264 and 23-FH1265  
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**DEBBIE WINICKI, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**Copies Furnished To:**

[REDACTED]  
[REDACTED]  
[REDACTED]

**Sunshine State Health Plan, Inc.**  
**SunshineHealth\_MFH@centene.com**

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