

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



**FILED**

Nov 08, 2023, 10:42 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1293

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1294

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**AMENDED FINAL ORDER<sup>1</sup>**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on July 24, 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**

<sup>1</sup> Amended to add a Notice of a Right to Judicial Review statement on the last page of the order.

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

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of additional homemaker services was incorrect.

### **PRELIMINARY STATEMENT**

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED]. [REDACTED] Petitioner's Authorized Representative and [REDACTED], appeared for the Fair Hearing to provide testimony on behalf of Petitioner, and did not call any witnesses.

Markeshi Lee ("Ms. Lee"), Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana"), appeared for the Fair Hearing on behalf of Respondent. Dr. Wayne Sherman ("Dr. Sherman"), Medical Director for Humana, appeared for the Fair Hearing 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 as an observer.

Prior to the Fair Hearing, the Office of Fair Hearings received a ten (10)-page evidence packet from Petitioner. The evidence packet appears in the Office of Fair Hearings' case management system as "23-FH1293 and 23-FH1294 Emailed DAR and Evidence.pdf." Absent an objection from Respondent, the evidence packet was admitted 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 four hundred and eighty-four (484)-page evidence packet. The evidence packet appears in the Office document management system as the file titles "Evidence Packet [Petitioner]\_Part1.pdf,"

“Evidence Packet [Petitioner]\_Part2.pdf,” “Evidence Packet [Petitioner]\_Part3.pdf,” “Evidence Packet [Petitioner]\_Part4.pdf,” “Evidence Packet [Petitioner]\_Part5.pdf,” and “Evidence Packet [Petitioner]\_Part6.pdf.” Absent an objection from the Petitioner, the four hundred and eighty-four (484)-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, 56. 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] years old. *Id.* at 222. According to Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), dated June 9, 2023, Petitioner has the following health conditions: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 228

– 229. Petitioner suffered a [REDACTED] and was hospitalized on [REDACTED]

[REDACTED]. Petitioner is

[REDACTED]. *Id.* at 223, 226. Petitioner receives [REDACTED], and

[REDACTED]. *Id.* at 119 – 126, 128 – 136, 229. Petitioner has no primary caregiver. *Id.*

at 238.

3. As provided in the 701B, Petitioner needs total assistance (cannot do at all) with the following Activities of Daily Living (“ADLs”): [REDACTED]

[REDACTED]. *Id.* at 226. Petitioner needs assistance (but not total help) with [REDACTED]

[REDACTED]. *Id.* Petitioner needs supervision or prompt for [REDACTED]. *Id.* Petitioner uses an assistive

device for [REDACTED]. *Id.* With regard to Instrumental Activities

of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) [REDACTED]

[REDACTED]. *Id.* at 227. Petitioner rarely has assistance for all IADLs, except [REDACTED]

[REDACTED]. *Id.*

4. Petitioner initially requested an additional twenty (20) hours per week of personal care PDO services and an additional twenty-one (21) hours per week of homemaker PDO services. Petitioner’s requests were partially denied in Notice of Adverse Determinations (“NABDs”), dated March 13, 2023. *Id.* at 10 – 14, 26 – 30. The NABDs contained identical rationale and explained the basis of the denials as follows, in pertinent part:

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

...

✓ Meet all of the 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 an additional 21 hours of direct service worker (DSW) PDO homemaker service each week; an additional 20 hours of direct service worker (DSW) PDO personal care service each week

You have several (multiple) medical problems. You do not have trouble making your needs known. You do not have trouble thinking clearly or remembering things.

You have not had any recent changes in your health. You have not recently been in the hospital.

You live with your [REDACTED], who help take care of you and share in household responsibilities. You use a wheelchair to move around. You need help [REDACTED]. You need help [REDACTED]. You need some help with [REDACTED]. You need help with [REDACTED].

You are being approved for an additional 2 hours of direct service worker (DSW) PDO homemaker service each week and an additional 11 hours of direct service worker (DSW) PDO personal care service each week.

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

...

*Id.* at 10-11, 26-27.

5. Petitioner also initially requested an additional eight (8) hours per week of personal care (traditional) services and an additional eight (8) hours per week of homemaker (traditional) services. Petitioner’s requests were denied in NABDs dated March 13, 2023. *Id.* at 18 – 22, 34 – 38. The NABDs contained identical rationale and explained the basis of the denials as follows, in pertinent part:

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

...

✓ Meet all of the 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 8 hours of homemaker service each week and 8 hours of personal care service each week.

You have several (multiple) medical problems. You do not have trouble making your needs known. You sometimes have trouble thinking clearly or remembering things.

You have not had any recent changes in your health. You have not recently been in the hospital.

You live with your [REDACTED], who help take care of you and share in household responsibilities. You use a [REDACTED]. You need help

[REDACTED]  
[REDACTED]  
[REDACTED].

Your request for an 8 hours of homemaker service each week and an 8 hours of personal care service each week is being denied as not medically necessary.

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

...

*Id.* at 18-19, 34-35.

6. Petitioner requested a plan appeal for the additional personal care services. Respondent issued a Notice of Plan Appeal Resolution (“NPAR”) denying Petitioner’s requests.

a. The NPAR dated May 4, 2023, states the following, in pertinent part:

The reason for the decision was based on the information received. You have requested that the additional 9 hours of direct service worker (DSW) personal care service each week that was denied in your initial request be reconsidered (appeal).

You have several (multiple) medical problems. You do not have trouble making your needs known. You do not have trouble thinking clearly or remembering things. You have a personal emergency response system. You live with [REDACTED]. [REDACTED] helps to care for you and is your direct service worker (DSW). You use a [REDACTED] (chair/bedbound). [REDACTED].

The denial of 9 additional hours of direct service worker (DSW) personal care service each week is being upheld. The hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your 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 49-50.

b. The NPAR dated May 26, 2023, states the following, in pertinent part:

The reason for the decision was based on the information received. You are appealing the denial of the requested 8 hours of homemaker (HMK) and 8 hours of personal care (PC) services each week. You currently receive 14 hours of homemaker PDO and 20 hours of Personal care PDO. You reside with your son and daughter-in-law. You are alert and oriented to person, place, and time. You have multiple medical problems. We have reviewed your documents and assessed your needs. The current hours that you receive are 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.

...

*Id.* at 52.

7. Petitioner also requested a plan appeal for the additional homemaker services.

Respondent issued a NPAR denying Petitioner's requests.

a. The NPAR dated May 26, 2023, states the following, in pertinent part:

The reason for the decision was based on the information received. You are appealing the denial of 19 of the requested 21 hours of direct service worker (DSW) PDO homemaker service each week and 9 of the requested 20 hours of direct service worker (DSW) PDO personal care service each week. You have requested 21 hours of homemaker PDO and were approved with 2 hours of HMK PDO. You also requested 20 hours of personal care PDO and are approved with 11 hours of personal care PDO per week.

You currently receive 8 hours of Personal Care PDO and 7 hours of homemaker PDO per week. You reside with [REDACTED]. You are alert and oriented to person, place, and time. You have multiple medical problems. We have reviewed your documents and assessed your needs. You currently receive 28 hours of PDO per week, which 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.

...

*Id.* at 43-44.

b. The corrected NPAR dated May 30, 2023, states the following, in pertinent part:

The reason for the decision was based on the information received. You have requested that the additional 8 hours of homemaker service each week that was denied in your initial request be reconsidered (appeal).

You have several (multiple) medical problems. You do not have trouble making your needs known. You do not have trouble thinking clearly or remembering things. You have a personal emergency response system.

[REDACTED]. [REDACTED] (DSW). You use [REDACTED]). [REDACTED]  
[REDACTED].

The denial of the additional 8 hours of homemaker service each week is being upheld. The hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your 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 46-47.

8. By letter dated June 9, 2023, Petitioner's primary care nurse, Joy Monica Bouza, ARNP, wrote a letter in support of reconsideration of the service requests. The letter stated, in pertinent part, as follows:

[Petitioner] has been a patient of our office since [REDACTED]

[REDACTED] has a history of [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

...

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

I wrote a letter on May 1, 2023, requesting the re-evaluation. Patient was seen and re-evaluated by Physical therapist and Occupational Therapist from Senior Nannies, and I have reviewed their progress notes.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

...  
See PCE 1 pages 5 - 8.

9. On May 24, 2023, Petitioner requested a Fair Hearing regarding the denial of additional personal care services in AHCA Case Number 23-FH1293 and the denial of additional homemaker

services in AHCA Case Number 23-FH1294. *Id.* at 41. On June 29, 2023, the Office issued a notice, to all parties of record, consolidating both cases and scheduling the consolidated Fair Hearing to be convened by telephone on July 24, 2023, at 10:00 a.m. EST.

10. As Ms. Lee confirmed at Fair Hearing, subsequent to the NPAR and prior to the Fair Hearing, Humana approved Petitioner to receive twenty-eight (28) hours per week of personal care PDO services and fourteen (14) hours per week of homemaker PDO services. Accordingly, as of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: twenty-eight (28) hours per week of personal care PDO services, fourteen (14) hours per week of homemaker PDO services, a personal emergency response system, and monthly incontinence supplies. *Id.* at 261, 276 – 277.

11. On July 24, 2023, the Fair Hearing convened with the Petitioner’s Authorized Representative and Respondent in attendance. On the record, Petitioner’s Authorized Representative withdrew the Fair Hearing request for personal care PDO services under case 23-FH1293. As the Fair Hearing request for personal care PDO services was withdrawn, the undersigned proceeded with the remaining issue under case 23-FH1293 regarding additional personal care services, and the remaining issues under case 23-FH1294 regarding homemaker PDO services and homemaker services.

12. [REDACTED] testified at the Fair Hearing as follows:

- a. [REDACTED] asserts that the Petitioner requires additional care due to [REDACTED] declining health, following a [REDACTED]. Petitioner is [REDACTED]. Petitioner needs [REDACTED]. Petitioner is [REDACTED].

[REDACTED]  
[REDACTED]  
[REDACTED]

- b. [REDACTED] argues that the additional hours would be used mainly for [REDACTED] – and to assist with ADLs.

Petitioner is unable to [REDACTED]

[REDACTED]. Petitioner [REDACTED]

[REDACTED]. [REDACTED] asserts that there is a safety concern with Petitioner being home alone and would be unable to evacuate in case of an emergency.

- c. [REDACTED] contends that Petitioner is alone throughout day and at night.

[REDACTED] contends that Petitioner's nurse's notes support a need for additional care. See ¶ 8.

- d. [REDACTED] currently live with the Petitioner, and are both approved as Petitioner's direct service workers. [REDACTED]

[REDACTED] both have full-time employment outside of the home, each working about 40 hours per week.

13. Dr. Sherman testified at the Fair Hearing as follows:

- a. Based on his review of Petitioner's need for assistance with ADLs and IALDs and natural support in the home, Dr. Sherman contends that Petitioner's currently authorized services should be sufficient to meet Petitioner's needs.

- b. Dr. Sherman asserted that the additional homemaker services and personal care services are in excess of Petitioner’s needs.

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

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

16. Because Petitioner is requesting new services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

17. 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 her 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

...

### **4.2.1 Home and Community-Based Supportive Services**

The LTC program benefit includes coverage of the following home and community-based supportive services:

#### **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.

### **4.2.2 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).

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:

**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. (Emphasis added).

19. 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>	
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.	15–30 minutes day for all monitoring tasks performed

PC Policy at pages 3 – 8, and 10.

### **Personal Care Services**

20. In the instant case, Petitioner initially requested an additional eight (8) hours per week of personal care (traditional) services. See ¶ 5 – 6. As established on the record by the evidence and testimony, Respondent denied the additional personal care services as not medically necessary. See ¶ 5, 6. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. See ¶ 16.

21. 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* ¶ 17. 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* ¶ 18.

22. Petitioner is authorized to receive the following Florida Medicaid LTC services: twenty-eight (28) hours per week of personal care PDO services, fourteen (14) hours per week of homemaker PDO services, a personal emergency response system, and monthly incontinence supplies. *See* ¶ 10.

23. Petitioner has multiple medical conditions, including primary osteoarthritis of both hips, high blood pressure, high cholesterol, frequent dizziness, frequent bladder incontinence, occasional bowel incontinence, partial paralysis, unsteady gait, syrinx of spinal cord, pain in right legs (bilateral), weakness in both lower extremities, macular degeneration, and vitamin D deficiency. *See* ¶ 2. Petitioner suffered a stroke in March of 2023, and is wheelchair bound. *See* ¶ 2. Regarding ADLs, Petitioner needs total assistance (cannot do at all) with using the bathroom, transferring, and walking/mobility. *See* ¶ 3. Petitioner needs assistance (but not total help) with bathing and dressing. *Id.* Petitioner needs supervision or prompt for eating. *Id.* Petitioner uses an assistive device for bathing, transferring, and walking/mobility. *Id.* Regarding IADLs, Petitioner needs total assistance (cannot do at all) with all IADLs, except using the telephone. *See* ¶ 3.

24. Petitioner resides in the home with [redacted] son and daughter-in-law. *See* ¶ 12. Petitioner’s [redacted] and direct service worker, [redacted], has full-time employment. *See* ¶ 12.

25. The evidence presented in this case does not reflect that Petitioner needs an additional eight (8) hours per week of personal care services at this time. Petitioner's currently authorized 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. It is clear from the record that Petitioner has multiple medical issues which compromise [REDACTED] ability to perform ADLs and IADLs. See ¶ 2 – 3, 8, 12. Although the PC Policy provides general guidance for general allowances for ADLs, *supra* ¶ 19, Petitioner did not introduce any evidence (e.g., a daily routine schedule, a schedule of the amount of time needed for each ADL and IADL) to justify the approval of an additional eight (8) hours of personal care services per week. Petitioner's daughter-in-law and direct service worker, [REDACTED], testified that Petitioner's health has declined since suffering a stroke in March of 2023. See ¶ 12. [REDACTED] argues that the currently approved hours are insufficient to meet Petitioner's needs and Petitioner is alone throughout the day. See ¶ 12. [REDACTED] argues that the additional hours would be used mainly for preparing meals – breakfast, lunch, and dinner – and to assist with ADLs. See ¶ 12. Moreover, [REDACTED] testified to a safety concern with Petitioner being left alone in the home and would be unable to evacuate in the case of an emergency. See ¶ 12. Dr. Sherman testified that the responses from the 701B, dated June 9, 2023, were used to determine the number of hours of medically necessary care Petitioner requires. See ¶ 2, 3, 13. In consideration of Petitioner's needs with ADLs and IADLs and to address Petitioner's worsened medical condition, Dr. Sherman contended that Respondent authorized Petitioner's current LTC services. See ¶ 13.

26. Petitioner introduced a letter from [redacted] primary care nurse Joy Monica Bouza, ARNP, stating that “[b]ased on my knowledge of [Petitioner’s] health and wellbeing, [redacted] needs assistance with house chores, shopping, and making meals. [redacted] will also need help with transfers, bathing, dressing, and toileting.” See ¶ 8. Further, the letter stated “[Petitioner] needs HHA daytime and nighttime to assist with ADLs/IADLs due to limited family support available.” See ¶ 8. 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. Therefore, a letter from Ms. Bouza does not, in itself, make the requested additional services medically necessary. [redacted] testimony that [redacted] and [redacted] husband work full-time align with Ms. Bouza’s letter in that Petitioner is alone throughout the day although [redacted] requires assistance. See ¶ 12. The letter appears to support the information taken from the 701B to demonstrate Petitioner’s limited abilities due to [redacted] medical conditions. In fact, to address safety concerns, the letter acknowledges that Petitioner “has personal emergency response system that [redacted] can use when alone and in state of emergency.” See ¶ 8. All in all, neither Petitioner nor Petitioner’s primary care nurse specifically point out how the currently approved services are insufficient and exposes any unmet needs. Accordingly, the undersigned does not find the Petitioner provided persuasive evidence to demonstrate the medical necessity of the additional personal care services.

27. Considering the totality of Petitioner’s circumstances, including [redacted] diagnoses, level of assistance for ADLs and IADLs, amount of currently approved services, and caregiver status, Petitioner failed to prove by a preponderance of the evidence that an additional eight (8) hours per week of personal care services are not “in excess of Petitioner’s needs.” See ¶ 16.

28. 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 eight (8) 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.

### **Homemaker Services**

29. In the instant case, Petitioner also requested an additional eight (8) hours per week of homemaker services and twenty-one (21) hours per week of homemaker PDO services. *See* ¶ 4, 5. Respondent approved an additional fourteen (14) hours per week of homemaker PDO services while denying the remaining seven (7) hours per week. *See* ¶ 7. Respondent determined that the eight (8) hours per week of homemaker services and the seven (7) hours per week of homemaker PDO services were not medically necessary because the services are in excess of Petitioner's needs. *See* ¶ 7. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 16.

30. 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* ¶ 17. Section 4.2.1.9 of the LTC Policy defines homemaker services as 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* ¶ 17.

31. The record reflects that additional homemaker services are not warranted under the circumstances of this case. Petitioner is authorized to receive the following Florida Medicaid LTC services: twenty-eight (28) hours per week of personal care PDO services, fourteen (14) hours per week of homemaker PDO services, a personal emergency response system, and monthly incontinence supplies. See ¶ 10. Petitioner resides in the home with [redacted] son and daughter-in-law. See ¶ 12. Petitioner's [redacted], works full-time outside of the home. See ¶ 12. Regarding ADLs, Petitioner needs total assistance (cannot do at all) with using the bathroom, transferring, and walking/mobility. See ¶ 3. Petitioner needs assistance (but not total help) with bathing and dressing. *Id.* Petitioner needs supervision or prompt for eating. *Id.* Petitioner uses an assistive device for bathing, transferring, and walking/mobility. *Id.* Regarding IADLs, Petitioner needs total assistance (cannot do at all) with all IADLs, except using the telephone. See ¶ 3.

32. At the Fair Hearing, [redacted] explained that that the additional hours would be used mainly for preparing meals – breakfast, lunch, and dinner – and to assist with ADLs. See ¶ 12. [redacted] further stated the Petitioner is unable to prepare or heat meals since [redacted] is unable to stand on own. See ¶ 12. Petitioner is wheelchair bound. See ¶ 2, 8, 12. Dr. Sherman provided testimony that the authorized services are sufficient to meet Petitioner's needs. See ¶ 13. No additional evidence was presented by Petitioner as to how the additional homemaker hours specifically would be utilized to meet Petitioner's IADLs, if approved in this matter. To illustrate, [redacted] did not explain the amount of time Petitioner requires for [redacted] IADLs. Further, Petitioner provided no evidence to justify the approval of the additional homemaker services per week where the currently authorized hours are insufficient. As previously discussed, Petitioner

did not introduce sufficient evidence to identify the unmet needs with the currently authorized services.

33. As Petitioner did not present additional evidence on this issue, Petitioner did not establish by a preponderance of the evidence that the eight (8) hours per week of homemaker services and the seven (7) hours per week of homemaker PDO services are not in excess of Petitioner's needs at this time. Therefore, it was not proven that eight (8) hours per week of homemaker services or seven (7) hours per week of homemaker PDO services are medically necessary.

34. In light of both parties' testimony and evidence, and the LTC Policy, the undersigned Hearing Officer finds that Petitioner failed to meet [REDACTED] burden of proving that an additional eight (8) hours per week of homemaker services and seven (7) hours per week of homemaker PDO 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 homemaker services was incorrect.

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

Respondent's denial of additional personal care PDO services is **WITHDRAWN**.

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

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

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



Kimberly Roche  
23-FH1293 & 23-FH1294  
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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**

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**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**

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Tallahassee, FL 32308  
Voice: (850) 412-3661  
TTY: (800) 955-8771



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