

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



FILED

Sep 01, 2023, 4:33 pm  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1296

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on June 22, 2023, at 1:00 p.m. Eastern Standard Time.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantal Pierre  
Clinical Appeals Coordinator  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's homemaker services was correct.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative, [REDACTED]

[REDACTED] appeared on behalf of Petitioner.

Chantal Pierre, 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 Respondent: Dr. John Carter (“Dr. Carter”), Senior Long Term Care Medical Director for Sunshine Health; Agaitha Durr, Long Term Care Coordinator Case Management for Sunshine Health; Monique Blissepp, Long Term Care Coordinator for Sunshine Health; and Jacqueline Alvarez, Long Term Care Supervisor for Sunshine Health.

Sandra Durden, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-seven (127)-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 twenty-seven (127)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Petitioner did not submit any documentary evidence to the Office of Fair Hearings and Respondent.

### **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] at the time of the present hearing. *Id.* at 13. Petitioner lives with [REDACTED], who is [REDACTED] direct service worker (“DSW”) under the participant

directed option (“PDO”) program. *Id.* at 67. Petitioner currently receives seventeen (17) hours a week of personal care services and eight (8) hours a week of homemaker services. *Id.* at 95. Through another provider, USA Home Health Services, Petitioner received [REDACTED]

[REDACTED]

3. Petitioner is presently diagnosed with [REDACTED]  
[REDACTED]  
[REDACTED].

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated January 31, 2023, (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: for [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED] Petitioner needs supervision or prompting; for using the bathroom, transferring, and walking/mobility, Petitioner uses assistive devices. *Id.* at 67. Petitioner always has assistance with [REDACTED] ADLs. *Id.*

5. As provided in the 701B, Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: for [REDACTED]  
[REDACTED], Petitioner needs total assistance (cannot do at all); [REDACTED], Petitioner needs no assistance; [REDACTED], Petitioner needs assistance (but not total help). *Id.* at 68. Petitioner always has assistance for [REDACTED] ADLs, [REDACTED], for which [REDACTED] needs no assistance. *Id.*

6. In the Notice of Adverse Benefit Determination (“NABD”), dated May 4, 2023, Respondent reduced Petitioner’s homemaker services from thirteen (13) hours per week to eight (8) hours per week, starting May 18, 2023. 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: We received your request to continue to receive 13 hours of homemaker services in the home each week. This request was denied because the information provided does not support that this level of care is required to manage your medical condition(s). You do not live alone. Homemaking hours are for hands-on help with your personal needs for light housekeeping, shopping, preparing meals and other instrumental activities of daily living. Your caregiver is able to assist with shared household tasks. The homemaker hours will be decreased to 8 hours each week. This is appropriate to meet your needs. The decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Pages 4 – 5 of RCE 1.

7. Petitioner requested an expedited plan appeal on May 15, 2023. *Id.* at 81. On May 16, 2023, Sunshine Health issued a Notice of Plan Appeal Resolution (“NPAR”), upholding the decision to reduce Petitioner’s homemaker services. *Id.* at 86 – 89. The NPAR explained as follows:

The reason for our decision was based on medical necessity. The appeal to overturn the reduction of 5 hours per week of Homemaker Services is denied for lack of medical necessity. 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 17 hours per week of Personal Care Services and 8 hours per week of Homemaker Services. The member only needs some, not total assistance with [REDACTED] personal care needs. The member receives 17 hours per week of Personal Care Services which can be used to assist with household tasks. 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 Board Certified Physician in Internal Medicine.

*Id.* at 86.

8. On May 30, 2023, Petitioner requested Fair Hearings to challenge the denial of homemaker services. On June 6, 2023, the undersigned issued an Order Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 22, 2023, at 1:00 p.m. EST.

9. Dr. Carter is a Medical Director for Sunshine Health. Dr. Carter's testimony established the facts that Petitioner has been a member of Sunshine Health on the Long-Term Care Ancillary Service Criteria Policy ("Sunshine Health LTC Policy") for over five (years), having [REDACTED] case monitored for years because of [REDACTED] multiple medical problems. Dr. Carter explained that being a member of Sunshine Health LTC Policy means there is on going Assessment: the Health plan is expected to periodically assess and review member's condition and plan of care. Dr. Carter noted that Petitioner lives with [REDACTED] DSW under the PDO program. Dr. Carter contends that Petitioner's homemaker services were correctly reduced from thirteen (13) hours to eight (8) hours per week because the additional five (5) hours were not medically necessary. Referring to the 701B assessment, Dr. Carter pointed out that homemaker services are provided for general household activities, such as [REDACTED] by a trained

homemaker. Petitioner's IADLs needs, such as [REDACTED], are assisted [REDACTED], who lives with [REDACTED]. Dr. Carter contended that under the Long-Term Care Ancillary Service Criteria, a member's natural supports, such as family that [REDACTED] lives with, are expected to provide some support. Dr. Carter referred to the tables listed in the Policy that estimate how many minutes (rounded up) are used to accomplish a member's IADLs. *Id.* at 113 – 114. Dr. Carter concluded that eight (8) hours of homemaker services each week, together with seventeen (17) hours of personal care services a week, are medically adequate for Petitioner's IADL needs.

10. [REDACTED] testified that [REDACTED] goal is to keep [REDACTED] at home while providing services to [REDACTED]. [REDACTED] further testified that [REDACTED] has special concerns in that [REDACTED] has a [REDACTED] that [REDACTED]. Petitioner currently takes [REDACTED]. [REDACTED] explained that [REDACTED], as DSW to Petitioner, must keep the house extremely clean, to extraordinary measures, in order to prevent infection. [REDACTED] testified that there are no other residents in the home and [REDACTED] is on call day and night in case Petitioner needs attendance. [REDACTED] further testified that [REDACTED] must make frequent trips to the pharmacy because Petitioner's list of daily medications is extensive; [REDACTED] must administer the medications to [REDACTED]. [REDACTED] contends that [REDACTED] does not know the distinction between the personal care services and homemaker services that [REDACTED] DSW.

11. 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, which states, in pertinent part, as follows:

**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.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

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

See Section 2 for more details

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 living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area.
- The entire size of the home may be considered if cleaning of specific areas not used by the member is needed to maintain sanitary living conditions.
- 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' ability to obtain groceries, household goods, and medications on their own
- Member's ability to put away groceries, household goods, and medications on their own
- 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

Pages 111 – 112 of RCE-1. The following is the LTC Policy Homemaker Service Determination Table:

Support needed for housekeeping:

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

- Lives alone and is able to provide own housekeeping: 0 minutes
- Lives alone and needs minimum to maximum support of outside assistance for some housekeeping: 15-120 min/week
- 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
- Has informal supports who provide all of member's housekeeping: 0 minutes
- Has informal supports who provide a minimum or moderate amount of the member's housekeeping: 15- 90 minutes/week
- Member requires maximum support for housekeeping: up to 120 minutes/week

Support needed for shopping:

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

- Lives alone and is able to provide own shopping: 0 minutes
- Lives alone and needs minimum to maximum support of outside assistance for some shopping: 15-90 min/week
- 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
- Has informal supports who provide all of member's shopping: 0 minutes
- Has informal supports who provide a minimum or moderate amount of the member's shopping: 15- 75 minutes/week
- Member requires maximum support for shopping: up to 90 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 alone and is able to provide own laundry: 0 minutes
- Lives alone and needs minimum to maximum support of outside assistance for laundry : 15-120 min/week
- 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.

Pages 113 – 114 of RCE-1.

### **CONCLUSIONS OF LAW**

12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

14. 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.

15. In the instant case, Respondent reduced existing services. As such, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.)

16. The Long Term Care (LTC) Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs LTC 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)

...

#### **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 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

...

##### **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.

...

#### **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.

17. The LTC Policy also addresses the medical necessity for services:

##### **1.3.14 Medically Necessary or Medical Necessity**


For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or  choice.

18. The Florida Medicaid program determines the amount or necessity for services based on the State of Florida's published definition of medical necessity. 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 severe pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide

- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

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

19. In this case, Respondent reduced Petitioner's homemaker services from thirteen (13) hours to eight (8) hours a week because they were not medically necessary. In the NABD, Respondent denied Petitioner's request to continue receiving thirteen (13) hours a week of homemaking services, which denial was upheld in the NPAR. See supra ¶ 6, 7.

20. 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." In regards to IADLs, Petitioner needs total assistance (cannot do at all) for heavy chores, light housekeeping, managing money, preparing meals, and shopping; Petitioner needs no assistance for using the telephone; and Petitioner needs some assistance (but not total help) for managing medication and using transportation. Petitioner always has assistance for ADLs, except for using the telephone, for which needs no assistance. See supra ¶ 5.

21. Respondent bears the burden of proof to show that Respondent correctly reduced Petitioner's homemaker services from thirteen (13) hours per week to eight (8) hours per week. Respondent has shown that, under the Sunshine Health LT Policy, the homemaker service determination table sets forth the time allotted for each homemaker task provided to a member. See supra ¶ 11. At the Fair Hearing, Dr. Carter explained that based on the 701B review, eight (8) hours of homemaker services is more than adequate to meet the medical necessity criteria,

considering that Petitioner lives with family who share in the household activities, and that [REDACTED] also receives seventeen (17) hours of personal care services per week. See supra ¶ 5, 6, 9.

22. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of the evidence that Respondent's reduction of Petitioner's homemaker services was correct.

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

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 1st day of September, 2023, in Tallahassee, Leon County, Florida.



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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:**



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

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