

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



FILED

Sep 05, 2023, 2:52 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1401

[REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on August 1, 2023, at 9:01 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Christian Pacheco  
Senior Director of Quality Improvement  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional five (5) hours per week of personal care services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. [REDACTED] Petitioner's Authorized Representative and adult [REDACTED] r, appeared on Petitioner's behalf. [REDACTED] [REDACTED] Petitioner's adult [REDACTED], attended as a witness for Petitioner.

Christian Pacheco, Senior Director of Quality Improvement for Sunshine State Health Plan, Inc. ("Sunshine Health") appeared on behalf of Respondent. Dr. John Carter ("Dr. Carter"), Long-Term Care Medical Director for Sunshine Health, attended as a witness for Respondent. Diana Fuentes, Care Coordinator for Sunshine Health, attended as a witness for Respondent. Kasa Marine, Utilization Management for Sunshine Health, attended as a witness for Respondent. Lauren Greenwald, Utilization Management for Sunshine Health, attended as a witness for Respondent. Cynthia Morisaji, Supervisor for Long Term Care for Sunshine Health, attended as a witness for Respondent.

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

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent an nine (9)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as "23-FH1401 Supporting Evidence.pdf." Absent an objection from the Respondent, the undersigned admitted the nine (9)-page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-seven (127)-page evidence packet. The evidence appears in the Office of Fair Hearings' document management system as "MFH Packet [Petitioner's Last Name].pdf".

Absent an objection from Petitioner, the undersigned admitted the one hundred and twenty-seven (127)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine Health. See RCE 1 at page 2. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] *Id.* at 45. [REDACTED] lives alone in a private residence. *Id.* Petitioner’s [REDACTED] reside in Florida but in different cities and/or counties and assist Petitioner when they can. *Id.* at 61. Petitioner has [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] *Id.* at 51 – 52.

3. [REDACTED] provided answers for the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment”), dated April 6, 2023. As provided in the 701B Assessment, Petitioner needs the following assistance with her activities of daily living (“ADLs”): needs assistance (but not total help) with [REDACTED]; uses assistive device for using the [REDACTED] and needs no assistance with eating. *Id.* at 49. Petitioner always has assistance with [REDACTED]  
[REDACTED] *Id.* Petitioner needs no assistance with eating. *Id.*

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

[REDACTED] and needs no assistance with using the telephone. *Id.* at 50. Petitioner always has assistance with [REDACTED]

[REDACTED]; and needs no assistance with using the telephone. *Id.*

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

Member has one [REDACTED] [REDACTED] lives in Weston, Florida and visits member 2-3 [times] a week. [REDACTED] provides most of the assistance member needs. [REDACTED] transports and attend[s] medical appointments with member. [REDACTED] provides supervision and companionship during the weekend. [REDACTED] manages member's medications at this time. [REDACTED] works full time and has other family responsibilities.

Member[s] [REDACTED] travels as past of [REDACTED] employment and is limited to the time available to assist member. When he is home, he stays with member and provides some support as managing the medications. Member's [REDACTED] travels 2-3 months at a time and stays home for approximately a week then leaves again for work. Member's other [REDACTED] William, lives in Hollywood Florida and is reported to provide very little assistance but does visit occasionally or has member visit [REDACTED] on the weekend.

RCE 1 at 61.

6. Petitioner requested an additional five (5) hours per week of personal care services. In the Notice of Adverse Benefit Determination ("NABD"), Respondent denied Petitioner's request as of April 11, 2023. *Id.* at 4 – 8. The NABD explained the basis of the decision as follows:

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

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;

2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

...

- Other Authority

...

The facts that we used to make our decision are:

The request for an extra 5 hours per week of Personal Care Services and an extra 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 14 hours per week of Personal Care Services and 6 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR"), dated May 18, 2023, upholding the denial of additional personal care services. *Id.* at 87 – 90. The NAPR states, in pertinent part:

On 05/04/2023 we received your timely plan appeal request Sunshine Health's Notice of Adverse Benefit Determination dated 04/11/2023, Notice of Adverse Benefit Determination Number OPF70003390, denying the service to be provided to [Petitioner].

On 05/17/2023, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [Petitioner] will not receive the request for an extra 5 hours per week of Personal Care Services and an extra 5 hours per week of Homemaker Services, effective 05/17/2023.

The reason for our decision was based on medical necessity. On appeal the request for an extra 5 hours per week of Personal Care Services and an extra 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 14 hours per week of Personal Care Services and 6 hours per week of Homemaker Services. The prior decision is upheld. 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.

8. On June 6, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On July 10, 2023, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 1, 2023, at 9:00 a.m. EST.

9. Petitioner's authorized representative and adult [REDACTED], testified as follows:

- a. Petitioner lives alone because that is what [REDACTED] wants, because change upsets [REDACTED] because [REDACTED] is in good physical health, and because [REDACTED] wants to be independent.
- b. Petitioner's adult [REDACTED] all [REDACTED] and help out when they can.
- c. [REDACTED] stated she would welcome Petitioner into her home, but all the bedrooms are upstairs and the home has seventeen (17) stairs.
- d. Petitioner requires more supervision and assistance for [REDACTED] ADLs because the level of care takes a little bit more time. The care plan states 15 minutes of walking but Petitioner walks almost a mile each day using [REDACTED] walker.
- e. Petitioner has been told by a doctor or other health care professional that [REDACTED] suffers from [REDACTED]

[REDACTED] See RCE 1 at 66.

- f. [REDACTED] read from a letter provided by Petitioner's doctor, Janelis Gonzalez, MD. The letter states, in pertinent part:

[Petitioner] was seen in my clinic on 7/18/23. [Petitioner] has a diagnosis of [REDACTED] which was made in 10/2021 by neurology, however during [REDACTED] visit with me, it is clear that [REDACTED] has progressed and she now requires more assistance with ADLs and IADLs than [REDACTED] during [REDACTED] last neurologic evaluation.

...

Given the above impairments, patient requires closer monitoring and additional assistance at home. I recommend [REDACTED] have [REDACTED] health hours extended to allow for closer monitoring and care given [REDACTED] worsened cognitive impairment.

See PCE 1 at 2.

10. Dr. Carter is a Long-Term Care Medical Director for Sunshine Health. Dr. Carter testified as follows:

- a. The medical directors used information from the case manager's assessment (701B Assessment).
- b. Petitioner does live alone in the Dade County community and on occasion one of the member's [REDACTED] stays with [REDACTED] for short amounts of time.
- c. Petitioner suffers from [REDACTED]  
[REDACTED].
- d. Petitioner's present care plan for approved services includes twenty (20) hours per week of combined services: fourteen (14) hours per week of personal care services and six (6) hours per week of homemaker services.
- e. Dr. Carter reviewed portions of the LTC (Long Term Care) Ancillary Service Criteria Policy and explained that the medical directors have considered that Petitioner essentially lives alone. Dr. Carter also explained that personal care services are

services that provide assistance with [REDACTED]

- f. Dr. Carter reviewed Petitioner's ADLs and IADLs.
- g. The health plan reviewed Petitioner's reported functioning, the family supports that exist for Petitioner, and the presently approved home services, and continues to believe that the denial of the request for the additional five (5) hours of personal care services is appropriate at this time.

11. In making its determination, Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09, which states in pertinent part as follows:

**6. Personal Care Services**

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

RCE 1 at 117 – 118.

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

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

**1. Description and Program Goal**

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

...

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

ADLs include:

- Bathing

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

...

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

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

### **4.1 General Criteria**

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

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

...

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

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

...

#### **4.2.2.6 Personal Care**

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

...

### **6.2 Specific Criteria**

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

SMMC LTC Policy at pages 1 – 8.

16. The LTC Policy also provides the following regarding medical necessity:

1.3.14 Medically Necessary or Medical Necessity

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

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

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

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

And, one of the following:

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

LTC Policy at pages 2 – 3.

17. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

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

Definitions Policy at page 7.

18. Petitioner requested an additional five (5) hours per week of personal care services. *See supra* ¶ 6. The additional personal care services were denied based on medical necessity. *See supra* ¶ 6, 7. Respondent explained that Petitioner's request was not medically necessary based on the information provided but did not specify which of the five medical necessity criteria Petitioner's request failed to meet. *Id.*

19. Section 4.1 of the SMMC 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 SMMC LTC Policy. *See supra* ¶ 16. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701B Comprehensive Assessment and the LTC Supplemental Assessment. *Id.*

20. The evidence presented reflects that Respondent’s denial of an additional five (5) hours per week of personal care services is warranted under the circumstances of this case. As provided in the SMMC LTC Policy, personal care is to provide “assistance with ADLs and IADLs, including [REDACTED] which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” See supra ¶ 16. The record reflects that Petitioner lives alone in a private residence and has family that visits [REDACTED]. See supra ¶ 2, 5, 9 and 10. With regard to ADLs, Petitioner needs assistance (but not total help) with [REDACTED]; and needs no assistance with eating. See supra ¶ 3. The 701B Assessment states that Petitioner always has assistance with [REDACTED] and needs no assistance with eating. See supra ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED] needs assistance (but not total help) with [REDACTED] and needs no assistance with using the telephone. See supra ¶ 4. The 701B Assessment states that Petitioner always has assistance with [REDACTED]; and needs no assistance with using the telephone. See supra ¶ 4. Petitioner currently receives fourteen (14) hours of personal care services and six (6) hours of homemaker services each week for a total of twenty (20) hours of care. See supra ¶ 6 and 7.

21. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PCS Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215,

provides general guidance concerning the time allotted for personal care tasks. [REDACTED] testified that Petitioner requires more supervision and assistance for [REDACTED] ADLs because the level of care takes a little bit more time. See supra ¶ 9. However, Petitioner provided no time estimates for each ADL or IADL to explain the amount of time Petitioner requires for [REDACTED] ADLs or IADLs. Allotting thirty (30) minutes of time for each of Petitioner's ADLs ([REDACTED] [REDACTED]) and taking into account Petitioner's medical conditions, the current fourteen (14) hours of personal care services appear to be reasonable. Further, Petitioner did not explain how the requested additional hours of personal care services would be utilized to meet Petitioner's hands on care needs if approved in this matter. Given the fact that Petitioner already has personal care services to assist with [REDACTED] ADLs and IADLs, Petitioner has not established that [REDACTED] currently authorized services are insufficient to meet [REDACTED] personal care needs.

22. [REDACTED] testified that Petitioner is in need of the requested additional personal care services because [REDACTED] lives alone. However, [REDACTED] also testified that Petitioner lives alone because that is what [REDACTED] wants, because change [REDACTED], because [REDACTED] is in good physical health, and because [REDACTED] wants to be independent. See supra ¶ 9. Based on this testimony, the request for additional personal care hours corresponds more with adult companion care services, which are defined as 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." See supra ¶ 15.

23. [REDACTED] testified that the additional hours of personal care services were requested because Petitioner's doctor recommended that Petitioner should have [REDACTED] home health hours


extended. See supra ¶ 9. However, the fact that a provider prescribed, recommended, or approved medical or allied care, goods, or services does not, itself, make such care, goods, or services medically necessary or a medical necessity or a covered service. See supra ¶ 17.

24. Therefore, upon consideration of the testimony provided, Petitioner’s Composite Exhibit 1, Respondent’s Composite Exhibit 1, and the applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of an additional five (5) hours per week of personal care services was incorrect.

**DECISION**

Respondent’s denial of an additional five (5) hours per week of personal care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial in this matter is **DENIED**.

**DONE AND ORDERED** this 5th day of September, 2023 in Tallahassee, Leon County, Florida.

 Kameisha Presley  
23-FH1401  
2023.09.05  
11:35:09 -04'00'

---

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

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**COPIES FURNISHED TO:**



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

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