



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

**FILED**

Nov 15, 2023, 1:15 pm  
OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1432

Plan ID No.: [Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1433

Plan ID No.: [Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1434

Plan ID No.: [Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the Office of Fair Hearings (“OFH”) convened a telephonic Medicaid Fair Hearing in the above styled consolidated case on November 1, 2023, at 2:00 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner: [REDACTED]  
Authorized Representative

For the Respondent: Markeshi Lee  
Appeals and Fair Hearing Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUES**

The first issue in this matter is whether the Respondent proved by a preponderance of the evidence that the Respondent’s reduction of eleven (11) hours of personal care services per week (Case No. 23-FH1432) was correct.

The second issue in this matter is whether the Respondent proved by a preponderance of the evidence that the Respondent’s termination of seven (7) home delivered meals per week (Case No. 23-FH1433) was correct.

The third issue in this matter is whether the Respondent proved by a preponderance of the evidence that the Respondent’s termination of three (3) hours of adult companion care services per week (Case Number 23-FH1434) was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] the Petitioner’s [REDACTED] and designated Authorized Representative appeared and testified on behalf of the Petitioner.

Markeshi Lee, Humana Medical Plan, Inc., (“Humana”), Appeals and Fair Hearing Specialist appeared at the hearing and represented Respondent. Dr. Avra Bowers, Humana Medical Director (“Dr. Bowers”), provided testimony on behalf of the Respondent. Translator

Cody, Identification Number 401448 provided Spanish translation services during the Fair Hearing.

Suzanne Chillari, Medical Healthcare Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes.

Prior to the hearing, Petitioner submitted a three hundred and twenty-five (325)-page evidence package that was admitted into evidence over the Petitioner’s objection that the documents contained outdated information, is identified as “Respondent’s Composite Exhibit 1”, and is recorded in the OFH document management system as follows: “Evidence Packet [Petitioner]\_Part 1.pdf”; “Evidence Packet [Petitioner]\_Part 2.pdf”; “Evidence Packet [Petitioner]\_Part 3.pdf”; “Evidence Packet [Petitioner}\_Part 4.pdf”; “Evidence Packet [Petitioner]\_Part 5.pdf”; “Evidence Packet [Petitioner]\_Part 6.pdf”; and “Evidence Packet [Petitioner]\_Part 7.pdf”.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana’s LTC plan. See Respondent’s Composite Exhibit 1, page 1. Humana is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. As of the time of the hearing, Petitioner is a [REDACTED]. See Respondent’s Composite Exhibit 1, page 85. The Petitioner’s [REDACTED] is the Direct Services Worker (“DSW”) under the Participant Direction Option (“PDO”) program and Authorized Representative that is the principal caregiver for the Petitioner and stays [REDACTED] in the Petitioner’s home. Respondent’s Composite Exhibit 1, page 99 and *testimony of* [REDACTED]

3. Petitioner has the following health conditions: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] See Respondent’s Composite Exhibit 1, pages 90 – 93. During the past year, the Petitioner has [REDACTED]  
[REDACTED].

See Respondent’s Composite Exhibit 1, pages 77 and 87 – 88. In addition, both the Florida Department of Elder Affairs 701B Comprehensive Assessment, dated March 27, 2023, which is the most recent 701B on the record (“701B”) and the testimony of the Authorized Representative reflect the Petitioner does not get lost or wander off. See Respondent’s Composite Exhibit 1, page 94 and *testimony of the Authorized Representative*.

4. The 701B, reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”). Petitioner needs total assistance (cannot do at all) with b [REDACTED], and some assistance (but not total help) with [REDACTED]. See Respondent’s Composite Exhibit 1, page 88-89. The 701B further reflects that the Petitioner uses assistive devices for [REDACTED]. See Respondent’s Composite Exhibit 1, page 89. Finally, the 701B Assessment states that the Petitioner always has assistance when [REDACTED], and has assistance most of the time with [REDACTED] *Id.* The Petitioner’s primary caregiver, who also serves as the Authorized Representative in this matter was present and provided answers to the case manager when the 701B annual assessment was performed on-site at the Petitioner’s home. See Respondent’s Composite Exhibit 1, page 85. The Petitioner’s Authorized Representative testified

that at the current time, the Petitioner needs total assistance with [REDACTED] the ADLs. *Testimony of the Authorized Representative.*

5. Regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), the 701B reflects that Petitioner needs total assistance (cannot do at all) with [REDACTED]  
[REDACTED]  
[REDACTED]. See Respondent’s Composite Exhibit 1, pages 89. The 701B reflects the Petitioner always has assistance in performing [REDACTED] IADLs. *Id.* The Petitioner’s primary caregiver, who also serves as the Authorized Representative in this matter was present and provided answers to the case manager when the 701B annual assessment was performed on-site at the Petitioner’s home. See Respondent’s Composite Exhibit 1, page 85. The Petitioner’s Authorized Representative, who also serves as the principal caregiver, testified that at the current time, the Petitioner needs total assistance with using the telephone. *Testimony of the Authorized Representative.*

6. The Petitioner is currently authorized to receive the following home and community-based services from the Respondent: twenty-one (21) hours of PDO personal care services per week, seven (7) hours of PDO homemaker services per week, and seven (7) home delivered meals per week. See Respondent’s Composite Exhibit 1, page 114-115 and *Testimony of Dr. Bowers.*<sup>1</sup>

7. On April 3, 2023, the Respondent issued three (3) Notices of Adverse Benefit Determinations (“NABDs”) reducing the Petitioner’s previously approved PDO personal care services hours from thirty-two (32) hours per week to twenty-one (21) hours per week, a

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<sup>1</sup> On October 23, 2023, the Respondent authorized the resumption of seven (7) home delivered meals per week, effective October 23, 2023, and an additional two (2) hours of homemaker services per week, effective November 1, 2023. *Testimony of Dr. Bowers.*

reduction of eleven (11) hours per week (Case Number 23-FH1432), terminating seven (7) home delivered meals per week (Case Number 23-FH1433), and terminating three (3) hours per week of adult companion care (Case Number 23-FH1434). See Respondent's Composite Exhibit 1, pages 22-29, pages 14-21, and pages 6-13 respectively. Each of the April 3, 2023, NABDs stated the following reasons for Respondent's reduction of the personal care services as follows:

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



Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR

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:

- 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; and
- 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**

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan's approved review criteria and guidelines.

You currently receive 5 hours of direct service worker (DSW) homemaker service

each week; 32 hours of direct service worker (DSW) personal care service each week; 3 hours of direct service worker (DSW) adult companion care each week; and 7 home delivered meals each week. The services and items you receive are reviewed on a regular basis. The review is based on your current medical status.

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 live with [REDACTED]. Your [REDACTED] helps to care for you. Your one [REDACTED] is your direct service worker (DSW). You use a [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

The services, 7 home delivered meals each week and 3 hours of direct service worker (DSW) adult companion care each week, are being terminated. The homemaker service aides are able to assist you with general household activities like basic meal preparation. You also receive food stamps. You live with others who should be able to meet your companionship needs.

Your direct service worker (DSW) personal care service is being decreased to 21 hours each week. These hours should be enough to meet your needs and can be divided into shifts to better meet your needs.

*Id.*

8. The Petitioner timely requested an appeal of the Respondent's the reduction of PDO personal care services hours from thirty-two (32) hours per week to twenty-one (21) hours per week, a reduction of eleven (11) hours per week (Case Number 23-FH1432). See Respondent's Composite Exhibit 1, pages 37-42. On May 31, 2023, the Respondent sent the Petitioner a Notice of Plan Appeal Resolution ("NPAR") letter in Case Number 23-FH1432 upholding the reduction of PDO personal care services hours from thirty-two (32) hours per week to twenty-one (21) hours per week, a reduction of eleven (11) hours per week, and stated as follows:

You have requested that the 11 hours of direct service worker (PDO) personal care service each week that was reduced be reconsidered (appeal). 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 live with [REDACTED] who helps care for you. You use a [REDACTED]. You need some help [REDACTED]. You need help [REDACTED]. You need some help [REDACTED]. You need help with [REDACTED]. The reduction of 11 hours of direct service worker (PDO) 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.*

9. The Petitioner timely requested an appeal of Respondent's termination of seven (7) home delivered meals per week (Case Number 23-FH1433). See Respondent's Composite Exhibit 1, pages 37-42. On May 31, 2023, the Respondent sent the Petitioner a NPAR letter in Case Number 23-FH1433 upholding the termination of seven (7) home delivered meals per week, and stated as follows:

You have requested that the 7 home delivered meals each week that was terminated be reconsidered (appeal). You have several (multiple) medical problems. You do not have trouble making your needs known. You sometimes have trouble [REDACTED]. You live with your [REDACTED]. You use a [REDACTED]. You need [REDACTED]. [REDACTED] The termination of 7 home delivered meals each week is being upheld. Your homemaker direct service worker (PDO) should be able to make basic meals for you to eat. 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.*

10. The Petitioner timely requested an appeal of Respondent's termination of three (3) hours of adult companion care services per week (Case Number 23-FH1434). See Respondent's

Composite Exhibit 1, pages 31-36. On June 1, 2023, the Respondent sent the Petitioner a Notice of Plan Appeal Resolution (“NPAR”) letter in Case Number 23-FH1434 upholding the termination of three (3) hours of adult companion care services per week, and stated as follows:

You have requested that the 3 hours of direct service worker (PDQ) adult companion care service each week that was terminated be reconsidered (appeal). You have several (multiple) medical problems. You do not have trouble making your needs known. You sometimes have trouble [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. The termination of 3 hours of direct service worker (PDO) adult companion care service each week is being upheld. You live with others who should be able to meet your companionship 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,*

11. The Petitioner requested a Fair Hearing due to the reduction of the Petitioner’s previously approved PDO personal care services hours from thirty-two (32) hours per week to twenty-one (21) hours per week, a reduction of eleven (11) hours per week (Case Number 23-FH1432), the termination of seven (7) home delivered meals per week (Case Number 23-FH1433), and the termination of three (3) hours per week of adult companion care (Case Number 23-FH1434). On September 29, 2023, the undersigned hearing officer scheduled a Fair Hearing for November 1, 2023, at 2:00 p.m. EST.

12. Dr. Bowers testified at the Fair Hearing for the Respondent that the reduction of PDO personal care services was based on the Petitioner’s annual assessment as reflected in the 701B. Dr. Bowers testified that the PDO personal care services were reduced in part because the 701B reflects the Petitioner daughter lives with the Petitioner. See Respondent’s Composite Exhibit 1,

pages 85 and 101. Dr. Bowers further testified that additional factors reflected in the 701B as to why the PDO personal care services were reduced includes the fact no skilled services are required for the Petitioner, the Petitioner doesn't wander away from [redacted] home, and that the Petitioner [redacted]. See Respondent's Composite Exhibit 1, pages 92-94, In addition, Dr. Bowers testified that based on the 701B, the Respondent concluded that the Petitioner's abilities to perform [redacted] ADLs and IADs, and the level of assistance required, fourteen (14) hours of personal care services per month was sufficient for the Petitioner, and that the reduction from thirty-two (32) hours of personal care services per week to twenty-one (21) hours of personal care services per week provided the Petitioner more than enough personal care service hours per week.

13. Dr. Bowers testified that the termination of seven (7) home delivered meals per week for the Petitioner was based on the 701B annual assessment, and the fact that the [redacted] [redacted] and that the 701B reported "no other for food assistance was needed. See Respondent's Composite Exhibit 1, page 85. In addition, because the 701B reflects the Petitioner lives with [redacted] and currently had five (5) hours of PDO homemaker services provided by [redacted] other primary caregiver [redacted], there was sufficient resources to conclude there were resources available provide for the preparation of meals, thus supporting the termination of the seven (7) home delivered meals per week. Finally, Dr. Bowers testified that on October 23, 2023, the Respondent decided to reinstate the seven (7) home delivered meals per week, effective October 23, 2023. The Authorized Representative acknowledged the resumption of the home delivered meals, but testified that is not enough to satisfy [redacted], and that the home delivered meals are insufficient because the Petitioner cannot eat

[REDACTED]. The Respondent testified that there is no current request for [REDACTED], [REDACTED]

14. Dr. Bowers testified that the termination of the PDO adult companion care was based on the 701B annual assessment, and in-part on the fact that the 701B reflects the Petitioner's non-caregiving [REDACTED] with the Petitioner, and combined with the socialization from the Petitioner's other care giving [REDACTED], there are sufficient socialization skills for the Petitioner. See Respondent's Composite Exhibit 1, pages 85, 99, and 101. In addition, Dr. Bowers testified that the 701B annual assessment reflects that the Petitioner doesn't feel [REDACTED] needs more companionship, that twenty-one (21) hours of PDO personal care services per week combined with the current seven (7) hours per week of PDO homemaker services is sufficient socialization, and that the termination of the PDO adult companion care services was appropriate. See Respondent's Composite Exhibit 1, page 99.

15. The Petitioner's Authorized Representative, who also serves as the PDO primary caregiver, testified that [REDACTED]'s condition has deteriorated and that [REDACTED] requires total assistance in performing [REDACTED] ADLs and IADLs. Contrary to what is reflected in the 701B, the Authorized Representative testified that the Petitioner's other [REDACTED] moved out of [REDACTED]

[REDACTED] The Authorized Representative testified that although [REDACTED], [REDACTED]  
[REDACTED]  
[REDACTED]. [REDACTED]  
[REDACTED], [REDACTED]

reflected in the 701B, [REDACTED]

[REDACTED]. The Authorized Representative further testified that [REDACTED]

[REDACTED]. Finally, the Authorized Representative testified that [REDACTED] requires constant supervision and care, and that both the currently approved home based service hours and the previously approved service hours are insufficient to meet [REDACTED]'s needs, referring to an October 2023, letter from the Petitioner's primary care physician which was not submitted into evidence stating that additional home based services hours are medically necessary.

#### **CONCLUSIONS OF LAW**

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

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

18. 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.

19. Because the Respondent is reducing and terminating previously approved home based services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent to demonstrate their decisions were correct. 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.).

20. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“March 2017”) (“SMMC LTC Policy”). The Agency’s SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC LTC Policy provides as follows:

**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 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.

...

## **2.2 Who Can Receive**

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

## **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.

...

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

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

...

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

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

...

##### **4.2.1.8 Home Delivered Meals**

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference

Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

...

#### **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.

...

### **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.

SMMC LTC Policy, pages 1-8.

21. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “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.

22. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016

(“PC Policy”) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215. 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, pages 3 – 8, and 10.

### **PDO Personal Care Services**

23. In the instant case, Respondent reduced the Petitioner’s previously approved PDO personal care services hours from thirty-two (32) hours per week to twenty-one (21) hours per

week, a reduction of eleven (11) hours per week. See *supra* ¶¶ 7 and 8. As established on the record by the evidence and testimony, Respondent reduced the Petitioner's previously approved PDO personal care hours from thirty-two (32) hours per week to twenty-one (21) hours per week, a reduction of eleven (11) hours per week because the additional hours were not medically necessary based on the 701B annual assessment. *Id.* Based upon Dr. Bower's testimony and the NPAR, the Respondent reduced the PDO personal care services by eleven (11) hours per week on the basis that the reduced hours are not medically necessary, are in excess of the patient's needs, and that the remaining twenty-one (21) hours of PDO personal care services per week are sufficient for the Petitioner's needs. See *supra* ¶¶ 7, 8, 12 and 22.

24. 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 SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. See *supra* ¶ 20. The evidence presented in this case does not reflect that the Petitioner has unmet needs after the reduction of eleven (11) hours of PDO personal care service hours per week. Regarding ADLs, the 701B assessment upon which the Respondent based their decision reflects the Petitioner needs total assistance (cannot do at all) with bathing and some assistance (but not total help with dressing, transferring, eating, using the bathroom, and walking/mobility). See *supra* ¶ 4. In addition, the 701B assessment states that the Petitioner always has assistance when eating, transferring, using the bathroom, with walking/mobility, and has assistance most of the time with dressing. *Id.* As Dr. Bowers provided credible testimony that the approved hours are more than enough personal care service hours per week to meet Petitioner's needs. Even at the

reduced hours of personal care services, the Authorized Representative provided no testimony of any unmet needs regarding the performance of the ADLs to refute Dr. Bower's testimony.

25. Section 1.3.14 of the SMMC LTC Policy and section 2.83 of the Definitions Policy mandates 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 supra ¶ 20 and 21. Further Section 4.1 of the SMMC LTC Policy and the Personal Care Coverage Policy provide that services cannot duplicate services that are already provided. See supra ¶ 20 and 22. Here, Petitioner is currently authorized to receive a total of twenty-eight (28) hours per week of the following combined Medicaid home and community-based services, including twenty-one (21) hours of PDO personal care services per week and seven (7) hours of homemaker services per week, for a total of twenty-eight (28) hours per week. See supra ¶ 6. Additional hours of personal care services for the Petitioner would duplicate services that are already provided.

26. Petitioner's currently authorized Medicaid personal care services 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 supra ¶ 20. The 701B assessment reflects the Petitioner herein requires total (maximum) assistance with the ADL of bathing and some assistance with dressing, earing, using the bathroom, transferring, and walking/mobility, total (maximum) assistance with all the IADLs, with the exception of using the phone, which both require some assistance or prompts and supervision. See supra ¶ 4 and 5. Even at the reduced hours of personal care

services, the Petitioner provided no testimony of any unmet needs regarding the performance of the ADLs and IADLs.

27. Considering the totality of Petitioner's circumstances, including [REDACTED] medical conditions the level of required assistance for the ADLs and IADLs, and the amount of currently approved services, the Respondent has proved beyond a preponderance of the evidence that the previously approved level of personal care services are in excess of Petitioner's needs. Therefore, the eleven (11) hours of PDO personal care services at issue do not meet medical necessity criteria. *See supra* ¶¶ 15, 20, 21, and 22.

28. In light of the parties' testimony, Respondent's Composite Exhibit 1, the SMMCLTC Policy, the PC Policy, the Definitions Policy, and the Petitioner's receipt of twenty-one (21) hours of PDO personal care services, the undersigned Hearing Officer finds that Respondent has met the burden of proving that the reduction of eleven (11) hours of PDO personal care services was correct.

#### **Home Delivered Meals**

29. In this case, Respondent terminated seven (7) home delivered meals per week for the Petitioner. *See supra* ¶¶ 7 and 9. The Respondent's rationale for terminating the seven (7) home delivered meals was that the Petitioner, is receiving government SNAP (food stamp) assistance, that the 701B annual assessment reflects the Petitioner does not need other food assistance, has twenty-eight (28) hours of PDO home health aide services each week, including seven (7) hours of PDO homemaker services per week, lives with [REDACTED], and that the principal caregiver and family can help with meal preparation". *See supra* ¶¶ 6, 7, 9, and 13.

30. As provided in the LTC Policy, the purpose of home delivered meals is to ensure the Petitioner has nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for and/or preparing food without assistance that provide a minimum of 33 1/3% of the current Dietary Reference Intake and meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern. See supra ¶ 20. Thus, home delivered meals are designed to provide nutritious meals when the Petitioner is unable to prepare such meals on their own, and the LTC Policy covers services that meet all the following: are determined to be medically necessary, do not duplicate another service, and meet the criteria as specified in the LTP Policy. See supra ¶ 20. The 701B reflects the Petitioner requires total assistance with shopping and preparing meals, but that the primary caregiver does not work other than caring for [REDACTED]. See supra ¶¶ 4 and 15.

31. Pursuant to Rule 59G-1.100(9)(b)(6), Florida Administrative Code, the Hearing Officer is authorized to dismiss a request for a Fair Hearing because it is moot. The Florida Supreme Court explained in *Godwin v. State*, 593 So.2d 211 (1992) (citing *Dehoff v. Imeson*, 153 Fla. 553 (1943)) that "[a]n issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect. . . . A case is 'moot' when it presents no actual controversy or when the issues have ceased to exist." In this matter, the Respondent has reinstated the previously terminated seven (7) home delivered meals, effective as of October 23, 2023, thus rendering any decision by this Hearing Officer as moot since there is no actual effect of this Hearing Officer requiring a service that it is already being provided by the Respondent. As such, this Hearing Officer finds that the issues surrounding the termination and subsequent reinstatement of seven (7) home delivered meals per week in Case Number 23-FH1433 is moot

and the Petitioner's appeal regarding the termination of seven (7) home delivered meals per week is dismissed.

### **PDO Adult Companion Care Services**

32. In this case, Respondent terminated the Petitioner's three (3) hours per week of PDO adult companion care services based on the 701B annual assessment. *See supra* ¶¶ 7 and 10. The Respondent's rationale for terminating the adult companion care services was that the 701B reflects the Petitioner's daughter lives in the home with the Petitioner and along with the socialization provided from [REDACTED] who serves as the principal caregiver, the Petitioner failed to meet the requirements of medical necessity of companion care services. Specifically, Respondent's witness indicated that the adult companion care services at issue are in excess of Petitioner's needs as [REDACTED] receives socialization from who [REDACTED] lives with and from [REDACTED] primary caregiver. *See supra* ¶¶ 7, 10, and 14.

33. As provided in the LTC Policy, the purpose of adult companion care services is to provide "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* ¶ 20. Thus, adult companion care services are designed to prevent social isolation and to provide supervision to protect the enrollee's safety. *Id.* The LTC Policy covers services that meet all of the following: are determined to be medically necessary, do not duplicate another service, and meet the criteria as specified in the LTP Policy. *See supra* ¶ 20. As Dr. Bowers testified, the 701B states that the Petitioner needs constant supervision, but reflects [REDACTED] lives in the home, [REDACTED] does not work other than serving as the principal caregiver, that the Petitioner does

not get lost or wander off, and that more companionship beyond what [REDACTED] has is not required.  
See supra ¶¶ 3 and 14.

34. Based on the Petitioner's living arrangements, [REDACTED] medical condition, and [REDACTED] functional abilities, the record demonstrates by a preponderance of the evidence that the previously approved adult companion care services are in excess of Petitioner's supervision or socialization needs.

35. Upon consideration of the testimony provided, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned finds that Respondent did meet its burden of proving by a preponderance of the evidence that previously approved three (3) hours per week of adult companion care services are no longer medically necessary.

36. Accordingly, the undersigned Hearing Officer concludes that Respondent did prove by a preponderance of the evidence that Respondent's termination of adult companion care services was correct.

### **DECISION**

Respondent's reduction of eleven hours of PDO personal care service hours per week (Case No. 23-FH1432) is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction is **DENIED**.

The Petitioner's appeal of the Respondent's termination of seven (7) home delivered meals (Case Number 23-FH1433) is hereby **DISMISSED** as moot in light of the Respondent's reinstatement of the previously terminated seven (7) home delivered meals per week before the scheduled Fair Hearing in this matter.

Respondent's termination of three (3) hours per week of PDO adult companion care services per week for the Petitioner (Case No. 23-FH1434) is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

**DONE AND ORDERED** this 15th day of November, 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer  
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**ALAN J. LEIFER, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**COPIES FURNISHED TO:**

[REDACTED]  
[REDACTED]  
[REDACTED]

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