



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

FILED

Sep 18, 2023, 11:19 am

OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 23-FH1489

Plan ID No.: █

vs.

UNITEDHEALTHCARE OF FLORIDA, 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 14, 2023, at 1:09 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

█  
Petitioner

For the Respondent:

Susan Frishman  
State Partner Account Manager  
UnitedHealthcare Community Plan

**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 twenty-two (22) hours per week of personal care services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner appeared on █ own behalf.

Susan Frishman, State Partner Account Manager for UnitedHealthcare Community Plan, Inc. (“UnitedHealthcare”) appeared on behalf of Respondent. Dr. Sloan Karver (“Dr. Karver”), Long Term Care Medical Director for UnitedHealthcare, attended as a witness for Respondent.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and eighty-nine (189)-page evidence packet. The evidence appears in the Office of Fair Hearings’ document management system as “23-FH1489 Respondent’s Statement of Matters.pdf.” Absent an objection from Petitioner, the undersigned admitted the one hundred and eighty-nine (189)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of UnitedHealthcare. *See* RCE 1 at page 1. UnitedHealthcare 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 48.

Petitioner lives [REDACTED] *Id.* at 49. Petitioner has [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 54 – 55.

Petitioner does not receive any current therapies or specialty care. *Id.* at 55. Petitioner has been

diagnosed with [REDACTED]. *Id.* at 56. Petitioner does not require or need supervision. *Id.* at 57.

3. According to the Florida Department of Elder Affairs 701B Comprehensive Assessment, dated March 8, 2023, (“701B Assessment”) Petitioner needs the following assistance with [REDACTED] activities of daily living (“ADLs”): needs assistance (but not total help) with [REDACTED] [REDACTED] needs supervision or prompting with [REDACTED]; and needs no assistance with [REDACTED]. *Id.* at 52. Regarding [REDACTED] ADLs, Petitioner never has assistance with [REDACTED] [REDACTED]. *Id.* However, during the hearing Petitioner testified that for the ADLs [REDACTED] requires assistance with, [REDACTED] always has assistance.

4. According to 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]; and needs no assistance with using the [REDACTED] [REDACTED]. *Id.* at 53. Regarding [REDACTED] IADLs, Petitioner never has assistance with [REDACTED]; always has assistance with [REDACTED]; and Petitioner does not need assistance with using the [REDACTED] [REDACTED]. *Id.* However, during the hearing Petitioner testified that for the IADLs [REDACTED] requires assistance with, [REDACTED] always has assistance.

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

Member states [REDACTED] requires assistance with [REDACTED] [REDACTED]. Member states [REDACTED] can eat independently and requires supervision for walking due to having an unsteady gait.

RCE 1 at 52.

6. Petitioner requested an additional twenty-two (22) hours per week of personal care services. *Id.* at 5. In the Notice of Adverse Benefit Determination (“NABD”), Respondent denied Petitioner’s request as of March 13, 2023. *Id.* at 5 – 9. 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: Your assessment tells us that you need some help with [REDACTED].

You asked for 22 more hours a week of personal care.

You are getting 28 hours a week of personal care to help you.

You are getting 14 hours a week of homemaker services to help you. The aide can clean your bedroom and bathroom when doing your homemaking.

In my clinical opinion, your personal needs can be met by the approved services. These hours can be split to meet your needs during the day.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated April 27, 2023, upholding the denial of additional personal care services. *Id.* at 100 – 102. The NPAR states, in pertinent part:

On March 29, 2023, we received your timely plan appeal request regarding UnitedHealthcare Community Plan’s Notice of Adverse Benefit Determination dated March 13, 2023, A190512478, partially denying the additional Home Health Hours provided to [Petitioner].

On April 26, 2023, after consideration of the information you provided to UnitedHealthcare Community Plan in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal.

As part of our review we look at information you or your provider gave us. We also look at your benefits. Based on our review of your appeal, we have determined that the service you requested will not be approved.

Fatima Hussain, M. D., Medical Director, specializing in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Criteria used/Policy Referenced: Florida Administrative Code 59G-1.010(166[ ]).

Your appeal was reviewed by a medical director. She is a medical doctor. She is board certified in family medicine. We looked at your records. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. You asked for additional personal care. You would like 22 more hours a week. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving a total of 28 hours a week. You can help yourself some. These should meet your personal care needs. You have other paid services for help. These include homemaker service 14 hours a week and home delivered meals 31 meals a [month]. Your aid does not have to make these meals for you. That is why we cannot approve what you asked for. Please talk about this with your doctor.

8. On June 19, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On July 25, 2023, the Hearing Officer issued an Order Scheduling Fair

Hearing by Telephone and Prehearing Instructions, setting the hearing for August 14, 2023, at 1:00 p.m. EST.

9. Petitioner testified as follows:

- a. Petitioner requested more personal care hours because of [REDACTED] medical conditions.
- b. Petitioner believes [REDACTED] is not supposed to be left alone because of [REDACTED] many medical conditions.
- c. Petitioner has no friends or family who live near [REDACTED].
- d. Petitioner needs assistance with eating.
- e. Petitioner always has assistance with [REDACTED] ADLs of [REDACTED]  
[REDACTED]
- f. Petitioner always has assistance with [REDACTED] IADLs of [REDACTED]  
[REDACTED]
- g. Petitioner never indicated that [REDACTED] never has assistance with [REDACTED] ADLs and IADLs when completing [REDACTED] 701B on March 8, 2023.
- h. Petitioner is struggling with [REDACTED] needs on the weekends because [REDACTED] does not have care services on the weekend. Petitioner does not want to use any current care service hours on the weekend because [REDACTED] wants the services during the week for escorting to [REDACTED] many appointments.

10. Petitioner referred to a letter from Petitioner's physician's office, Millennium, that is signed by Zoila Grove, APRN (Advanced Practice Registered Nurse). The letter states, in pertinent part:

Please be informed that I am the attending provider for [Petitioner] who needs Home Care hours increased to 56 hours per week, 8 hours a day (7 days a week) Pt can not be alone due to worsened & additional medical conditions.

RCE 1 at 27.

11. Dr. Karver is a Long-Term Care Medical Director for UnitedHealthcare. Dr. Karver testified as follows:

- a. Petitioner's current service hours are sufficient to meet Petitioner's medical necessity.
- b. Petitioner currently receives seven (7) home delivered meals each week, fourteen (14) hours of homemaker services each week, and twenty-eight (28) hours of personal care services each week, which comes to a total of forty-two (42) hours of care per week.
- c. Petitioner utilizes [REDACTED] forty-two (42) hours of care per week as follows: 11:00 a.m. to 7:00 p.m. on Monday, Wednesday, and Friday, and 11:00 a.m. to 8:00 p.m. on Tuesday and Thursday. Petitioner's case manager recommended that Petitioner distribute the care hours successfully so that Petitioner has care coverage on the weekend, but Petitioner refuses.
- d. Dr. Karver referred to a note in Petitioner's report that states Petitioner is able to perform [REDACTED] ADL tasks with no assistance. See RCE 1 at 46.
- e. There was a face-to-face visit between a case manager and Petitioner on June 19, 2023. An updated 701B Assessment was not completed because there were not any significant changes in Petitioner's conditions.

**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) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care and homemakers:

**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

...

### 1.3.9 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]

LTC Policy at 2 – 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 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 twenty-two (22) 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 LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 15. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. *Id.* 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 twenty-two (22) hours per week of personal care services is warranted under the circumstances of this case. As provided in the LTC Policy, personal care is 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." *See supra* ¶ 15.

The record reflects that Petitioner lives [REDACTED] and does not have any friends or family in [REDACTED]. See supra ¶ 2, 9. With regard to [REDACTED] ADLs, Petitioner needs assistance (but not total help) with [REDACTED]. [REDACTED] needs supervision or prompting with [REDACTED]; and uses [REDACTED]. See supra ¶ 3. Petitioner answered the 701B Assessment stating that [REDACTED] never has assistance with [REDACTED]. [REDACTED] *Id.* However, during the hearing, Petitioner testified that for the ADLs [REDACTED] requires assistance with, [REDACTED] always has assistance. See supra ¶ 9. With regard to [REDACTED] 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 [REDACTED]. See supra ¶ 4. Petitioner answered the 701B Assessment stating that [REDACTED] never has assistance with [REDACTED]. [REDACTED] always has assistance with using [REDACTED] and Petitioner does not need assistance [REDACTED]. [REDACTED] *Id.* However, during the hearing, Petitioner testified that for the IADLs [REDACTED] requires assistance with, [REDACTED] always has assistance. See supra ¶ 9. Petitioner testified that [REDACTED] needs assistance with [REDACTED]. See supra ¶ 9. However, Petitioner answered the 701B Assessment stating that [REDACTED] independently. See supra ¶ 9. Petitioner currently receives twenty-eight (28) hours of personal care services each week, fourteen (14) hours of homemaker services each week, and seven (7) home delivered meals each week, which comes to a total of forty-two (42) hours of care per week. See supra ¶ 11.

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. As Petitioner testified, Petitioner has many medical conditions that may impact her ability to complete her ADLs and IADLs. However, Petitioner did not provide a schedule of ALDs/IADLs and/or any estimate of the time it takes to complete each ADL/IADL task. Allotting thirty (30) minutes of time for each of Petitioner’s ADLs [REDACTED] [REDACTED] ) and taking into account Petitioner’s medical conditions, the current twenty-eight (28) hours of personal care services appear to be reasonable. Petitioner also has fourteen (14) hours of homemaker services per week, which closely align with the documented IADL tasks that Petitioner needs assistance with. Dr. Karver testified that Petitioner’s current service hours are sufficient to meet Petitioner’s medical necessity. Dr. Karver provided credible and persuasive testimony that the approved services are adequate to meet Petitioner’s needs.

22. Petitioner testified that [REDACTED] requested the additional hours of personal care services because [REDACTED] physician said that Petitioner needs home care hours increased. *See supra* ¶ 10. 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.

23. Therefore, upon consideration of the testimony provided, 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 twenty-two (22) hours per week of personal care services was incorrect.

**DECISION**

Respondent's denial of an additional twenty-two (22) 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 18th day of September, 2023 in Tallahassee, Leon County, Florida.



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**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:**



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