



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

**FILED**

Sep 18, 2023, 11:48 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

**PETITIONER,**

**AHCA Case No.: 23-FH1540**

[REDACTED]

**vs.**

**HUMANA MEDICAL PLAN, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 10, 2023, at 10:04 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Michael Moens  
Grievance and Appeals Fair Hearing Specialist  
Humana Medical 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 additional personal care services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner’s Authorized Representative and [REDACTED]

[REDACTED] appeared for Fair Hearing on behalf of the Petitioner.

Petitioner’s psychiatric nurse practitioner, Tara Fisher (“Ms. Fisher”), appeared for Fair Hearing as a witness for Petitioner. Petitioner’s home health aide, Marie Henry (“Ms. Henry”), appeared for Fair Hearing as a witness for Petitioner.

Michael Moens (“Mr. Moens”), Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) appeared for Fair Hearing on behalf of Respondent. Dr. Srujani Gaddam (“Dr. Gaddam”), Medical Director for Humana, appeared for Fair Hearing as a witness for Respondent.

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for Fair Hearing as an observer.

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-one (271)-page evidence packet. The two hundred and seventy-one (271)-page packet appears in the Office of Fair Hearings’ document management system as file titles “Evidence Packet 23-FH1540\_Part1.pdf” and “Evidence Packet 23-FH1540\_Part2.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and seventy-one (271)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana. *See* page 1 of RCE 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED]. *Id.* Petitioner lives at home with [REDACTED]. *Id.* at 29. Petitioner is [REDACTED] *Id.* at 30, 35, 37.

Further, Petitioner’s medical history includes [REDACTED]

[REDACTED] *Id.* at 34-35. Petitioner is [REDACTED]

[REDACTED] *Id.* at 37. Petitioner [REDACTED]

[REDACTED]

[REDACTED]

3. Petitioner’s [REDACTED]

[REDACTED] *Id.* at 32. Petitioner’s [REDACTED] works

and has a family of [REDACTED] own. *Id.* at 47.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment

(“701B”) dated April 25, 2023, Petitioner’s needs for activities of daily living (“ADLs”) are as

follows: [REDACTED], Petitioner needs total assistance

(cannot do at all); and [REDACTED], Petitioner needs assistance (but not

total help). *Id.* at 32. Petitioner uses an assistive device for [REDACTED]. *Id.*

Petitioner uses [REDACTED]. *Id.* In regard to [REDACTED] instrumental

activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) for all IADLs.

*Id.* at 33.

5. Petitioner’s primary care physician, Christopher Thomas, M.D. (“Dr. Thomas”), wrote a

letter dated December 29, 2022, in support of additional home health services. The letter states

as follows:

[Petitioner] is a patient of this office under my care. [REDACTED] medical diagnoses include

[REDACTED]

[Petitioner] requires additional hours of assistance from home health services due

to [REDACTED]. These additional hours will

help to do ■■■ activities of daily living and assist with ■■■ care, thereby preventing problems associated with ■■■ medical state such as falls.

Not providing these additional home health service hours would increase his risk of morbidity and mortality.

...

*Id.* at 24.

6. Petitioner requested an additional twenty-eight (28) hours per week of personal care services. Respondent issued a Notice of Adverse Benefit Determination, dated February 10, 2023, denying the twenty-eight (28) hours of personal care services. The NABD explained the basis of the denial as follows:

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

...

- ✓ Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness 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:

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 have 14 hours of homemaker service each week; 28 hours of personal care service each week; and 7 home delivered meals each week. You have requested an additional 14 hours of homemaker service each week; an additional 28 hours of personal care service each week.

You have [REDACTED]  
[REDACTED]  
[REDACTED] You do not [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

You have 42 hours of home health aide services each week to meet your needs. Your request for an additional 14 hours of homemaker service each week; an additional 28 hours of personal care each week is being denied as not medically necessary. The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs.

...

*Id.* at 7-8.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated May 2, 2023, upholding the denial of an additional twenty-eight (28) hours per week of personal care services. The NPAR explained as follows:

...

The reason for the decision was based on the information received. You are appealing the denial of the requested additional 14 hours of homemaker (HMK) and additional 28 hours of personal care (PC) services each week. [Petitioner] currently receives 14 hours of HMK, and 28 hours of PC services each week and also receives 7 home delivered meals (HDM) each week.

[Petitioner] resides at home with [REDACTED] and is [REDACTED]. [REDACTED] has multiple medical problems. We have reviewed the documents and assessed [REDACTED] needs. [REDACTED] currently is receiving 42 hours of home

health aide per week, giving [REDACTED] 6 hours of care daily which can be split into 2 shifts to meet [REDACTED] needs during the day. [REDACTED] does not have any significant change in [REDACTED] overall needs and [REDACTED] provides supervision. We are upholding the decision of the medical director and denying your appeals.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the Plan's approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

...

*Id.* at 19-20.

8. Julia Chalankina, RN, wrote a letter dated March 13, 2023, in support of Petitioner's request for additional services. The letter states as follows:

I am the assessing RN who admitted [Petitioner] to home health services following [REDACTED] [REDACTED] for new diagnosis of [REDACTED]. I noted patient is [REDACTED] [REDACTED]. Patient has [REDACTED] [REDACTED], with higher than average [REDACTED] [REDACTED]. I recommended to patient's [REDACTED] to increase day time caregiver hours for safety provision.

...

*Id.* at 23.

9. Patrick Pinchinat, M.D. ("Dr. Pinchinat"), wrote a letter dated June 22, 2023, in support of Petitioner's request for services. The letter states as follows:

I certify in my medical opinion, [Petitioner] is completely dependent for activities of daily living, and is at risk of health complications and injury if [REDACTED] were to be left alone for long periods of time. [Petitioner] health history includes [REDACTED] [REDACTED]. Patient would benefit from continued services.

...

*Id.* at 25.

10. On June 23, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On July 21, 2023, the undersigned issued an Order Scheduling Fair Hearing

by Telephone and Prehearing Instructions, setting the hearing for August 10, 2023, at 10:00 a.m. EST.

11. Petitioner is currently approved to receive twenty-eight (28) hours per week of personal care services, fourteen (14) hours per week of homemaker services, and seven (7) home delivered meals, weekly. *Id.* at 8, 55-69.

12. Ms. Fisher is Petitioner's psychiatric nurse practitioner. Ms. Fisher testified to the following:

a. Petitioner has been a patient under Ms. Fisher's care for [REDACTED]. Petitioner has [REDACTED]. Ms. Fisher observed a steady [REDACTED] Petitioner's medical condition over the [REDACTED] and contends that Petitioner requires additional hours from home health assistance due to [REDACTED] [REDACTED], [REDACTED].

b. Petitioner was last seen in Ms. Fisher's office on July 27, 2023, for a mental status exam where [REDACTED] was brought in by wheelchair by [REDACTED] home health aide. Ms. Fisher observed Petitioner was [REDACTED] [REDACTED]. Petitioner was not [REDACTED].

13. [REDACTED] is Petitioner's [REDACTED] testified to the following:

a. Petitioner unable to care for [REDACTED] in any way. Petitioner cannot [REDACTED] [REDACTED]. Petitioner was [REDACTED]; once for [REDACTED] and once for [REDACTED].

- b. When Petitioner is in an unfamiliar setting, Petitioner becomes [REDACTED] and [REDACTED], resulting in a [REDACTED] [REDACTED] [REDACTED]. When Petitioner is at home and placed in bed, [REDACTED] does not experience [REDACTED] [REDACTED] since [REDACTED] is familiar with this setting. Petitioner needs constant interaction with [REDACTED] and [REDACTED] home health aide. [REDACTED] believes it is best for Petitioner to remain at home.
- c. Petitioner's [REDACTED] is [REDACTED] of age and has [REDACTED]. *Id.* at 47-48. [REDACTED] asserts that Petitioner's [REDACTED] [REDACTED] Petitioner or assist [REDACTED]. *Id.* at 35, 39. Petitioner's [REDACTED] have all occurred when Petitioner was home alone with [REDACTED].

14. Ms. Henry is Petitioner's home health aide. Ms. Henry testified to the following:

- a. Ms. Henry has been Petitioner's caregiver since [REDACTED]. Ms. Henry's current schedule with Petitioner is from 8 a.m. to 2 p.m., daily. Ms. Henry explains that after she leaves at noon or 2 p.m., she at times has to call or return to check on Petitioner's status.
- b. Petitioner is served breakfast in the morning, has lunch at noon and dinner at 6 p.m. Petitioner has recently begun requesting snacks. Petitioner has to be fed to ensure [REDACTED] eats. Petitioner's feedings take approximately 30-minutes to 1 hour. [REDACTED] has a good appetite. [REDACTED] can only eat cookies or a banana by himself.
- c. Petitioner is [REDACTED]. Ms. Henry asserts that Petitioner is left unchanged from 3 p.m. after she leaves until 8 a.m. when [REDACTED] returns the following day.

- d. Petitioner is showered about one to two hours prior to breakfast. Petitioner takes a shower twice per day due to [REDACTED]
  - e. Petitioner experiences [REDACTED] in the week prior to the Fair Hearing, and [REDACTED]. *Id.* at 75.
15. Dr. Gaddam is a Medical Director for Humana. Dr. Gaddam testified to the following:
- a. Humana supplies a supplementary plan secondary to care provided by available natural supports. Humana has been suggesting that Petitioner split the current service hours into shifts and to consider long-term placement to better meet the member's needs. Humana's position is that four (4) hours a day of personal care services should be sufficient to take care of the member's needs.

#### **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)(2019). 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 Fla. Admin. Code R. 59G-1.100(17)(b).

18. Because Petitioner is requesting an additional 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.)

19. The Florida Medicaid Statewide Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs

Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services:

### **1.1 Description and Program Goal**

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

...

### **1.3 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
- 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.

...

## **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.

...

### **4.2.2 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.

...

*Id.* at 83-90.

20. 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.

21. The Agency’s Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs personal care services available under Florida Medicaid. The Personal Care Policy provides the following with respect to personal care services:

**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

...

Personal Care Policy at pages 3-7, 10.

22. Petitioner requested an additional twenty-eight (28) additional hours of personal care services per week. *See* ¶ 6. In the NABD, dated February 10, 2023, Respondent denied Petitioner’s request. *See* ¶ 6. Respondent cited to the medical necessity criteria as the basis for their decision. However, Respondent did not specify which prong of medical necessity it used to make its decision. *See* ¶ 6. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. *See* ¶ 15.

23. According to the LTC Policy, personal care services are used to provide medically necessary assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are essential to the health and welfare of the enrollee. *See* ¶ 19.

Petitioner currently has twenty-eight (28) hours per week of personal care services, fourteen (14) hours per week of homemaker services, and seven (7) home delivered meals, weekly. See ¶ 11.

24. In the instant case, Petitioner established that the additional 28 hours of personal care services per week were not in excess of the patient's needs. Petitioner's medical history includes

[REDACTED]

[REDACTED]

[REDACTED]. See ¶ 2, 5. In the

letter by Petitioner's primary care physician, Dr. Pinchinat, dated December 29, 2022, he stated that Petitioner "requires additional hours of assistance from home health services due to [REDACTED]

[REDACTED] These additional hours will help to do [REDACTED] activities of daily living and assist with [REDACTED] care, thereby preventing problems associated with [REDACTED] medical state..." See ¶ 5. Ms. Fisher, Petitioner's psychiatric nurse practitioner, testified that Petitioner

has been under her care for [REDACTED] and she has observed a steady decline in Petitioner's health. See ¶ 12. During Ms. Fisher's most recent mental status exam on Petitioner on [REDACTED]

[REDACTED] Ms. Fisher testified that she observed Petitioner disheveled, not aware [REDACTED],

[REDACTED]. See ¶ 12. Ms. Fisher explained that Petitioner was not

following commands. See ¶ 12. The letters introduced by Julia Chalankina and Dr. Pinchinat both point to Petitioner's complete dependence for daily living due to [REDACTED] health history and hospitalization. See ¶ 8, 9.

25. Petitioner's needs are further demonstrated in the 701B dated April 25, 2023, which indicated for ADLs Petitioner requires total assistance for [REDACTED]

[REDACTED] See ¶ 4. Petitioner needs assistance (but not total help) for [REDACTED]

See ¶ 4. Petitioner uses an assistive device for [REDACTED].

See ¶ 4. Moreover, Petitioner needs total assistance (cannot do at all) for all IADLs. See ¶ 4. Petitioner's home health aide, Ms. Henry, testified that her daily schedule with Petitioner is from 8 a.m. to 2 p.m. See ¶ 14. Petitioner is fed three times per day with breakfast in the morning, lunch at noon and dinner at 6 p.m. See ¶ 14. Based on Petitioner's appetite, Petitioner's feedings take approximately 30-minutes to 1 hour. See ¶ 14. Additionally, Ms. Henry explained that since Petitioner is [REDACTED] has to be changed every two hours. See ¶ 14. Ms. Henry showers Petitioner twice per day due to [REDACTED]. See ¶ 14. The record shows that Petitioner is also [REDACTED]. See ¶ 5, 8, 14. [REDACTED] and Ms. Henry testified that Petitioner experiences [REDACTED] prior to the Fair Hearing, and [REDACTED]. See ¶ 13, 14. [REDACTED] testified that Petitioner's [REDACTED] have all occurred when Petitioner was home alone with [REDACTED]. See ¶ 13. The record indicates that Petitioner cannot be left alone and requires constant supervision and prompting. See ¶ 2, 9. Petitioner was [REDACTED] [REDACTED]. See ¶ 8, 13. The undersigned has to disagree with Respondent's argument that the four (4) hours per day of personal care services should be sufficient to take care of the member's needs. See ¶ 15. It appears, based on the foregoing, the additional twenty-eight (28) hours per week, or the equivalent of eight (8) hours per day each week of combined services, represents an adequate level of care for Petitioner's daily needs. Thus, it appears Petitioner's decline due to his medical conditions is consistent with a medically necessary increased level of care needed to maintain Petitioner's functional capacity.


26. The record reflects that an increased level of care appears to be individualized, specific, consistent with a confirmed diagnosis, and not in excess of the Petitioner's needs as previously discussed. See ¶ 24-25. Dr. Gaddam testified that Respondent's supplementary plan is secondary to care provided by available natural supports. See ¶ 15. The increased hours do not appear to be primarily intended for the convenience of the caregiver since the record shows Petitioner's [REDACTED] with whom [REDACTED] lives, is unable to assist with Petitioner's declining medical condition in a meaningful capacity. See ¶ 13. [REDACTED] raised concern with purported lack of supervision provided by Petitioner's [REDACTED] due to her cognitive impairment. See ¶ 13. In addition, Petitioner's [REDACTED] and Petitioner's [REDACTED] do not live in the home. See ¶ 3. All in all, the undersigned finds that Petitioner met his burden.

27. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did prove by a preponderance of the evidence that Respondent's denial of Petitioner's request of 28 additional personal care hours was incorrect. In light of all the evidence relevant to the particular needs of Petitioner, Petitioner has shown that the requested services are not in excess of the Petitioner's needs. Accordingly, the undersigned finds that Petitioner has proved by a preponderance of the evidence that Respondent's denial of 28 additional hours of personal care services was incorrect.

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

Respondent's denial of personal care services is **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**.

**DONE and ORDERED** this 18th day of September, 2023 in Tallahassee, Leon County, Florida.

 Kimberly Roche  
23-FH1540  
2023.09.18  
09:19:54 -04'00'

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

**ENCLOSURE:**  
**Notice of Nondiscrimination Policy**

**COPIES FURNISHED TO (w/ enclosure):**



**Humana Medical Plan, Inc.**  
**GAMedicaidRightFax@humana.com**

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

## Notice of Nondiscrimination Policy

The Agency for Health Care Administration (“AHCA”) is committed to providing all people with an equal opportunity to participate in its programs, services, and activities. AHCA complies with applicable Federal civil rights laws and does not exclude people or treat them differently in admission to, access to, or employment in its programs, services, or activities on the basis of race, color, national origin, age, disability, or sex. Communication aids and services, such as: qualified sign language interpreters, qualified foreign language interpreters, and written information in alternative formats (i.e.: Braille, large print, foreign language, etc.) are provided free of charge, in accordance with federal law, when necessary to ensure equal opportunity and effective communication.

This Notice is provided as required by Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act and implementing regulations. This Notice is available, upon request, in alternative formats. Individuals who require free communication aids and services to effectively participate in AHCA’s programs, services, and activities are invited to make their requests to the Civil Rights Compliance Coordinator at the contact information listed below. If you believe that AHCA has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex you can file a grievance in person, by mail, or by telephone with:

Civil Rights Compliance Coordinator  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, FL 32308  
Voice: (850) 412-3661  
TTY: (800) 955-8771



**Spanish ATENCIÓN:** si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-(888) 419-3456 (TTY: 1-800-955-8771).

**French Creole Atansyon:** Si w pale Kreyòl Ayisyen, gen sèvis èd pou lang ki disponib gratis pou ou. Rele 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Vietnamese CHÚ Ý:** Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Portuguese ATENÇÃO:** Se fala português, encontram-se disponíveis serviços linguísticos, grátis. Ligue para 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Chinese 注意 :** 如果您使用繁體中文, 您可以免費獲得語言援助服務。請致電 1-(888) 419-3456 (TTY: 1-800-955-8771)

**French ATTENTION:** Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-(888) 419-3456 (ATS: 1-800-955-8771).

**Tagalog PAUNAWA:** Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Russian ВНИМАНИЕ:** Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-(888) 419-3456 (телетайп: 1-800-955-8771).

#### **Arabic**

**ملحوظة:** إذا كنت تتحدث العربية، فإن خدمات المساعدة اللغوية متاحة لك بالمجان. اتصل برقم 1-(888) 419-3456 (التحويلة: 1-800-955-8771)

**Italian ATTENZIONE:** In caso la lingua parlata sia l'italiano, sono disponibili servizi di assistenza linguistica gratuiti. Chiamare il numero 1-(888) 419-3456 (TTY: 1-800-955-8771).

**German ACHTUNG:** Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Korean 주의:** 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-(888) 419-3456 (TTY: 1-800-955-8771) 번으로 전화해 주십시오.

**Polish UWAGA:** Jeżeli mówisz po polsku, możesz skorzystać z bezpłatnej pomocy językowej. Zadzwoń pod numer 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Gujarati નોંધ:** જો તમે ગુજરાતી બોલતા હો, તો નિ:શુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Thai เรียบน:** ถ้าคุณพูดภาษาไทยคุณสามารถใช้บริการช่วยเหลือทางภาษาได้ฟรี โทร 1-(888) 419-3456 (TTY: 1-800-955-8771).