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

FILED
Nov 15, 2023, 10:05 am
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

AHCA Case No.: 23-FH1550
Plan ID No.: [redacted]

vs.

MOLINA HEALTH CARE OF FLORIDA, INC.,

RESPONDENT.
_____/

[redacted],

PETITIONER,

AHCA Case No.: 23-FH1553
Plan ID No.: [redacted]

vs.

MOLINA HEALTH CARE OF FLORIDA, INC.,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on August 16, 2023, at 10:05 a.m. Eastern Standard Time ("EST"), October 2, 2023, at 10:04 a.m. EST, and October 27, 2023, at 10:11 a.m. EST.

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

For the Respondent: August 16, 2023, hearing:
Katia Matos
Utilization Management Director

Molina Health Care of Florida, Inc.

October 2, 2023, hearing:
Melissa Hedrick
Counsel for Respondent
Molina Health Care of Florida, Inc.

October 27, 2023, hearing:
Yuneisy Cruz
Director of Health Care Services
Molina Health Care of Florida, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of additional personal care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of additional homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. Petitioner's Authorized Representative and [redacted] ("[redacted]"), appeared for the Fair Hearing on behalf of Petitioner. Gerri Longley, Registered Nurse, appeared for the Fair Hearing held on October 27, 2023, as a witness for Petitioner.

Yuneisy Cruz ("Ms. Cruz"), Director of Health Care Services for the Long-term Care Program for Molina Health Care of Florida, Inc. ("Molina"), appeared as representative for Respondent. The following individuals appeared for Fair Hearing as witnesses for Respondent: Dr. Mark Bloom ("Dr. Bloom"), Medical Director, on October 27, 2023; Dr. Nida Lopez Morales, Medical Director, on August 16, 2023, and October 2, 2023; Katia Matos, Utilization Management

Director, on August 16, 2023, and October 2, 2023; Melissa Dominguez, Manager of Government Contracts, on August 16, 2023; Caridad Bello, Government Contracts Specialist, for all dates; and Mariana Nunez, Lead of Appeals and Grievances, for all dates.

The following appeared for the Fair Hearing as observers: Melissa Hedrick, Counsel for Molina; Andrew Murr, legal department for Molina, on August 16, 2023; Suzanne Chillari, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), on October 2, 2023; and Lee Ann Williams, Medical Health Care Program Analyst and Fair Hearing Liaison for the AHCA, on October 2, 2023, and October 27, 2023.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a twenty-five (25)-page evidence packet and a twelve (12)-page evidence packet. The twenty-five (25)-page evidence packet appears in the Office document management system as the file title "Additional Evidence_ [Petitioner].pdf[1]." The twelve (12)-page evidence packet appears in the Office document management system as the file title "23-FH1550 and 23-FH1553 Evidence.pdf[2]." Absent an objection from the Respondent, the twenty-five (25)-page evidence packet was admitted into evidence as Petitioner's Composite Exhibit 1 ("PCE 1") and a twelve (12)-page evidence packet was admitted into evidence as Petitioner's Composite Exhibit 2 ("PCE 2").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a ninety-nine (99)-page evidence packet. The evidence packet appears in the Office document management system as the file title "MFH _Office Packet_[Petitioner].pdf." Absent an objection

[1] This file was received on October 17, 2023.
[2] This file was received on October 18, 2023.

from the Petitioner, the ninety-nine (99)-page evidence packet was admitted into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Molina's Long-term Care ("LTC") program. Molina is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida. *See* RCE 1 at page 1-4.

2. Petitioner is [redacted] old. *Id.* at 5. Petitioner resides in the community with [redacted]. *Id*. at 6. [redacted] does not work outside of the home. *Id*. at 19, 37. Petitioner has the following health conditions: [redacted] *Id*. at 7, 11-13. Petitioner is authorized to receive skilled nursing services five (5) days per week at six (6) hours per day with [redacted]. *Id*. at 12. Petitioner receives daily [redacted] and daily [redacted]. *Id*. Petitioner receives [redacted] several times a day. *Id*.

3. According to Petitioner's Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B"), dated [redacted], with regard to Activities of Daily Living ("ADLs"), Petitioner needs total assistance (cannot do at all) with [redacted]. *Id*. at 9. Petitioner needs assistance (but not total help) with [redacted]. *Id*. Petitioner needs no assistance with [redacted] *Id*. Petitioner uses an [redacted]. *Id*. With regard to Instrumental Activities of Daily Living ("IADLs"), Petitioner

needs total assistance (cannot do at all) with [redacted]. *Id*. at 10. Petitioner needs assistance (but not total help) with [redacted]. *Id*.

4. Petitioner initially requested thirty (30) additional hours per week of personal care services. In a Notice of Adverse Determination ("NABD"), dated April 5, 2023, Respondent approved sixteen (16) hours per week, and denied the remaining fourteen (14) hours per week of personal care services. *Id*. at 53-56. 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 under treatment, and not in excess of the patient's needs;
> 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
> 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;
>
> And one of the following:
>
> 1. Enable the enrollee to maintain or regain functional capacity; or
> 2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.
>
> . . .
>
> The facts that we used to make our decision are: This decision was based on medical necessity (as defined by Agency for Health Care Administration's Medical Necessity a defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332)
> The reason why the request was not approved is: The asked for 30 hours of personal care are partially approved for additional 16 hours per week, while 14 hours are denied by the Medical Director because service is not medically necessary. You are already receiving other services that should meet your needs. This determination by the Medical Director has been made based on medical

necessity (as defined by Florida law) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

Id. at 54.

5. Petitioner also requested ten (10) additional hours per week of homemaker services. In a Notice of Adverse Determination ("NABD"), dated April 5, 2023, Respondent denied Petitioner's request for additional homemaker services. *Id*. at 45-48. 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:
>
> 4. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs;
> 5. 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
> 6. 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:
>
> 3. Enable the enrollee to maintain or regain functional capacity; or
> 4. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.
>
> . . .
>
> The facts that we used to make our decision are: This decision was based on medical necessity (as defined by Agency for Health Care Administration's Medical Necessity a defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332)
> The reason why the request was not approved is: The asked for S5130 - Homemaker services 10 hours per week are denied by the Medical Director because service is not medically necessary. You are already receiving other services that should meet your needs. You should be receiving hours of assistance

> based on the calculation tool we utilize to determine your needs. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

Id. at 46.

6. On May 19, 2023, Petitioner requested a plan appeal for the denial of additional personal care services and the denial of additional homemaker services. *Id*. at 61-63. On June 14, 2023, Respondent issued Notice of Plan Appeal Resolutions ("NPARs") upholding the denial of the remaining fourteen (14) hours per week of personal care services and denial of the ten (10) hours per week of homemaker services. *Id*. at 70-72. The NPARs contained identical rationale and explained as follows:

> We made our decision based on the Florida Agency for Health Care Administration's Long-Term Care (LTC) Program Policy (Rule 59G-4.192) and the Molina Clinical Policy for Medical Necessity (332). It shows rules that you must meet to show medical necessity (need). Part of the rules is having an evaluation (test) to find out what you need. These tests are done the first time a member needs a test. They are also done annually (every year) and when there is a significant (big) change in the member's care. A significant (big) change may involve a change in the member's state of health or the person taking care of them. Your recent test does not show a significant (big) change in your care. You are already receiving services that should meet your needs. For this reason, the 14 hours of Personal Care Services and the 10 Hours of Homemaker Services is not approved. Please talk to your doctor and/or Case Manager about your options.
>
> While we are denying the 14 hours of Personal Care Services and the 10 hours of Homemaker Services, you will still receive 16 hours of Personal Care Services.

Id. at 70.

7. On June 21, 2023, [redacted] requested a Fair Hearing on behalf of Petitioner to challenge the denial of additional personal care services in AHCA Case Number 23-FH1550 and the denial of additional homemaker services in AHCA Case Number 23-FH1553. On July 25, 2023, the undersigned issued a notice, to all parties of record, consolidating both cases and an Order

Scheduling Fair Hearing by Telephone and Prehearing Instructions ("Scheduling Order"), setting the hearing for August 16, 2023, at 10:00 a.m. EST. At [redacted] request, the undersigned issued an Order Granting Continuance ("Continuance") and second Scheduling Order, setting the hearing for September 25, 2023, at 10:00 a.m. EST. On September 7, 2023, at Molina's request, the undersigned issued a second Continuance and third Scheduling Order, setting the hearing for October 2, 2023, at 10:00 a.m. EST. At [redacted] request, the undersigned issued a third Continuance and fourth Scheduling Order, setting the hearing for October 27, 2023, at 10:00 a.m. EST.

8. Petitioner is authorized to receive the following Florida Medicaid LTC services: sixteen (16) hours per week of personal care services and thirty (30) hours of skilled nursing services per week. *Id*. at 24-30. Petitioner received attendant nursing care services from [redacted], until [redacted]. *Id*. at 27, 97-99.

9. [redacted] is Petitioner's [redacted] [redacted] testified at the Fair Hearing as follows:

a. Petitioner is prescribed emergency lifesaving medication for [redacted] which can occur randomly. Petitioner is [redacted]. Petitioner is prone to [redacted] due to [redacted].

b. [redacted] contends that Petitioner needs monitoring and personal care 24/7. [redacted] argued that Petitioner has a [redacted] which require monitoring for cleaning and changing due to a risk for infection.

c. [redacted] referenced the 24-hour schedule as reflective of a typical day of Petitioner's care. *See* PCE 2 at 2-3.

d. [redacted] asserts that Ms. Longley is Petitioner's registered nurse assisting Petitioner as a safety measure.

e. Due to the constant need for [redacted] a larger amount of laundry is required.

10. Ms. Longley is Petitioner's nurse. Ms. Longley testified at Fair Hearing to the following:

a. In her professional opinion, Ms. Longley believes it is medically necessary for Petitioner to receive the additional services since Petitioner is [redacted] and not able to do [redacted].

b. Ms. Longley raised the issue of Petitioner's provider, [redacted], not providing enough nurses to cover care hours.

c. Ms. Longley expressed concern that [redacted] is going to burn out without additional support and needs some relief.

11. Ms. Cruz is the Director of Health Care Services for the Long-term Care Program for Molina. Ms. Cruz testified at Fair Hearing as follows:

a. Molina took into consideration the request for the [redacted] old recipient with a vast medical history. *See* ¶ 2. After completion of the 701B, the LTC Supplemental Assessment dated [redacted], and the Functional Level Services Review Tool dated [redacted], the care plan was established for Petitioner to receive forty (40) hours per week of attendant care service to support Petitioner's skilled nursing needs, sixteen (16) hours per week on weekends of

personal care services through the participant direct option ("PDO") program at Petitioner's [redacted] request. *Id*. at 5-22, 37, 38-42.

b. Ms. Cruz contends that according to the LTC Supplemental Assessment, Petitioner's ADLs needs are being met by [redacted] who is willing and trained together with the approved services. *Id*. at 37.

c. Based on Petitioner's IADLs needs and [redacted] availability for assistance, Molina did not approve homemaker services. *Id*. at 10, 37.

d. In [redacted], Molina received notice that Petitioner's attendant care service provider, [redacted], was experiencing staff issues and only providing services 2 days per week. On [redacted], Molina conducted a significant change assessment and 18 additional hours per week of personal care services were approved through the PDO program for total of 34 hours per week until attendant care staffing issues are resolved.

12. Dr. Bloom is the Medical Director for Molina. Dr. Bloom testified at Fair Hearing as follows:

a. Upon review of the 701B, the LTC Supplemental Assessment, and the Functional Level Services Review Tool, Dr. Bloom contends that the medical directors established Petitioner's functional level with ADLs and IADLs were properly assessed, and [redacted] needs were properly determined.

b. Molina's medical directors based their decision on the medical necessity criteria. *See* ¶ 17.

c. Dr. Bloom contends that Petitioner's needs are being met by the current approved services in conjunction with [redacted] support received by [redacted]

CONCLUSIONS OF LAW

13. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

15. Because Petitioner is requesting new services, 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.)

16. 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. *Id.* at 75-96. The Florida Medicaid LTC Policy provides the following, in pertinent part:

> **1.0 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.

. . .

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 restrictive setting

4.2.1 Home and Community-Based Supportive Services

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

. . .

4.2.1.9 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.

Id. at 125 – 146. (Emphasis added).

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:

> **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 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. (Emphasis added).

18. The Agency's Florida Medicaid Personal Care Services Coverage Policy, November 2016 ("PC Policy") has been incorporated, by reference, into Rule 59G-4.215, F.A.C. 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
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient's needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
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
Grooming and Skin Care	
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
Positioning	
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

Transfers	
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
Toileting and Maintaining Continence	
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
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
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 at pages 3-8, and 10.

Personal care services in AHCA Case Number 23-FH1550

19. In the instant case, Petitioner requested an additional thirty (30) hours per week of personal care services. *See* ¶ 4. In the NABD dated April 5, 2023, Respondent authorized an additional sixteen (16) hours per week of personal care services. *See* ¶ 4. Accordingly, a total of fourteen (14) additional hours per week of personal care services are in dispute. Respondent did not specify which prong of medical necessity it used to make its decision. *See* ¶ 4, 6. Petitioner

has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 15.

20. 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* ¶ 16. The Definitions Policy requires 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* ¶ 17. Under Florida Medicaid, the purpose of personal care services is "[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* ¶ 16, 18.

21. Petitioner is currently authorized to receive sixteen (16) hours per week of personal care services and thirty (30) hours of skilled nursing services per week. *See* ¶ 8. The record is clear that Petitioner has complex medical issues that require significant support to address limitations with [redacted] daily activities. *See* ¶ 2-3, 9-11. Petitioner has multiple medical conditions, including [redacted]. *See* ¶ 2. Specifically, regarding ADLs, Petitioner needs assistance (but not total help) with [redacted] *See* ¶ 3. Petitioner needs [redacted]. *See* ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [redacted]

[redacted]. *See* ¶ 3. Petitioner needs assistance (but not total help) with [redacted]. *See* ¶ 3.

22. Petitioner introduced a 24-hour schedule, based on [redacted] testimony, as reflective of a typical day for Petitioner's care. *See* PCE 2 at 2-3. The schedule shows that within an 11-hour sleeping period from 9:00 p.m. to 7:59 a.m., Petitioner's care largely consists of basic monitoring. *Id*. For example, it states, "monitor sleep in [redacted] room," "check position (to maintain [redacted] and "check [redacted] to [e]nsure leak free" dividing each task into 15-minute intervals within each hour. *Id*. Basic monitoring is not among the criteria for requiring person care services under Florida Medicaid. *See* ¶ 18. Moreover, in the remaining 13-hours, Petitioner's schedule also includes various non-covered services such as companion care services and leisure activities, and travel time to and from a place of residence (e.g., "drive home," "play catch," "assist into swimming pool," and other related activities). *See* PCE 2 at 2-3. It appears that the hands-on care provided to Petitioner during a typical day, such as [redacted] do not appear consistent with the 701B dated [redacted]. *See* PCE 2 at 2-3 and RCE 1 at 9-10. Regarding ADLs, the 701B states "member is [redacted]." *See* RCE 1 at page 9. The record shows the 701B was completed with the help of [redacted] providing answers to questions. *Id*. at 6. Petitioner is also authorized to receive skilled nursing services five (5) days per week at six (6) hours per day. *See* ¶ 2. The LTC Policy does not allow services to duplicate other approved services. *See* ¶ 16. Overall, the schedule does not offer a clear demonstration of unmet needs for ADLs and IADLs to justify the request for an additional fourteen (14) hours per week of personal care services.

23. At Fair Hearing, [redacted] argued that Petitioner is prescribed emergency life-saving medication in the case of a [redacted] and therefore needed 24/7 monitoring. *See* ¶ 9. Petitioner did not introduce any evidence of [redacted]. Ms. Longley, who is Petitioner's nurse, did not testify to performing any medical interventions during Petitioner's care due to a seizure. *See* ¶ 10. [redacted] also argued that Petitioner has a [redacted] which require monitoring for cleaning and changing due to a risk for infection. *See* ¶ 9. Skilled nursing services are not equivalent to personal care services. *See* ¶ 16, 18. Personal care services administered under the Florida Medicaid program 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* ¶ 16, 18. The undersigned concludes that this argument for 24/7 monitoring is not substantiated in the record and therefore does not meet medical necessity criteria.

24. The record does not show how [redacted] is no longer able to provide adequate care for Petitioner. *See* ¶ 9. Ms. Longley expressed concern that [redacted] is going to burn out without additional support. *See* ¶ 10. Ms. Longley testified that Petitioner's provider, [redacted], fell short of nursing staff creating a lack of support to [redacted] with Petitioner's care. *See* ¶ 10. It appears that the request of additional service hours lies disproportionately in favor of a convenience to Petitioner and/or Petitioner's [redacted] *See* ¶ 9-10. The medical necessity criteria require for personal care services to be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. *See* ¶ 16-17. To the extent that Petitioner lacked care through [redacted] approved services, Ms. Cruz testified

that on [redacted], Respondent temporarily approved eighteen (18) additional hours, for a total of thirty-four (34) hours of home health care, to address the staffing issues by Petitioner's provider. *See* ¶ 11. The record does not clearly demonstrate a lack of [redacted] support provided to Petitioner. *See* ¶ 2, 9-10. The record holds sufficient evidence to rebut Petitioner's argument that Petitioner requires additional assistance with ADLs and IADLs.

25. Ms. Cruz explained that Respondent used the 701B, the LTC Supplemental Assessment, and the Functional Level Services Review Tool to determine the medically necessary hours and services for the member, as well as need for assistance including ADLs and IADLs. *See* ¶ 11. Petitioner resides in the home with [redacted], who does not work outside the home. *See* ¶ 2. According to Ms. Cruz's testimony, Petitioner's ADLs needs are being met by [redacted] who is willing and trained, together with the approved services based on the information within 701B, the LTC Supplemental Assessment, and the Functional Level Services Review Tool. *See* ¶ 11. In Dr. Bloom's medical opinion, Petitioner's needs are being met by the current approved services in conjunction with [redacted] support received by [redacted] *See* ¶ 12.

26. Considering the totality of Petitioner's circumstances, including [redacted] diagnoses, level of need with ADLs and IADLs, amount of currently approved services, and [redacted] situation, Petitioner failed to prove by a preponderance of the evidence that an additional fourteen (14) hours per week of personal care services are not "in excess of Petitioner's needs" and are not primarily intended for the convenience to the recipient, the recipient's caretaker, or the provider." *See* ¶ 16. Therefore, the record does not demonstrate that the requested additional personal care services are medically necessary. Accordingly, the undersigned finds that Petitioner

has not proved by a preponderance of evidence that Respondent's denial of the additional hours of personal care services was incorrect.

Homemaker services in AHCA Case Number 23-FH1553

27. In the instant case, Petitioner also requested an additional ten (10) hours per week of homemaker services. *See* ¶ 5. In the NABD dated April 5, 2023, Respondent denied Petitioner's request citing to a lack of medical necessity as the basis for their decision. *See* ¶ 5. However, Respondent did not specify which prong of medical necessity it used to make its decision. *See* ¶ 5-6. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 15.

28. 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* ¶ 16. Under Florida Medicaid, the purpose of homemaker services is for 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." *See* ¶ 16.

29. Petitioner is currently authorized to receive sixteen (16) hours per week of personal care services and thirty (30) hours of skilled nursing services per week. *See* ¶ 8. Petitioner has multiple medical conditions, including [redacted]. *See* ¶ 2.

Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [redacted]. *See* ¶ 3. Petitioner needs assistance (but not total help) with [redacted]. *See* ¶ 3.

30. The evidence presented in this case did not establish that the additional ten (10) hours per week of homemaker services were not in excess of Petitioner's needs. At Fair Hearing, [redacted] argued that due to the constant cleaning, changing and leaks from the [redacted], a larger amount of laundry is required. *See* ¶ 9. Petitioner introduced a 24-hour schedule, based on [redacted] testimony, as reflective of a typical day for Petitioner's care. *See* ¶ 9. The undersigned does not find that this schedule demonstrates Petitioner's unmet needs in [redacted] IADLs with the currently approved service hours, or show [redacted] unavailability with activities. The record shows that [redacted] is Petitioner's [redacted] and [redacted] who does not work outside of the home. *See* ¶ 2, 9. The record does not present evidence to show how [redacted] is no longer able to meet these homemaking needs for Petitioner. *See* ¶ 9-10.

31. Ms. Cruz explained that Respondent used the 701B, the LTC Supplemental Assessment, and the Functional Level Services Review Tool to determine the medically necessary hours for Petitioner, as well as functional needs for assistance with IADLs. *See* ¶ 11. According to Ms. Cruz and Dr. Bloom's testimony, based on Petitioner's IADLs needs and [redacted] availability for assistance, Respondent did not approve homemaker services. *See* ¶ 11, 12. Furthermore, Ms. Cruz and Dr. Bloom both indicated that Respondent established a care plan that is reflected in the current approved services. *See* ¶ 11, 12.

32. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that ten (10) additional homemaker hours per week are not in excess of the Petitioner's needs. Therefore, the record does not demonstrate that the requested additional homemaker services are medically necessary. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of the additional hours of homemaker services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of additional personal care services in AHCA case number 23-FH1550 is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of personal care services is **DENIED**.

Respondent's denial of additional homemaker services in AHCA case number 23-FH1553 is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of homemaker services is **DENIED**

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

Kimberly Roche
23-FH1550 & 23-FH1553
2023.11.15 08:14:32 -05'00'

KIMBERLY ROCHE, 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]

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