



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

**FILED**

Nov 20, 2023, 1:50 pm  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1686

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Medicaid Fair Hearing on the instant case on September 5, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Chrissie Simmons  
Medical Health Care Program Analyst  
Agency for Health Care Administration

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to terminate Petitioner’s personal care services was correct.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. [REDACTED] (“[REDACTED]”),  
Petitioner’s Authorized Representative and [REDACTED] appeared on behalf of the Petitioner. Maria

Fierero, (“Ms. Fierero”) and Lena Rocha (“Ms. Rocha”), from [REDACTED], Medicaid Waiver Support, appeared as a witnesses for the Petitioner but did not testify.

Chrissie Simmons, (“Ms. Simmons”), Medical Health Care Program Analyst for the Agency for Healthcare Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. Chris Kunis (“Dr. Kunis”), Medical Director for eQHealth Solutions (“eQHealth”), attended as a witness for Respondent.

Claudia, translator number 216398, with Language Line Solutions, appeared to provide Spanish translation services for Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a fourteen (14)-page e-mail. The fourteen (14)-page email appears in the Office of Fair Hearings’ document management system as file title “23-FH1686 Faxed [REDACTED] and Additional Documents.pdf.” Absent an objection from the Respondent, the undersigned admitted the fourteen (14)-page e-mail into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty (80)-page evidence packet and a forty-three (43)-page evidence packet. The eighty (80)-page evidence packet appears in the Office of Fair Hearings’ document management system as file title “[REDACTED] FH09.05.2023.pdf.” The forty-three (43)-page evidence packet appears in the Office of Fair Hearings’ document management system as file title “23-FH1686-AHCA evidence PCS 43pgs.pdf.” Absent an objection from the Petitioner, the undersigned admitted Respondent’s eighty (80)-page packet into evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and Respondent’s forty-three (43)-page evidence packet as Respondent’s Composite Exhibit 2 (“RCE 2”).

**FINDINGS OF FACT**

1. AHCA is a single state agency responsible for administering the Medicaid program and for ensuring compliance with state and federal Medicaid Rules. *See* RCE 2 at 13.

2. Petitioner receives Medicaid Services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the Agency to review prior authorization requests for services. *See* RCE 2 at 2. eQHealth is explicitly authorized to make medical necessity determinations for fee-for-service Medicaid services, including personal care services, and to act as a witness for the Agency in all Fair Hearing proceedings resulting from decisions and actions made by eQHealth in accordance with the contractual agreement. *Id.*

3. As of the date of the Fair Hearing, Petitioner was [REDACTED] ([REDACTED] - [REDACTED]) old. *See* RCE 1 at 2. Petitioner lives in a private residence with [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED]. *Id.* at 6. .

4. Petitioner is diagnosed with the following conditions: [REDACTED]  
[REDACTED]  
[REDACTED]. *Id.* at 21, 74.

5. Regarding Activities of Daily Living (“ADLS”), Petitioner requires total assistance with [REDACTED]  
[REDACTED]. *Id.* at 68, 74-75, 76. Petitioner requires assistance with [REDACTED]  
[REDACTED]. *Id.* at 22. Petitioner is [REDACTED]  
[REDACTED]. *Id.* at 22, 68 - 69. Petitioner also needs total assistance with Instrumental Activities of Daily Living (“IADLs”), including [REDACTED]. *Id.* at 76.

6. Petitioner attends school in the community Monday through Friday from 8:45 a.m. to 3:45 p.m. [REDACTED] works outside the home Monday through Friday from 12:00 p.m. to 4:00 p.m. *Id.* at 79.

7. Petitioner requested authorization of personal care services as follows, in pertinent part: from June 18, 2023, to August 12, 2023: forty-six (46) personal care hours weekly; from August 13, 2023 to August 16, 2023: twenty- seven (27) personal care hours; from August 17, 2023, to August 19, 2023: nine (9) personal care hours; August 20, 2023, to September 2, 2023: twenty-one (21) personal care hours weekly; September 3, 2023, to September 9, 2023: twenty-six (26) personal care hours; September 10, 2023, to September 23, 2023: twenty-one (21) personal care hours weekly; September 24, 2023, to September 30, 2023: twenty-six (26) personal care hours; October 1, 2023, to October 21, 2023: twenty-one (21) personal care hours weekly; October 22, 2023, to October 28, 2023: twenty-six (26) personal care hours; October 29, 2023, to November 4, 2023: twenty-one (21) personal care hours; November 5, 2023, to November 11, 2023: twenty six (26) personal care hours: November 12, 2023, to November 25, 2023: forty-six (46) personal care hours weekly; November 26, 2023, to December 9, 2023: twenty-one (21) personal care hours weekly; and December 10, 2023, to December 14, 2023: fifteen (15) personal care hours. *Id.* at 25-29.

8. In a Notice of Outcome (“NOO”) dated June 26, 2023, personal care services were terminated. *Id.* at 35. The NOO explained the basis of the termination as follows, in pertinent part:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G- 1.010, Florida Administrative Code, Specifically be requested services are not medically necessary under the following standards:

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not an excess of the patients needs.

The rationale for our decision is as follows:

PR Principle Reason- Denial: submitted information does not support the medical necessity for requested services.

*Id.* at 35.

9. Petitioner then requested reconsideration. In a Notice of Reconsideration Determination (“NRD”), dated July 12, 2023, the termination of personal care services was upheld. *Id.* at 48. The

NRD explained as follows, in pertinent part:

The reason for the denial is that the services are not medically necessary as defined in 59G- 1.010, Florida Administrative Code. Specifically the services must be:

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patients needs.

The medical basis for the reconsideration decision is as follows: request is for PCS for this [REDACTED] with [REDACTED] Patient is [REDACTED]; Attends school Monday to Friday 9:00 AM to 3:00 PM. Currently [REDACTED] does not work so can provide all care when [REDACTED] secures employment then may request PCS services. Deny this request.

*Id.* at 48-51.

10. On July 11, 2023, Petitioner requested a Fair Hearing to challenge the termination of personal care services. On August 3, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 5, 2023, at 1:00 p.m. Eastern Standard Time.

11. Dr. Kunis testified to the following:

- a. Petitioner is an [REDACTED], who is [REDACTED]. Petitioner's [REDACTED] must be [REDACTED]. Petitioner is [REDACTED]. [REDACTED].
- b. Petitioner needs total assistance with [REDACTED].
- c. Petitioner was previously approved for 3 hours per day of personal care services on Sunday through Saturday.
- d. Personal care services are authorized based upon a child's developmental needs and health care issues, and personal care services do not include supervision.
- e. Parents must provide as much care as they can pursuant to the AHCA rules.
- f. Petitioner attends school from approximately 8:45 a.m. to 3:45 p.m. on Monday - Friday. Petitioner also receives 5 hours per day of behavior analysis services on Monday through Saturday.
- g. At the time of the request for continued authorization of personal care services, Petitioner was on summer break, [REDACTED] was not working, and [REDACTED] was actively looking for employment.
- h. Additional documentation states that [REDACTED] now works on Monday through Friday from 12:00 p.m. to 4:00 p.m.
- i. Dr. Kunis asserted that additional personal care services can be requested if additional work hours are scheduled for Petitioner's [REDACTED] but personal care services cannot be used for supervision.
- j. Dr. Kunis further added that an approval for 3 hours of personal care services per day would be appropriate for non-school days only.

12. [REDACTED] testified to the following:
- a. Petitioner needs total assistance with ADLs and cannot be left alone for [REDACTED] safety. [REDACTED] needs help to [REDACTED]. [REDACTED] cannot [REDACTED] and cannot [REDACTED].
  - b. [REDACTED] asserted that Petitioner needs more than 3 hours of personal care services on non-school days.
  - c. [REDACTED] asserted that [REDACTED] needs more work because of their financial needs. [REDACTED] only works 4 hours a day Monday through Friday. [REDACTED] feels [REDACTED] needs to work more but cannot take additional work because [REDACTED] cannot leave [REDACTED] [REDACTED] alone.
  - d. [REDACTED] argued that Petitioner needs hands – on assistance and not just supervision.
  - e. [REDACTED] would like to work after 7:00 p.m., but [REDACTED] cannot leave [REDACTED] [REDACTED] alone. Currently, [REDACTED] does not work after 4:00 p.m. Monday through Friday.

#### **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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 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. The burden of proof in this proceeding is governed by Rule 59G-1.100(17)(g), F.A.C., which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan,

whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

16. Because Respondent is terminating a previously authorized service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. 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.)

17. The Florida Medicaid Personal Care Services Coverage Policy (“PC Policy”) incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs personal care services available under Florida Medicaid. The PC 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.

**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 (ADL)**

As defined in Rule 59G-1.010, F.A.C.

**1.3.2 Babysitting**

Custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient.

### **1.3.6 Home Health Services**

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

## **2.0 Eligible recipient**

### **2.1 General Criteria**

An eligible recipient must be enrolled in the Florida Medicaid program on the date of service and meet the criteria provided in this policy. Provider(s) must verify each recipient's eligibility each time a service is rendered.

### **2.2 Who can receive**

Florida Medicaid recipients under the age of 21 years requiring medically necessary personal care services. Some services may be subject to additional coverage as specified in section 4.0.

RCE 2 at 30-31.

18. The PC Policy provides the following general and specific criteria for coverage of personal care services:

### **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

#### **4.2.1 Parental Responsibility**

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

#### **4.2.2 Services Provided by Independent Personal Care Providers**

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

#### **4.3 Early and Period Screening, Diagnosis, and Treatment**

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1095(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary.

RCE 2 at 32. The PC Policy further addresses excluded services as follows:

### **5.0 Exclusion**

#### **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:

...

- Assistance with homework

- Babysitting
- Companion sitting or leisure activities
- Respite care to facilitate the parent or legal guardian attending to personal matters
- 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),

...

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 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>	
	15–30 minutes

Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	
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

RCE 2 at 37.

19. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides the applicable definitions for Florida Statewide Medicaid Managed Care policy. The Definition Policy provides the following definitions applicable to the instant case:

### **2.2 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

### **2.64 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)

RCE 2 at 7, 12.

20. The Florida Medicaid Authorization Requirements Policy (“Authorization Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

### **3.0 Determination Process**

#### **3.1 Review Criteria**

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO’s physician peer reviewer will determine medical necessity using his or her clinical judgment,

acceptable standards of care, state and federal laws, and AHCA’s medical necessity definition.

### **3.2 Review Process**

The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.

#### **3.2.1 Continued Authorization Requests**

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual error or omissions in prior certifications.
- There is a documented improvement in the recipient’s medical condition.
- There is a documented change in the recipient’s circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

RCE 2 at 24.

21. The PC Policy provides the following with respect to Florida Medicaid recipients under the age of 21 years, requesting coverage for personal care services:

#### **4.3 Early and Periodic Screening, Diagnosis, and Treatment**

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid’s General Policies on authorization requirements.

RCE 2 at 32.

22. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state

plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5),

EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

23. Petitioner is under age 21, and therefore EPSDT applies to ■■■ request for services.

However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

24. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida's definition of medical necessity. The Definitions Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines medical necessity as follows:

### **2.83 Medically Necessary or Medical Necessity**

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate 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.

RCE 2 at 13.

25. In the instant case, Petitioner requested continued authorization of personal care services. *See* ¶ 7. In an NOO and NRD, personal care services were terminated based on medical necessity. Specifically, the requested services were not: “[I]ndividualized, specific and consistent with symptoms or a confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.” *See* ¶ 7 - 9.

26. The PC Policy states that Florida Medicaid reimburses for services that meet all of the following: are determined to be medically necessary; do not duplicate another service; and meet the criteria as specified in this LTC Policy. *See* ¶ 18. In order for personal care services to be medically necessary, section 2.83 of the Definitions Policy requires that all five medical necessity criteria must be met. *See* ¶ 24. This includes the following criterion: services must be “individualized, specific, and consistent with the symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” *See* ¶ 24. Parents and legal guardians must participate in providing care to the fullest extent possible. *See* ¶ 18. Section 5.2 of the PC Policy provides that personal care services cannot be used for babysitting purposes. *See* ¶ 18. Babysitting is defined as “custodial care, daycare, afterschool care, supervision, or similar

childcare unrelated to the services that are documented to be medically necessary for the recipient.” See ¶ 18.

27. Respondent’s QIO determined that the personal care services at issue were not medically necessary according to section 2.83 of the Definitions Policy. In the instant case, the record reflects that [REDACTED] current work schedule is from 12:00 p.m. to 4:00 p.m. on Monday through Friday. See ¶ 6, 11, 12. Further, Petitioner’s school schedule is from approximately 9:00 a.m. to 3:45 p.m. See ¶ 6, 11, 12. As Dr. Kunis testified, [REDACTED] current work schedule is only 4 hours per day during the hours while Petitioner attends school. See ¶ 11, 26. Although [REDACTED] testified that [REDACTED] would like to work more hours, Dr. Kunis testified that additional personal care services could be requested once Petitioner secures additional hours of employment.

28. Based on the foregoing, the record demonstrates that the termination of personal care services was warranted in this this case. Personal care services are intended to provide assistance with activities of daily living (ADL) and age-appropriate instrumental activities of daily living (IADLs) 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. Dr. Kunis provided credible and persuasive testimony that Petitioner was cared for while in school and the personal care services requested were in excess of Petitioner’s needs as [REDACTED] is available when Petitioner is not in school. See ¶ 11. Further, Dr. Kunis stated that if [REDACTED] obtained additional employment, additional personal care hours could be requested. See ¶ 11.

29. Because Respondent did demonstrate that the previously authorized personal care services were in excess of Petitioner’s needs, the undersigned concludes that the services at issue

no longer meet medical necessity criteria. Looking at all of the evidence relevant to the particular needs of Petitioner, Respondent did demonstrate that the requested personal care services at issue in this case are not necessary to correct or ameliorate defects and physical and mental illness and conditions.

30. In light of the testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1 and 2, and the applicable laws and policies, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent's termination of personal care services was correct.

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

Respondent's termination of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

**DONE** and **ORDERED** this 20th day of November, 2023, in Tallahassee, Leon County, Florida.



Lynne Ringers

23-FH1686

2023.11.20

08:06:45 -05'00'

---

LYNNE RINGERS, Hearing Officer  
Agency for Health Care Administration  
Office of Fair Hearings  
2727 Mahan Drive, Mail Stop # 11  
Tallahassee, FL 32308-5407  
Office: (850) 412-3649

**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:**



AHCA Medicaid Hearing Unit  
MedicaidHearingUnit@ahca.myflorida.com