



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

FILED

Oct 10, 2023, 10:30 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1696

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1697

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1698

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on August 18, 2023, at 10:05 a.m. Eastern Standard Time (“EST”).

APPEARANCES

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

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

STATEMENT OF ISSUE

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

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

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

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED], Petitioner's Authorized Representative, appeared for the Fair Hearing to provide testimony on behalf of Petitioner. Petitioner appeared for the Fair Hearing as [REDACTED] own witness.

Markeshi Lee ("Ms. Lee"), Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana"), appeared for the Fair Hearing on behalf of Respondent. Manohar K. Chenchugalla, M.D. ("Dr. Chenchugalla"), Medical Director for Humana, appeared for the Fair Hearing as a witness for Respondent.

Lee Ann Williams, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the 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 three hundred and fifty-nine (359)-page evidence packet. The evidence packet appears in the Office document management system as the file titles "Evidence Packet [Petitioner]_Part1.pdf," "Evidence Packet [Petitioner]_Part2.pdf," "Evidence Packet [Petitioner]_Part3.pdf," "Evidence Packet [Petitioner]_Part4.pdf," and "Evidence Packet [Petitioner]_Part5.pdf." Absent an objection from the Petitioner, the three hundred and fifty-nine (359)-page packet was admitted into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana's Long-term Care ("LTC") program. See RCE 1 at pages 1, 108. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. Petitioner is [REDACTED]. *Id.* According to Petitioner's Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B"), dated July 20, 2023, Petitioner's health conditions include: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 114-115. Petitioner has history of [REDACTED]

[REDACTED]. *Id.* As testified by Petitioner, for [REDACTED]

Petitioner is prescribed [REDACTED] and for [REDACTED] Petitioner is prescribed [REDACTED],

[REDACTED] *Id.* at 120-121.

3. As provided in the 701B, Petitioner needs assistance (but not total help) with the following Activities of Daily Living (“ADLs”): [REDACTED]. *Id.* at 112. Petitioner needs supervision or prompt for using [REDACTED]. *Id.* Petitioner needs no assistance with [REDACTED]. *Id.* Petitioner uses [REDACTED]. *Id.* Petitioner’s 701B is consistent with Petitioner’s Fall Risk Assessment, dated July 20, 2023, which states that Petitioner needs supervision or prompt for [REDACTED]. *Id.* at 128-129. With regard to Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]. *Id.* at 113. Petitioner needs assistance (but not total help) with [REDACTED]. *Id.* Petitioner needs supervision or prompt for [REDACTED]. *Id.* Petitioner needs no assistance with using the [REDACTED]. *Id.*

4. Petitioner initially requested an additional twenty (20) hours per week of homemaker services. Petitioner’s request was partially denied in a Notice of Adverse Determination (“NABD”), dated November 23, 2022. *Id.* at 25-29. The NABD explained the basis of the denial as follows, in pertinent part:

- ✓ 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.

...

✓ **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 have requested additional 20 hours of homemaker (HMK) and additional 6 hours of personal care (PC) services per week. You currently receive 9 hours of PC service weekly, and 7 home delivered meals per week. You are a [REDACTED] whose [REDACTED] live with you but are currently not in the home until the condition of the home improves. You are alert and oriented and able to make your needs known. You have multiple medical problems including [REDACTED] [REDACTED] You need assistance with all your activities (PC) and instrumental activities (HMK) of daily living. Based on your need we are approving 5 of the requested 6 hours of PC and 7 of the requested 20 hours of HMK services. You also receive 7 HDM. You will now receive 21 hours of HHA per week giving you 3 hours of care daily for your needs which should be sufficient.

...

Id. at 25-26.

5. Petitioner also requested an additional fourteen (14) hours per week of personal care services and an additional ten (10) hours per week of adult companion care services. Petitioner's requests were denied in Notice of Adverse Determinations ("NABDs"), dated May 3, 2023. *Id.* at 17-21, 33-37. The NABDs contained identical rationale and explained the basis of the denials as follows, in pertinent part:

✓ 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.

...

- ✓ **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 have requested 14 additional hours of personal care (PC) and 10 hours of adult companion care (ACC) services weekly. You currently receive 7 hours of homemaker and 14 hours of PC services weekly. You stated that you are at risk for [REDACTED] with [REDACTED]. You require assistance/supervision to complete your PC tasks. You need assistance getting [REDACTED]. You cannot [REDACTED]. You are diagnosed with [REDACTED]. You reside at home with [REDACTED]. We are denying 10 hours of ACC service weekly as you can use Medicaid transportation benefit for your medical appointments. We are denying 14 additional hours of PC service weekly as your current 21 hours are sufficient to meet your needs as you require only moderate assist (not total) with [REDACTED].

...

Id. at 17-18, 33-34.

6. On December 7, 2022, Petitioner requested a plan appeal regarding the denial of homemaker services. *Id.* at 46-48. On December 28, 2022, Respondent issued a Notice of Plan

Appeal Resolution (“NPAR”) denying Petitioner’s request for additional homemaker services. *Id.*

The NPAR states the following, in pertinent part:

The reason for the decision was based on information received. You have requested your initial request of 13 hours of homemaker services be reconsidered (appeal). You currently receive 14 hours of Personal Care (PC) service weekly, 7 hours of homemaker services weekly and 7 home delivered meals per week. You are a [REDACTED] live with you but are currently not in the home until the condition of the home improves. You are alert and oriented and able to make your needs known.

You have multiple medical problems including [REDACTED]. You need assistance with all your activities Personal Care (PC) and instrumental activities homemaker services (HMK) of daily living. You also receive 7 home delivered meals (HDM). You have 21 hours of Home Health Aide (HHA) per week giving you 3 hours of care daily for your needs.

After thorough review of your chart, we have decided to uphold the denial of 13 hour of homemaker services weekly. The hours you are receiving should be enough to meet your needs and can be divided into shifts to better meet your needs.

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

...

Id. at 46-47.

7. On May 19, 2023, Petitioner requested a plan appeal regarding the denial of additional personal care services. *Id.* at 52-54. On June 10, 2023, Respondent issued a NPAR denying Petitioner’s request for additional personal care services. *Id.* The NPAR states the following, in pertinent part:

The reason for the decision was based on the information received. You have requested that the additional 14 hours of personal care service each week that was denied in your initial request be reconsidered (appeal). You have several (multiple) medical problems. You do not have trouble making your needs known. You sometimes have trouble [REDACTED]. You live with [REDACTED]. You are able to [REDACTED]. You do not use an [REDACTED]. You are not wheelchair-bound. You need

supervision [REDACTED]. You need supervision [REDACTED]. You need some help [REDACTED]. You need supervision when [REDACTED]. You need help with [REDACTED]. You need some help [REDACTED].

The denial of 14 additional hours of personal care service each week is being upheld. The hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your needs.

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

...

Id. at 52.

8. On May 19, 2023, Petitioner also requested a plan appeal regarding the denial of additional adult companion care services. *Id.* at 52-54. On June 10, 2023, Respondent issued an NPAR denying Petitioner's request for additional adult companion care services. *Id.* The NPAR states the following, in pertinent part:

The reason for the decision was based on the information received. You have requested that the 10 hours of adult companion care each week that was denied in your initial request be reconsidered (appeal). You have several (multiple) medical problems. You do not have trouble making your needs known. You sometimes have trouble [REDACTED]. You live with [REDACTED]. You are able to [REDACTED]. You do not use an [REDACTED]. You are not wheelchair-bound. You need supervision when [REDACTED]. You need supervision when [REDACTED]. You need some help [REDACTED]. You need supervision when [REDACTED]. You need help with [REDACTED]. You need some help [REDACTED].

The denial of the 10 hours of adult companion care each week is being upheld. The hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your needs.

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

...

Id. at 52.

9. On July 10, 2023, Petitioner requested a Fair Hearing regarding the denial of additional homemaker services in AHCA Case Number 23-FH1696, the denial of additional personal care services in AHCA Case Number 23-FH1697, and the denial of additional homemaker services in AHCA Case Number 23-FH1698. *Id.* at 1. On July 27, 2023, the Office issued a notice, to all parties of record, consolidating all cases and scheduling the consolidated Fair Hearing to be convened by telephone on August 18, 2023, at 10:00 a.m. EST.

10. As of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: fourteen (14) hours per week of personal care services, and seven (7) hours per week of homemaker services. *Id.* at 134-157, 163.

11. Petitioner testified at the Fair Hearing as follows:

- a. Since initially receiving personal care services and homemaker services in 2020, [REDACTED] has been diagnosed with additional medical issues including [REDACTED]. [REDACTED] Petitioner argues that these new diagnoses create heightened medical necessity for additional service hours.
- b. Petitioner asserts that [REDACTED] symptoms with [REDACTED] are worsened with [REDACTED]. [REDACTED]. Petitioner asserts that [REDACTED] [REDACTED] are exacerbated when in public alone and people stare at [REDACTED]. Petitioner argues that if someone were with [REDACTED] during these situations, this service would allow Petitioner to be more comfortable and decrease [REDACTED]. Petitioner contends that [REDACTED] is not able to enjoy social

activities alone anymore. Petitioner contends that [REDACTED] would need adult companion care to go out to the library, school, etc.

- c. Petitioner argues that [REDACTED] interactions with other people suffers due to [REDACTED] mental health symptoms, and [REDACTED] believes that another person present could better speak on [REDACTED] behalf.
- d. Petitioner asserts that [REDACTED] has [REDACTED], including [REDACTED]. Petitioner asserts that [REDACTED] still needs assistance [REDACTED].
- e. Petitioner asserts that [REDACTED] medication for [REDACTED] is maxed out and [REDACTED] neurologist cannot prescribe more. See ¶ 2. Petitioner asserts that [REDACTED] medications for [REDACTED] are not controlling symptoms. See ¶ 2.

12. Dr. Chenchugalla testified at the Fair Hearing as follows:

- a. Based on his review of Petitioner’s need for assistance with ADLs and IALDs, Dr. Chenchugalla explained that Petitioner’s needs remained the same since 2022. See ¶ 3.
- b. Dr. Chenchugalla opined that Petitioner’s currently authorized services should be sufficient to meet Petitioner’s needs based on the 701B completed in July of 2023.

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 168-189. 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.

...

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:

4.2.1.1 Adult Companion Care

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

...

4.2.1.9 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 168-176.

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.

Homemaker Services AHCA Case Number 23-FH1696

19. The Office of Fair Hearings received a request for a Fair Hearing from Petitioner on July 10, 2023, regarding homemaker services. Rule 59G-1.100(8)(g), Florida Administrative Code (“F.A.C”), requires that “a Fair Hearing request by an enrollee must be received by the Agency within 120 days of the date a required [Notice of Plan Appeal Resolution] NPAR is sent to the enrollee”. Rule 59G-1.100(9)(b)(3), F.A.C., authorizes a Hearing Office to deny or dismiss a Fair Hearing request that is untimely.

20. In the instant case, the NPAR is dated December 28, 2022. The Complainant requested a Fair Hearing on July 10, 2023, which is more than 120 days from December 28, 2022. Therefore, it appears that the request is untimely.

21. On August 22, 2023, the undersigned issued an Order to Show Cause (“Order”) why the Fair Hearing request should not be dismissed for failure to timely file the request. The Order explained that Rule 59G-1.100(b)(g), Florida Administrative Code, requires that “[a] fair hearing request by an enrollee must be received by the Agency within 120 days of the date the required NPAR is sent to the enrollee.” The Order notified Petitioner that failure to show cause by September 1, 2023, would result in dismissal of the case. The Office of Fair Hearings did not receive a response.

22. Therefore, the undersigned concludes that Petitioner’s request for a Fair Hearing regarding homemaker services in AHCA Case Number 23-FH2304 is untimely.

Personal Care Services AHCA Case Number 23-FH1697

23. In the instant case, insofar as it relates to Plan ID #172597349, Petitioner initially requested an additional fourteen (14) hours per week of personal care services. See ¶ 5, 7. In the NABD dated May 3, 2023, Respondent denied the additional personal care services due to lack of medical necessity. See ¶ 5. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. See ¶ 15.

24. 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.

25. The evidence presented in this case does not reflect that Petitioner needs an additional fourteen (14) hours per week of personal care services. Specifically regarding ADLs, Petitioner needs assistance (but not total help) with [REDACTED]. See ¶ 3. Petitioner needs supervision or prompt for using [REDACTED]. See ¶ 3. Petitioner needs no assistance [REDACTED]. See ¶ 3. Petitioner uses [REDACTED]. See ¶ 3. 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. Petitioner needs supervision or prompt for [REDACTED]. See ¶ 3. Petitioner needs no assistance with [REDACTED]. See ¶ 3. Petitioner has multiple medical conditions, including [REDACTED]. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] See ¶ 2.

26. Petitioner’s currently authorized 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 ¶ 10, 16. Petitioner testified [REDACTED] has been diagnosed with additional medical issues to include [REDACTED] [REDACTED] since initially receiving personal care services and homemaker services in 2020. See ¶ 2, 11. Petitioner contended that these new diagnoses should demonstrate the medical

necessity for additional service hours. See ¶ 11. Moreover, Petitioner argued that [REDACTED] and still needs assistance [REDACTED]. See ¶ 3, 11. The record does not show that basic supervision is qualifying criteria within the PC Policy for the purpose of requiring personal care services. See ¶ 18. Although the PC Policy provides general guidance for general allowances for ADLs, see ¶ 18, Petitioner provided no time estimates to explain the amount of time Petitioner requires for each of [REDACTED] ADLs. Further, Petitioner did not introduce any evidence (e.g., a daily schedule, a schedule of ADLs and IADLs) to justify the approval of an additional fourteen (14) hours of personal care services per week. Petitioner argued that [REDACTED] new diagnoses create heightened medical necessity for additional service hours. See ¶ 11. However, the record does not show how the requested additional hours of personal care services will be utilized to meet Petitioner's needs if approved in this matter.

27. Moreover, as Dr. Chenchugalla testified, based on his evaluation of Petitioner's need for assistance with ADLs and IADLs recorded in the 701B dated July 20, 2023, Petitioner's needs remained the same since 2022. See ¶ 12. Dr. Chenchugalla provided sufficient and persuasive testimony that the authorized personal care services are sufficient to meet Petitioner's functional needs.

28. Considering the totality of Petitioner's circumstances, including [REDACTED] diagnoses, level of need for ADLs and IADLs, and amount of currently approved services, 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." See ¶ 15.

29. In light of both parties' testimony, the evidence, the LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet [REDACTED] burden

of proving that an additional fourteen (14) hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of evidence that Respondent's denial of the requested additional personal care services was incorrect.

Adult Companion Care Services AHCA Case Number 23-FH1698

30. In the instant case, Petitioner requested ten (10) hours per week of adult companion care services. See ¶ 5, 8. In the NABD, dated May 3, 2023, Respondent determined that the ten (10) hours per week of adult companion care services were not medically necessary. See ¶ 5. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. See ¶ 15.

31. Adult companion care services administered under the Florida Medicaid program are for the "provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee." See ¶ 16. At Fair Hearing, Petitioner argued that that [REDACTED] symptoms with [REDACTED] are worsened with [REDACTED] [REDACTED] See ¶ 11. Petitioner testified that [REDACTED] [REDACTED] are inflamed when people stare at [REDACTED] in public. See ¶ 11. Petitioner argues that if someone were with [REDACTED] during these situations, this service would help decrease stress induced reactions. See ¶ 11. In addition, Petitioner argued that due to [REDACTED] mental health symptoms, [REDACTED] believes that another person could better communicate with others on [REDACTED] behalf. See ¶ 11. Petitioner asserts that [REDACTED] is not able to enjoy social activities alone anymore. See ¶ 11. It appears that Petitioner's request for companion care services is largely speculative at this time. Although the LTC Policy provides general guidance for how adult companion care services may be utilized, see

¶ 16, Petitioner introduced no evidence (e.g., a weekly activities schedule, regular participation in specific social events, etc.) to justify an approval of ten (10) hours of adult companion care services per week.

32. In light of both parties' testimony and evidence, and the LTC Policy, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that ten (10) hours per week of adult companion care services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of evidence that Respondent's denial of the requested adult companion care services was incorrect.


IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of additional homemaker services in AHCA case number 23-FH1696 is **DISMISSED** without prejudice and is now closed.

Respondent's denial of additional personal care services in AHCA case number 23-FH1697 is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of personal care services is **DENIED**.

Respondent's denial of adult companion care services in AHCA case number 23-FH1698 is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of adult companion care services is **DENIED**.

DONE and ORDERED this 10th day of October 2023, in Tallahassee, Leon County, Florida.


Kimberly Roche
23-FH1696 & 23-
FH1697 & 23-FH1698
2023.10.10 08:23:46
-04'00'

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 เรียน: ถ้าคุณ

บริการช่วยเหลือทางภาษาได้ฟรี โทร 1-(888) 419-3456 (TTY: 1-800-955-8771).