



FILED

Sep 18, 2023, 11:58 am
OFFICE OF FAIR HEARINGS

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

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1719

Plan ID No.: [Redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1720

Plan ID No.: [Redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 14, 2023, at 9:58 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Chantal Pierre
Clinical Appeals Coordinator
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional personal care services was incorrect.

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED] [REDACTED] appeared on behalf of Petitioner. Petitioner appeared as [REDACTED] own witness.

Chantal Pierre ("Ms. Pierre"), Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. John Carter, M.D. ("Dr. Carter"), Medical Director for Sunshine, appeared as a witness for Respondent. Kasi Narine, Utilization Management for Sunshine, appeared as a witness for Respondent. Lauren Greenwald, Utilization Management for Sunshine, appeared as a witness for Respondent. Luris Coll, Care Coordinator for Sunshine, appeared as a witness for Respondent.

Diana Hearod, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared 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 one hundred and seventy-nine (179)-page evidence packet. The one hundred and seventy-nine (179)-page packet appears in the Office of

Fair Hearings' document management system as file titles "MFH packet [Petitioner].pdf". Absent an objection from the Petitioner, the undersigned admitted the one hundred and seventy-nine (179)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE-1").

At the Fair Hearing, Petitioner's Authorized Representative stated that [redacted] submitted on August 7, 2023, a one (1)-page document to be part of the evidence record. On August 14, 2023, the Office of Fair Hearings timely received the one (1) page document on behalf of Petitioner. The documents appear in the Office of Fair Hearings' document management system as the file title "23-FH1719, 23-FH1720 Evidence.pdf". Absent an objection from the Respondent, the undersigned admitted the one (1) page documents into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. See page 2 of RCE 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

2. Petitioner is [redacted] years old. *Id.* at 45. Petitioner lives with [redacted]. *Id.* at 46. Petitioner is diagnosed with [redacted]
[redacted]
[redacted]. *Id.* at 47, 51-52, 65, 69-70, 150. Petitioner uses a [redacted]. *Id.* at 52, 70. Petitioner also suffers from [redacted]
[redacted]. *Id.* at 54, 72. Petitioner cannot be left alone. *Id.*

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessments ("701Bs") dated April 19, 2023, and July 17, 2023, Petitioner's needs for activities of daily living

("ADLs") are as follows: Petitioner needs assistance (but not total help) for all ADLs, [REDACTED]. *Id.* at 45-46, 49, 67. [REDACTED], Petitioner needs no assistance. *Id.* Petitioner uses a [REDACTED]. *Id.* In regard to [REDACTED] instrumental activities of daily living ("IADLs"), Petitioner needs total assistance (cannot do at all) for [REDACTED]. *Id.* at 50, 68. Petitioner needs assistance (but not total help) for [REDACTED], [REDACTED]. *Id.*

4. [REDACTED] is [REDACTED] and is the Petitioner's [REDACTED] r and caregiver. *Id.* at 77. [REDACTED] has been providing care for Petitioner for two (2) years or more. *Id.* [REDACTED]

5. Petitioner initially requested an additional twenty-four (24) hours per week of personal care services and an additional twenty-six (26) hours per week of homemaker services. Petitioner's requests were denied in Notice of Adverse Determination ("NABD"), dated April 24, 2023. *Id.* at 4-8. The NABD 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 the reason(s) checked below: (*See Rule*)

...

- ✓ Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or

2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

The facts that we used to make our decision are: The request for an extra 24 hours per week of Personal Care Services and an extra 26 hours per week of Homemaker Services is denied as not medically needed. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 6 hours per week of Personal Care Services and 4 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Id. at 4-5.

6. On May 16, 2023, Petitioner requested a plan appeal for the denial of additional twenty-four (24) hours per week of personal care services and the denial of additional twenty-six (26) hours per week of homemaker services. *Id.* at 134-136. In a Notice of Plan Appeal (“NPAR”) dated June 13, 2023, Respondent partially approved eleven (11) hours per week of personal care services, and upheld the denial of the remaining thirteen (13) hours per week of personal care services and twenty-six (26) hours per week of homemaker services. *Id.* at 142-144. The NPAR explained as follows:

...

The reason for our decision was based on additional clinical information from the case manager notes regarding the member's physical assistance needs, the denial of extra services is partially overturned. Sunshine Health will now approve an extra 11 hours/week of Personal Care Services to meet the member's care needs. The denial of the remaining requested 13 hours/week of Personal Care Services is upheld, and the denial of the extra 26 hours/week of Homemaker Services is upheld. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

...

Id. at 142.

7. On June 27, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services in AHCA Case Number 23-FH1719 and the denial of additional homemaker services in AHCA Case Number 23-FH1720. On July 21, 2023, the undersigned issued a notice, to all parties of record, an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions (“Scheduling Order”), setting the hearing for August 14, 2023, at 10:00 a.m. EST.

8. As of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: seventeen (17) hours per week of personal care services, four (4) hours per week of homemaker services, and one case of pull-ups per month. *Id.* at 35, 40.

9. Petitioner’s cardiologist, Boris D Nunez, M.D. (“Dr. Nunez”), wrote a letter dated August 3, 2023, in support of Petitioner’s request for services. The letter states as follows:

It is my understanding that [Petitioner] has significant [redacted] and needs to be under the caring [redacted] most of [redacted] time to help with daily medications and activities. From a cardiac standpoint this is a [decision] [based] on my studies and notes from [redacted] previous appointments.

...
See PCE 1 at page 2.

10. [redacted] testified to the following:

a. Petitioner has multiple medical problems that affect [redacted] daily living. See ¶ 2.

[redacted]
[redacted]
[redacted]

b. [redacted] manages and administers Petitioner’s medications four times per day because Petitioner forgets to take them. *Id.* at 75-76. In the last few weeks, upon standing, [redacted]

[REDACTED]
[REDACTED]

c. Petitioner [REDACTED]. [REDACTED] has to occasionally

[REDACTED]
[REDACTED]
[REDACTED]

d. [REDACTED] [REDACTED]

[REDACTED] [REDACTED] are in the process of
[REDACTED]
[REDACTED]
[REDACTED]

e. [REDACTED] left [REDACTED] job to become Petitioner's primary caregiver. [REDACTED]

[REDACTED] and Petitioner explain the reason for the request of extra service hours is to help pay the bills. [REDACTED] also requests the additional service hours so that [REDACTED] can go shopping to avoid Petitioner's exposure to a multitude of people.

f. [REDACTED] [REDACTED] helps care for Petitioner while [REDACTED]

[REDACTED]. [REDACTED] contends that Petitioner cannot be left alone at any time [REDACTED]. [REDACTED] contends that during the last assessment, [REDACTED]
[REDACTED]

11. Dr. Carter testified to the following:

- a. Sunshine took into consideration the request for an [REDACTED] LTC member with multiple medical conditions. See ¶ 2. The original care plan included ten (10) total hours of home health services. See ¶ 5. Currently, the care plan includes twenty-one (21) hours per week of combined services, if equally distributed across seven days is approximately three (3) hours per day. See ¶ 8.
- b. Sunshine utilized the Sunshine LTC Ancillary Service Criteria to help determine the appropriateness of services. See ¶ 12. The services are secondary to home support to address functional deficits due to a member's medical condition. *Id.* at 154, 157. The determinant for services is based on ADL/IADL deficits, living situation, supervision needs, available supports, and other services in place. *Id.* at 157-159. For homemaker services, Sunshine reviews criteria for IADL limitations, living situation, supervision needs, and available supports. *Id.* at 163-166. Personal care services are primarily hands-on care which can include housekeeping duties. *Id.* at 168-172.
- c. The 701Bs show Petitioner requires partial assistance with all ADLS, which are hands-on care, but is independent for eating. See ¶ 3. Petitioner needs partial assistance for most IADLs. See ¶ 3 and RCE 1 at 50. Sunshine considered Petitioner is wheelchair bound and [REDACTED]. See ¶ 2.
- d. Dr. Carter contends that Petitioner's current approved services should be sufficient to cover [REDACTED] needs in light of member residing [REDACTED] as primary caregiver, and [REDACTED], and Petitioner's [REDACTED] does not work outside of the home. From [REDACTED] clinical judgment, Dr. Carter asserts that

Petitioner should not be left alone on a permanent basis and benefits from [redacted] being in the home.

12. The Sunshine Health Long Term Care Ancillary Service Criteria (May 2014) (“FL.LT.UM.09”) provides as follows in regards long-term care services:

PURPOSE:

To establish clinical criteria on which to review Sunshine Health Long Term Care (LTC) line of business ancillary services for members residing in a home and community based environment. The goal of the ancillary services is to provide these supportive services in the home to address the member’s cognitive and functional deficits, which may be a result of their medical conditions. The services will assist in maintaining the members in their home and community environment, in a safe manner, to avoid the risk for nursing home placement.

...

1. Determinants for Services

When considering the level of support the member requires and which of the ancillary services may support the member’s cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member’s support needed due to ADL deficits, living situation, and supervision needs.

a) Activities of Daily Living (ADL’s)/Instrumental Activities of Daily Living (IADL’s)

- Independent where member is able to provide the task without support, with or without assistive devices
- Minimal functional impairment where the ADL’s require one of the following:
 - Supervision
 - At least minimum assistance
 - Member ambulates with assistance of a person or a device
 - Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply
 - Member has ADLs requiring at least minimal assistance
 - Member ambulates with assistance of a person or device
 - Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
 - Member has ADLs requiring total assistance
 - Member is non-ambulatory
 - Member transfers require one (1) to two (2) person assist
 - Member’s treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone.
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
- Lives with non-family (with consideration of the number of days and hours that non- family members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

e) Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

...

6. Homemaker Services

Homemaker: 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. These services are provided to members who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Chore services, including heavy chore services and pest control may be included in this service. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Services reviews include four (4) criteria:

- a) Instrumental Activity of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

Covered Homemaker service may include:

- a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Criteria to consider for Housekeeping may include but are not limited to:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member
- For members living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area.
- The entire size of the home may be considered if cleaning of specific areas not used by the member is needed to maintain sanitary living conditions.
- For members sharing a residence, housekeeping applies only to the areas used by the member.

- b) Shopping for the recipient's food and essential household items, picking up prescriptions and needed medical supplies

Criteria to consider for Shopping may include but are not limited to:

- Member's ability to obtain and put away groceries, household goods, and medications on their own
- Member lives with family or has other supports who do the shopping for the member and puts away groceries, household goods and medications

- c) Meal preparation includes menu planning, storing, preparing, cooking, and serving food (buttering bread and cutting food into bite size pieces, plating). Meal preparation does not include the cost of the food.

Criteria to include for Meal Preparation may include but are not limited to:

- Number of meals per days eaten by member or number of meals the member should eat per day

- Number of daily meals prepared by a caregiver and left in a location that the member can access, heat if necessary, and get to the table to eat.
- Meal preparation tasks member is able to complete independently. Is member able to use the microwave stove or oven?
- Amount of assistance needed in the preparation and cleanup, such as:
 - Meal planning
 - Meal preparation
 - Special diets
 - Special food preparation
 - Assembling food on plates
 - Getting food to the table

d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all laundromat and/or cleaning fees.

Criteria to include for Laundry Considerations may include but are not limited to:

- Identify the amount of laundry to be done on a weekly basis, including washing, drying, folding and putting away member's clothes, bed linens and towels
- Identify if member soils their clothing or bedding due to incontinence, therefore more frequent laundry is needed, which results in more smaller loads
- Preparing clothes and other items to be washed
- Putting the clothes and other items in the washer and dryer
- Hanging clothes and other items to dry
- Other chores could be done while the member's clothes or other items are being washed, dried, folded, and put away.
- If laundry must be done in an apartment laundry room or a community laundry, additional time may be given for waiting for the laundry to be done.
- Routine changing of bed linens is considered part of bedroom housekeeping

...

7. Personal Care Services

In accordance with Rule 59G-4.215, F.A.C., for member 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 member. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years. A service that provides assistance with eating,

bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders

The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times

- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

Personal Care workers must be supervised by a registered nurse, licensed to practice nursing in Florida and who conducts a supervisory home visit every 60 days to observe the personal care worker. The services may be provided in the member's home or other location.

Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

Covered Personal Care services may include:

a) Bathing

Assistance with bathing, including washing, rinsing, and drying the body or body parts.

- Member's ability to transfer in and out of the tub or shower
- Amount of time it takes the member to transfer in and out of the tub or shower
- Ability of member to prepare the shower or run the bath water
- Ability of member to use any assistive devices, such as a grab-bar or shower chair
- Ability of member to use a sponge or wash cloth to clean himself/herself
- How many times per week does the member bathe, consider that:

- Incontinence episodes resulting in the need for a bath
- Daily bathing of the elderly is not recommended due to damage that occurs to the skin from the water and the soap
- Bathing more than once per day is a personal preference and not a necessity.
- Full bath (bathtub, shower, or bed bath) or partial sponge bath (washing of face, underarms, and private areas).
- A bed bath for members who are bed bound and cannot get out of the bed to be bathed in a shower or tub

b) Dressing and Grooming

Dressing assistance includes the laying out, taking off, putting on, and fastening of clothing and footwear, and includes:

- Member's ability to choose their own clothes, put them on, and put on socks and shoes
- Ability to put clothes, socks and shoes on if someone lays out the clothes
- Ability to button, zipper, tie, or buckle clothes or shoes
- Ability to successfully use assistive devices in dressing, such as reachers, sock pullers, or shoehorns
- Ability to dress self in the morning or evening to get ready for bed

Grooming includes assessment of member's ability to:

- Comb or brush hair
- Shave
- Complete oral hygiene, including brushing teeth, remove dentures/partials, clean dentures/partials, and replace dentures/partials
- Trim and clean fingernails and toenails

c) Eating and Feeding Considerations

Eating/Feeding is the process of a member getting oral nourishment from a receptacle (dish, plate, cup, glass, bottle, etc.) into their body after it is cooked or prepared for eating. (This does not include tube feeding as that is considered a skilled task.) Includes an assessment of the member's ability to:

- Cut foods into appropriate size pieces
- Move food or drink from the serving receptacle to their mouth

Support for eating considers the number of meals per day that the member eats.

Note: Assistance with the preparation of meals is considered as part of Meal Preparation

d) Toileting Considerations

- Taking off and putting on of clothing and/or diapers,
- Post-toilet hygiene
- Use of equipment, such as a urinal or bedpan

- Emptying of urinal or bedpan
- Cleaning of a catheter or ostomy bag
- Reminders or a toileting schedule

e) Transferring Considerations

Transferring is the member's ability to move horizontally and/or vertically between the bed, chair, wheelchair, commode, etc. It includes an assessment of the member's:

- Ability to use any mechanical devices such as a walker, cane, handrails, or wheelchair to assist with transfers
- Ability to safely transfer without the assistance of another person
- Ability to physically participate in the transfer by pivoting, holding on, or bracing themselves to assist the caregiver

f) Mobility Considerations

Mobility is the extent of the member's purposeful movement within their residence. It includes an assessment of the member's:

- Ability to purposely move about his/her residence independently with or without the use of assistive devices, this includes the ability of a member to move around in a wheelchair
- Movements being unsafe without the assistance of another person in ambulating
- Muscle weakness, unstable gait or unstable balance

...

See RCE1 at 154-170.

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 Fla. Stat. § 409.285(2)(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 Fla. Admin. Code R. 59G-1.100(17)(b).

15. Because Petitioner is requesting additional 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. The LTC Policy provides the following, in pertinent part:

1.1 Description and Program Goal

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

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual’s medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

- a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
- b) All other LTC supportive services must meet all of the following:
 - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
 - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
 - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

...

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.

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

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.

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

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

...

5.2 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

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 5 – 7, and 10.

Personal Care Services

19. In the instant case, Petitioner initially requested an additional twenty-four (24) hours per week of personal care services. *See* ¶ 5-6. As of the date of the Fair Hearing, Sunshine authorized an additional eleven (11) hours per week of personal care services. *See* ¶ 8. Accordingly, a total of thirteen (13) additional hours per week of personal care services are in dispute. *See* ¶ 6, 8. Respondent denied the additional thirteen (13) hours per week of personal care services citing the lack of medical necessity as the basis for their decision. However, Respondent did not specify which prong of medical necessity it used to make its decision. *See* ¶ 5, 6. Petitioner has the burden of proof to show by a preponderance of evidence that the Respondent’s decision was incorrect. *See* ¶ 15.

20. The LTC Policy states that Florida Medicaid LTC plans cover services that meet all of the following: (1) are determined medically necessary; (2) do not duplicate another service; and (3) meet the criteria specified in the 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. Respondent's FL.LT.UM.09 mirrors the LTC Policy in that personal care services are used to provide medically necessary assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are essential to the health and welfare of the enrollee. See ¶ 12, 16.

21. Here, Petitioner did not establish that the additional thirteen (13) hours per week of personal care services were not in excess of Petitioner's needs. Petitioner is currently authorized to receive seventeen (17) hours per week of personal care services, four (4) hours per week of homemaker services, and one case of pull-ups per month. See ¶ 8. The testimony and documents in the record show Petitioner requires assistance due to [REDACTED] medical conditions. See ¶ 2, 9, 10. Petitioner's needs are demonstrated in the 701Bs dated April 19, 2023, and July 17, 2023, which indicate for ADLs, Petitioner requires assistance (but not total help) for all ADLs, except for eating. See ¶ 3. Petitioner uses a wheelchair for walking/mobility. See ¶ 3. Moreover, in regard to [REDACTED] IADLs, Petitioner needs total assistance (cannot do at all) for [REDACTED]. See ¶ 3. Petitioner needs assistance (but not total help) for [REDACTED]. See ¶ 3. According to [REDACTED] Petitioner cannot dress [REDACTED] and [REDACTED] has to occasionally feed Petitioner due to [REDACTED] essential tremors worsening. See ¶ 10. As a reason for an anticipated house move, [REDACTED] explained that the narrow bathroom creates a struggle to assist Petitioner into the shower. See ¶ 10. [REDACTED] also contended that during the last assessment, Petitioner's [REDACTED] were not as bad as now, and [REDACTED] have also progressed. See ¶ 10. [REDACTED] explained an almost daily occurrence in the last few weeks with Petitioner's blood pressure dropping very low and [REDACTED] action of lying Petitioner down until [REDACTED] blood

pressure stabilizes. See ¶ 10. [REDACTED] contended that Petitioner cannot be left alone at any time due to [REDACTED] medical conditions. See ¶ 10. Petitioner's cardiologist, Dr. Nunez, wrote a letter dated August 3, 2023, stating Petitioner "has significant neurocardiogenic syncope and needs to be under the caring of [REDACTED] [REDACTED] most of [REDACTED] time to help with daily medications and activities." See ¶ 9.

22. According to Dr. Carter's testimony, Respondent took into consideration the request for an [REDACTED] LTC member with multiple medical conditions. See ¶ 2, 11. Respondent considered Petitioner is [REDACTED]. See ¶ 11. Respondent relied upon the 701Bs which show Petitioner requires partial assistance with all ADLS, which are hands-on care, but is independent [REDACTED]. See ¶ 3, 11. Petitioner needs partial assistance for most IADLs. See ¶ 11. Petitioner's current care plan includes twenty-one (21) hours per week of combined services, if equally distributed across seven days is approximately three (3) hours per day. See ¶ 8, 11. It is Respondent's position that Petitioner's currently approved services should be sufficient to cover [REDACTED] needs in light of Petitioner residing with [REDACTED] [REDACTED] as primary caregiver, and [REDACTED] [REDACTED]. See ¶ 11. Petitioner did not introduce evidence to demonstrate any unmet needs in [REDACTED] ADLs or IADLs with the currently approved service hours. Moreover, the letter by Petitioner's cardiologist, while beneficial, does not point to an unmet need in Petitioner's care that is not already captured in Petitioner's current plan of care. See ¶ 9. Further, basic monitoring and administration of medications are not among the criteria within the PC Policy for the purpose of requiring personal care services. See ¶ 13. Therefore, Petitioner did not show that the request was not in excess of [REDACTED] needs.

23. Further, section 1.3.4 of the LTC Policy maintains that medically necessary services should not be “primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” See ¶ 16. Petitioner did not introduce evidence to demonstrate that the request was not for [redacted] own or [redacted] caregiver’s, [redacted], convenience. At Fair Hearing, [redacted] testified that [redacted] quit [redacted] job to become Petitioner’s primary caregiver. See ¶ 10. The testimony on the record reveals that the additional service hours were requested to cover Petitioner’s activities of daily living and to help pay household bills. See ¶ 10. In addition, [redacted] testified that [redacted] and [redacted] are in the process of selling their house to buy a single-story home for Petitioner’s safety. See ¶ 10. [redacted] also argued that the additional service hours are so that [redacted] can go shopping to avoid Petitioner’s exposure to a multitude of people. See ¶ 10. The record reflects that [redacted] does not work outside the home. See ¶ 4, 10. The record does not contain any evidence to show how [redacted] is no longer able to provide adequate care for Petitioner. See ¶ 10. It appears that the reasons – financial concerns and avoiding environmental dangers – for the request of additional service hours lie disproportionately in favor of a convenience to Petitioner and/or Petitioner’s caregiver. The criteria for personal care services do not support decisions to be based on these concerns. See ¶ 11 – 12, 18. As such, the undersigned Hearing Officer finds that Petitioner has not demonstrated that the request for additional personal care services is medically necessary.

24. 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 thirteen (13) additional hours per week of personal care services are not in excess of the Petitioner’s needs and are not primarily intended for the convenience to the recipient, the

recipient's caretaker, or the provider. 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 the evidence that Respondent's denial of the additional hours of personal care services was incorrect.

Homemaker Services

25. In the instant case, Petitioner also requested an additional twenty-six (26) hours per week of homemaker services. *See* ¶ 5. In the NABD, dated April 24, 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. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 15.

26. The FL.LT.UM.09 mirrors the LTC Policy guidelines in that homemaker services are 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* ¶ 12, 16.

27. Here, Petitioner did not establish that the additional twenty-six (26) hours of homemaker services, weekly, were not in excess of Petitioner's needs. Petitioner is currently authorized to receive seventeen (17) hours per week of personal care services, four (4) hours per week of homemaker services, and one case of pull-ups per month. *See* ¶ 8. According to the 701Bs dated April 19, 2023, and July 17, 2023, Petitioner's needs for IADLs indicate Petitioner needs total assistance (cannot do at all) for [REDACTED]. *See* ¶ 3. Petitioner needs

assistance (but not total help) for [REDACTED]

[REDACTED] See ¶ 3. According to [REDACTED] testimony, [REDACTED] does all meal preparation, house cleaning, house chores, and laundry. See ¶ 10. Moreover, [REDACTED] manages and administers Petitioner's medications four times per day because Petitioner forgets to take them. See ¶ 10. [REDACTED] testified that the requested additional service hours were so that [REDACTED] can go shopping to avoid Petitioner's exposure to a multitude of people. According to [REDACTED]'s testimony, [REDACTED] helps care for Petitioner while [REDACTED] runs errands. According to Dr. Carter's testimony, Respondent utilized the FL.LT.UM.09 to help determine the appropriateness of services. See ¶ 11. For homemaker services, Sunshine reviews criteria for IADL limitations, living situation, supervision needs, and available supports. See ¶ 11. Petitioner did not introduce evidence to demonstrate any unmet needs in [REDACTED] IADLs with the currently approved service hours. The record reflects that [REDACTED] does not work outside the home. See ¶ 4, 10. The record does not contain any evidence to show how [REDACTED] is no longer able to provide adequate care for Petitioner.

28. Further, section 1.3.4 of the LTC Policy maintains that medically necessary services should not be "primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." See ¶ 16. At Fair Hearing, Petitioner and [REDACTED] both testified that additional service hours were requested because [REDACTED] provides assistance to Petitioner and those additional hours would help address financial concerns. See ¶ 10. Petitioner did not introduce evidence to demonstrate that the request was not for [REDACTED] own and/or [REDACTED]

convenience. As such, the undersigned finds that Petitioner has not demonstrated that the additional homemaker services are medically necessary.


29. 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 twenty-six (26) additional homemaker hours per week are not in excess of the Petitioner's needs and are not primarily intended for the convenience to the recipient, the recipient's caretaker, or the provider. 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 is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's denial of additional homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

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

 Kimberly Roche
23-FH1719 & 23-
FH1720
2023.09.18 09:53:15
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KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop #11
Tallahassee, FL 32308-5407

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Notice of Nondiscrimination Policy**

COPIES FURNISHED TO (w/ enclosure):



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