



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

**FILED**

Nov 07, 2023, 2:40 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1732

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 15, 2023, at 9:00 a.m. Eastern Standard Time.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Michael Moens  
Medicaid Fair Hearing Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

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

**PRELIMINARY STATEMENT**

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

[REDACTED]

appeared on behalf of the Petitioner.

Michael Moens, Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Avra Bowers (“Dr. Bowers”), Medical Director for Humana, attended as a witness for Respondent.

Sandra Durden, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Certified Spanish-English Language Interpreter, Brisa, Identification Number 354037, attended the hearing to interpret the hearing proceedings, and she was then replaced by Certified Interpreter, Natalie, Identification Number 342895.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty-six (286)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles: “Evidence Packet \_Part1.pdf”; “Evidence Packet \_Part2.pdf”; “Evidence Packet \_Part3.pdf”; “Evidence Packet\_Part4.pdf”; “Evidence Packet\_Part5.pdf”; and “Evidence Packet \_Part6.pdf.” Absent an objection from the Petitioner, the undersigned admitted the two hundred and eighty-six (286)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Petitioner submitted a one hundred and fifty (150)-page evidence packet to the Office of Fair Hearings and Respondent. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “23-FH1732 Evidence.pdf.” Absent an objection from the Respondent, the undersigned admitted the one hundred and fifty (150)-page packet into evidence as Petitioner’s Composite Exhibit 1.

**FINDINGS OF FACT**

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

2. [REDACTED]. *Id.* Petitioner lives with [REDACTED], who does not work outside the home. *Id.* at 40, 54.

3. Petitioner is diagnosed with the following [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. *Id.* at 46 - 47. In the past, Petitioner has had the following health issues: [REDACTED]

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated July 7, 2023, ("701B"), Petitioner's needs for activities of daily living ("ADLs") are as follows:  
for [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

5. As provided in the 701B, Petitioner's needs for instrumental activities of daily living ("IADLs") [REDACTED]  
[REDACTED]  
all); [REDACTED]  
[REDACTED]

6. As provided in the 701B, uses [REDACTED], however, it is painful for [REDACTED] to walk [REDACTED]. *Id.* at 44. Petitioner changes or limits [REDACTED] activities out of fear of [REDACTED]. *Id.* at 51. The 701B indicates that Petitioner is [REDACTED] [REDACTED] needs supervision. *Id.* at 49. As provided in the Plan of Care, dated July 7, 2023, Petitioner suffers from [REDACTED] is not able to care for [REDACTED]: Petitioner's [REDACTED], [REDACTED], will provide daily assistance with Petitioner's ADLs and IADLs. *Id.* at 75. [REDACTED] [REDACTED] cares for Petitioner for 16 hours per week and is experiencing financial and emotional strain. *Id.* at 55 - 56.

7. In the Notice of Adverse Benefit Determination ("NABD"), dated February 10, 2023, Respondent denied Petitioner's request for an additional twenty-six (26) hours of homemaker services. The NABD explained the basis of the denial as follows:

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

...

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

and one of the following:

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

....

- Other authority

The facts that we used to make our decision are:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan’s approved review criteria and guidelines.

You have requested an additional 26 hours of homemaker service each week and an additional 25 hours of personal care service each week. You have several (multiple) medical problems. You do not have trouble [REDACTED]. You have trouble [REDACTED]. You have not had any recent changes in your health. You have not recently been in the hospital. You live [REDACTED]. Your [REDACTED] helps to care for you. Your [REDACTED] does not work outside of the home. You use a walker to move around (walk). You need some help transferring (move from bed to chair). You need some help [REDACTED] g. You need help with [REDACTED]; [REDACTED]. You are being approved for an additional 4 hours of personal care service each week. Your request for an additional 26 hours of homemaker service each week is being denied as not medically necessary. You live with others who share in household responsibilities. These hours should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs. al needs (sic).

Pages 9 – 10 of RCE 1.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated May 12, 2023, upholding the denial. *Id.* at 19 – 24. The NPAR explained as follows:

The reason for the decision was based on the information received. You have requested that the additional 26 hours of homemaker services each week that was denied in your initial request be reconsidered (appeal).

[Petitioner] has several (multiple) medical problems. [REDACTED] does not have trouble [REDACTED]. [REDACTED] often has [REDACTED] things. [REDACTED] lives with [REDACTED] you. [REDACTED] uses a [REDACTED] [REDACTED] [REDACTED] [REDACTED]

The denial of 26 additional hours of homemaker service each week is being upheld. The hours [Petitioner] is currently receiving should be enough to meet [redacted] 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 19.

9. On July 14, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional homemaker services. On May 11, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions ("Scheduling Order"), setting the hearing for May 30, 2023, at 1:00 p.m. EST, which hearing was continued and rescheduled at the request of Petitioner. On September 1, 2023, the undersigned issued a Second Scheduling Order setting the hearing for September 15, 2023, at 9:00 a.m.

10. On August 28, 2023, Respondent authorized an additional five (5) hours of homemaker services for Petitioner, for a total of fourteen (14) homemaker hours each week. *Id.* at 26.

11. Petitioner's [redacted], [redacted], testified that Petitioner needs more homemaker care services because [redacted] is in poor condition and needs constant supervision. [redacted] testified that [redacted] cannot move without assistance, and [redacted] health is worse, mentally and physically, than what is reported on the 701B assessment from July 7, 2023. [redacted] argued that Petitioner's body has greatly deteriorated, and without more care [redacted] would have to be placed in a nursing home, and [redacted] wants to keep [redacted] in [redacted] home. [redacted] testified that [redacted] constantly worried that [redacted] may fall if [redacted] is confused and tries to get out of bed, especially overnight, and that [redacted] must sleep right next to [redacted] overnight because of [redacted] fall risk.

12. Dr. Bowers is a Medical Director for Humana. Dr. Bowers' testimony established the facts that Petitioner's request for an additional twenty-one (21) hours of weekly homemaker services were being denied because they were not medically necessary. Referring to the 701B assessment, Dr. Bowers pointed out that homemaker services are provided for general household activities, such as meal preparation, and routine household care by a trained homemaker. Petitioner's IADLs needs, such as [REDACTED] [REDACTED] [REDACTED] by [REDACTED] who lives with [REDACTED]. Dr. Bowers established that Petitioner currently receives fourteen (14) hours of homemaker services each week, together with twenty-eight (28) hours of personal care services each week, for a total of forty-two (42) hours of home health services per week. Dr. Bowers concluded that these services are adequate for Petitioner's needs. Dr. Bowers explained that Respondent took into account the facts that [REDACTED] primary caregiver, [REDACTED], does not work outside the home, and that [REDACTED], such as, [REDACTED]. Dr. Bowers testified that Respondent also took into account the 701B assessment noting that while Petitioner has confusion nearly every day, [REDACTED]; and it was also taken into consideration that while Petitioner has multiple medical problems, no skilled nursing services are needed. Considering all the foregoing, Dr. Bowers explained, the Plan increased the initial calculations for homemaker services (*i.e.*, the thirty (30) minutes for each homemaker care task, for a total of one and one half (1 ½) hours per day, were increased to a maximum of two (2) hours per day) giving Petitioner a total of fourteen (14) hours per week. For the same reasons, Dr. Bowers explained further, the Plan doubled Petitioner's personal care services for a total of twenty-eight

(28) hours per week. Dr. Bowers contends that a total of forty-two (42) hours each week, or six (6) hours per day, for home care services is adequate to meet Petitioner's medical needs. Dr. Bowers acknowledged that [REDACTED] were very taxing on [REDACTED] and that respite care services might be beneficial should Petitioner request them from the Plan.

### **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. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

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

16. In the instant case, Petitioner requested new services. As such, 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.)

17. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs LTC services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services:

**1.1 Description and Program Goal**

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

...

**1.3.1 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)

...

#### **1.3.16 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

#### **4.2.1 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.

...

##### **4.2.1.8 Home Delivered Meals**

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

##### **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.

...

##### **4.2.1.15 Respite Care**

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee's natural supports on a planned or an emergency basis.

#### **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.

LTC Policy at pages 1-8.

18. The LTC Policy also addresses the medical necessity for services:

#### **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.

LTC Policy at pages 2-3.

19. In this case, Respondent denied Petitioner’s request for twenty-one (21) additional hours per week of homemaker services because they were not medically necessary. In the NABD, Respondent denied Petitioner’s request, which determination was upheld in the NPAR, because the additional services were in excess of Petitioner’s needs. See supra ¶ 7, 8.

20. As provided in the LTC policy, 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.**” (emphasis added). See supra ¶ 17. Additionally, section 1.3.14 of the LTC Policy requires that “LTC supportive 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 supra ¶ 18. According to the LTC Policy definition for “homemaker services,” these services closely align with IADL tasks. See supra ¶ 17. In regards to Petitioner’s IADL needs, the 701B states that for [REDACTED]

[REDACTED]

[REDACTED], Petitioner needs total assistance (cannot do at all); and for [REDACTED]

[REDACTED], Petitioner has assistance most of the time with [REDACTED] IADLs. See supra ¶ 5.

21. Petitioner bears the burden of proof to show that Respondent incorrectly denied Petitioner’s request for twenty-one (21) additional homemaker hours each week. At the Fair Hearing, Dr. Bowers explained that Petitioner lives with [REDACTED] who provides natural support by

sharing in the household activities. See supra ¶ 6, 12. Petitioner's [REDACTED] does not currently work outside the home. See supra ¶ 2. [REDACTED] did not present any evidence that [REDACTED] has obligations or appointments that require [REDACTED] to be temporarily absent from the home on a regular basis or unable to assist with general household tasks. Dr. Bowers opined, based on the 701B review and the Plan's allotted time for IADL tasks, fourteen (14) hours of homemaker services per week is more than adequate to meet Petitioner's need for homemaker services. Additionally, Petitioner receives twenty-eight (28) hours of personal care services per week to assist with [REDACTED] ADLs. See supra ¶ 12. [REDACTED] testified that the request for additional homemaker services is based, in part, on the need to keep [REDACTED] safe from [REDACTED], including overnight when [REDACTED] stands up, experiences [REDACTED], or when [REDACTED] needs exercise. The record reflects that Petitioner is diagnosed with [REDACTED]. [REDACTED] However, the needs that [REDACTED] has identified correlate to a possible need for supervision, or adult companion care services, rather than additional homemaker services. Adult companion care services are defined as "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." (emphasis added). See supra ¶ 18. As Dr. Bowers also testified, respite care services can also be requested. See supra ¶ 12.

22. Based on the foregoing, *supra* ¶ 20-21, the record does not show that the additional homemaker services at issue are "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." Therefore, the undersigned concludes that an additional twenty-one (21) hours per week of homemaker services were not shown to meet medical necessity criteria.

23. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of the evidence that Respondent's denial of Petitioner's homemaker services was incorrect.

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

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

**DONE** and **ORDERED** this 7th day of November, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki  
23-FH1732  
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**DEBBIE WINICKI, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**Copies Furnished To:**

[REDACTED]  
[REDACTED]

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

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