



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

**FILED**

Oct 24, 2023, 12:25 pm

OFFICE OF FAIR HEARINGS



PETITIONER,

AHCA Case No.: 23-FH1785

Plan ID No.: 

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /



PETITIONER,

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SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

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

**APPEARANCES**

For the Petitioner:



Petitioner

For the Respondent:

Christian Pacheco  
Senior Director of Quality Improvement  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The first 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 second 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 appeared on his own behalf. [REDACTED] [REDACTED] Petitioner's friend and caregiver [REDACTED] attended as a witness for Petitioner.

Christian Pacheco, Senior Director of Quality Improvement for Sunshine State Health Plan, Inc. ("Sunshine Health" or "Respondent") appeared on behalf of Respondent. The following persons attended as witnesses for Sunshine Health: Dr. Vincent Jarvis ("Dr. Jarvis"), Long-Term Care Medical Director; Ashara Howard, Care Coordinator II; Agaitha Durr, Care Coordinator II; Nina Garcia, Supervisor Care Management Long Term Care; and Anna Maynard, Care Coordinator I.

Marielisa Amador, Medical/Health Care Program Analysts for the Agency for Health Care Administration ("Agency" or "AHCA") appeared as observer.

Certified Interpreter, Kimberly, identification number 353538, provided interpretation services at the hearing.

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 twenty-six (126)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner's name].pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred and twenty-six (126)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

### **FINDINGS OF FACT**

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

2. Petitioner is [REDACTED]. *Id.* Petitioner [REDACTED]. *Id.* at 31, 64, 93. Petitioner's servicing provider for [REDACTED] personal care and homemaker services is GT Independence. *Id.* at 35. Petitioner's friend, [REDACTED], currently assists daily with [REDACTED] ADLs and IADLs, five (5) to six (6) hours a day, and [REDACTED] sometimes helps. *Id.* at 31, 34, 67, 68, 93. [REDACTED] is pending approval to be Petitioner's direct service worker ("DSW"), as [REDACTED] has [REDACTED] own family and works full-time. *Id.* at 31, 32, 93. Petitioner declines home health aide services and will wait for participant direction option ("PDO") approval for [REDACTED] DSW authorization. *Id.* at 93.

3. Petitioner is diagnosed with the following: [REDACTED]  
[REDACTED]. *Id.* at 69 - 70. Petitioner is unable to use [REDACTED] left leg due to a trucking accident leaving [REDACTED]  
[REDACTED]. *Id.* at 93.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated July 26, 2023, ("701B"), Petitioner's needs for activities of daily living ("ADLs") are as follows: for [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED], Petitioner also uses assistive devices (cane and bath chair); and for [REDACTED] needs no assistance. *Id.* at 66, 67. Petitioner always has assistance with [REDACTED] ADLs, except [REDACTED]. *Id.* Petitioner needs hands on assistance as [REDACTED] is unable to [REDACTED]. *Id.* Petitioner suffered a trucking accident in [REDACTED] that damaged [REDACTED]. *Id.* Petitioner does not need supervision. *Id.* at 72.

5. As provided in the 701B, Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: for [REDACTED], Petitioner needs total assistance (cannot do at all); using [REDACTED], Petitioner needs no assistance; for [REDACTED], Petitioner needs assistance (but not total help). *Id.* at 68. Petitioner always has assistance with [REDACTED] IADLs, except using [REDACTED], for which [REDACTED] needs no assistance. *Id.* According to the 701B, Petitioner always has assistance with the IADLs for which [REDACTED] needs assistance, namely, [REDACTED]. *Id.*

6. According to the Long Term Care Person Centered Care Plan, signed on July 26, 2023, ("Long Term Plan of Care"), Petitioner can [REDACTED]. *Id.* at 30. As provided in the Long Term Plan of Care, Petitioner needs one (1) hour, daily, to assist with bathing; thirty (30)minutes, daily, to assist with dressing; one

(1) hour daily, to assist with light housekeeping; and two (2) hours, daily, to assist with preparing meals. *Id.* at 31.

7. Petitioner requested an additional four (4) hours of personal care services, and an additional six (6) hours of homemaker services. Petitioner's requests were denied in the Notice of Adverse Benefit Determination ("NABD"), dated May 4, 2023. 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.

The facts that we used to make our decision are: The request for extra services (an extra 4 hours/week of Personal Care Services+ an extra 6 hours/week of Homemaker Services) is partially approved. The member's present care plan includes 6 hours/week of Personal Care Services and 4 hours/week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status Sunshine Health will approve an extra 4 hours/week of Personal Care Services and will deny an extra 6 hours/week of Homemaker Services. The updated care plan approved by Sunshine Health will

include 10 hours/week of Personal Care Services and 4 hours/week of Homemaker Services. This decision was made with Sunshine Health Polley LT.UM.09 Long Term Care Ancillary Service Criteria.. . .

Pages 4 - 5 of RCE 1.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated July 15, 2023, upholding the denial of additional homemaker services, but approved the additional personal care services. *Id.* at 87 – 90. The NPAR explained, as follows:

The reason for our decision was based on medical necessity. On appeal Sunshine Health will deny an extra 6 hours/week of Homemaker Services. The updated care plan approved by Sunshine Health will include: 10 hours/week of Personal Care Services and 4 hours/week of Homemaker Services. The prior decision 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.

Page 87 of RCE 1.

9. On July 8, 2023, Petitioner requested Fair Hearings to challenge the denial of personal care services and homemaker services. On July 26, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for August 15, 2023, which was continued. On August 16, 2023, the undersigned issued a Second Order Consolidating and Scheduling Consolidated Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for September 5, 2023, at 1:00 p.m. EST.

10. At the Fair Hearing, it was discovered through testimony and evidence that Petitioner’s request for the additional four (4) hours each week for personal care services was approved, for a total of ten (10) hours each week, and that the issue was moot. *Id.* at 4 – 5, 87. It was further discovered at the hearing that Petitioner’s request for six (6) additional hours each week for

homemaker services was partially approved by Respondent, by an increase of three (3) hours each week, for a total of seven (7) hours each week.

11. Petitioner testified that [REDACTED] can no longer walk on [REDACTED] own, nor [REDACTED], and that [REDACTED] cannot do [REDACTED].

Petitioner explained that a trucking accident in [REDACTED] left [REDACTED]

[REDACTED], and that [REDACTED] has already had [REDACTED]

[REDACTED]. Petitioner testified that [REDACTED] is [REDACTED] caregiver, but [REDACTED]

only works with [REDACTED] for a few hours a day, daily, to help [REDACTED] dress, bathe, use the bathroom, and transferring; [REDACTED] also cooks [REDACTED] meals every day, does [REDACTED] laundry and cleans [REDACTED] house.

Petitioner testified that [REDACTED] heart rate often increased from when [REDACTED], and [REDACTED] worried that [REDACTED] health will deteriorate if someone is not with [REDACTED] for more hours a day.

Petitioner contends that [REDACTED] needs more help to assist with [REDACTED] activities to have the best quality of life to be able to stay in [REDACTED] own home, and that the additional services are necessary.

12. [REDACTED] testified that Petitioner cannot do much on [REDACTED] own to take care of [REDACTED] needs. [REDACTED] further testified that [REDACTED] is only there for four (4) hours per day to do all the personal care and homemaker chores, but that more services are necessary to meet Petitioner's needs.

13. Dr. Jarvis is a Long-Term Care Medical Director for Sunshine Health. Dr. Jarvis' testimony established the following facts: Petitioner is a member of the Sunshine Health LTC (Long Term Care) Ancillary Service Criteria Polity and Procedure, FL.LT.UM.09.00 ("Sunshine Health Policy"). Under the Sunshine Health Policy, personal care and homemaker services are ancillary services that are meant to supplement a member's household or family member support. As described

under the Sunshine Health Policy, the goal is to provide ancillary services is to address a member's cognitive and functional deficits. Other elements to be considered are member's level of functioning, living situation considerations, informal supports, and family in area or nearby. Dr. Jarvis explained that the decision to uphold the denial of additional homemaker services was based on Petitioner's health condition, and the 701B assessment. Dr. Jarvis testified that, according to the 701B assessment, Petitioner requires partial assistance for [REDACTED] ADLs, except for eating, for which [REDACTED] needs no assistance. Dr. Jarvis acknowledged that Petitioner needs total assistance for [REDACTED] IADLs of [REDACTED]. Dr. Jarvis contends that the ten (10) hours of personal care and seven (7) hours of homemaker care hours are adequate to meet Petitioner's medical needs and to keep Petitioner in a safe environment in [REDACTED] own home.

14. In making its decision in this case, Respondent relied upon the Sunshine Health LTC (Long Term Care) Ancillary Service Criteria Polity and Procedure, FL.LT.UM.09.00, which states, in pertinent part, as follows:

**DESCRIPTION OF BENEFITS:**

LTC ancillary services are non-skilled services covered under the LTC program. Services include:

- Adult Companion Care
- Adult Day Care Services
- Home Accessibility Adaptation Services
- Home Delivered Meals
- Homemaker Services
  - Pest Control Services
  - Chore Services
- Personal Care Services
- Personal Emergency Response Services (PERS)
- Respite Care Services

...

### **C. Criteria for Type of Service:**

Criteria for each of the benefits noted in the Policy section will be used when reviewing the medical necessity of any ancillary services. In addition, the Medical Necessity Review policy FL.UM.02.01 is considered when determining medical necessity of ancillary services. The AHCA SMMC Contract and the Florida Coverage Policies and Limitations Handbooks are used to determine benefits, any benefit limitations, and additional criteria.

The ancillary services of this policy are intended to augment and support the existing informal care and community services being provided to allow the member to remain safely in their home.

### **D. 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) Level of functioning with 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:
  - o Supervision
  - o At least minimum assistance
  - o Member ambulates with assistance of a person or a device
  - o Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply
  - o Member has ADLs requiring at least minimal assistance
  - o Member ambulates with assistance of a person or device
  - o Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
  - o Member has ADLs requiring total assistance
  - o Member is non-ambulatory
  - o Member transfers require one (1) to two (2) person assist
  - o 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) Informal Supports

- None
- New friends/family in the area
- Family nearby

d) 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 call for help, even with assistance of a personal emergency response unit.

e) 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

...

The criteria for each ancillary service is described below:

## E. Service Descriptions

### 5. 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.

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. This area includes the member's bedroom and one bathroom.

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 groceries, household goods, and medications on their own
- Member's ability to put away groceries, household goods, and medications on their own
- Member lives with family who does the shopping for the member and puts away groceries, household goods and medications
- Member 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 consider 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 consider for Laundry 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, including:
  - Amount of clothing and other items to be laundered
  - 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 can be given for waiting for the laundry to be done.
  - Routine changing of bed linens is considered part of bedroom housekeeping

...

Homemaker Service Determination Tables [in pertinent part:]

Support needed for housekeeping:

The following guide assists in determining the amount of support needed by the member:

...

- Has informal supports who provide a minimum or moderate amount of the member’s housekeeping: 15 - 90 minutes/week
- Member requires maximum support for housekeeping: up to 120 minutes/week

...

Support needed for shopping:

The following guide assists in determining the amount of support needed by the member:

...

- Has informal supports who provide a minimum or moderate amount of member’s shopping: 15 - 75 minutes/week
- Member requires maximum support for shopping: up to 90 minutes/week

...

Support needed per meal:

The following guide assists in determining the amount of support needed by the member:

- Breakfast by self –1-15 min/day
- Breakfast with others –1-5 min/day
- Lunch by self –1-20 min/day.
- Lunch with others –1-5 min/day
- Dinner by self –1-30 min/day.
- Dinner with others –1-5 min/day
- Additional Meal –1-10 min per meal.

Support needed for laundry:

The following guide assists in determining the amount of support needed by the member:

...

- Has informal supports who do a minimum or moderate amount of the member's laundry: 15-90 minutes/week.
- Member requires maximum support for laundry: up to 120 minutes.

...

## **5b. Chore Services**

Those services needed to maintain the member in a home that is clean and sanitary and provides a safe environment. Chore services include heavy household chores such as washing floors, windows and walls, tacking down rugs and tiles, and moving heavy items of furniture in order to provide safe access and egress.

...

## **6. 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. Personal care services include but may not be limited to 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 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.

The services may be provided in the member's home or other location.

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:
  - o Incontinence episodes resulting in the need for a bath
  - o Daily bathing of the elderly is not recommended due to damage that occurs to the skin from the water and the soap
  - o 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

...

Criteria for Consideration for Personal Care services include but are not limited to:

1. Location of service delivery e.g., home vs. facility
2. Services provided overnight when the following conditions apply:
  - a. Member requires frequent repositioning due to wounds
  - b. Severe incontinence requiring multiple overnight changes and cleaning
3. The service unnecessarily duplicates another provider's service

Pages 116 – 124 of RCE 1.

### **CONCLUSIONS OF LAW**

15. 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).

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

17. 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.

18. In the instant case, Petitioner is requesting 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.)

19. The Long Term Care (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 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.

### **4.1 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

...

#### **4.2.1.9 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.

...

### **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.

20. The LTC Policy also addresses medical necessity:

### **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.

21. The Florida Medicaid 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.

#### **A. Personal Care Services**

22. Petitioner requested four (4) additional hours each week of personal care services. See supra ¶ 7. In the NABD, dated May 4, 2023, Respondent approved Petitioner's request for the four (4) additional hours of personal care services each week, as upheld in the NPAR, dated July 15, 2023. See supra ¶¶ 7, 8. Pursuant to Fla. Admin. Code R. 59G-1.100(9)(b)(6), the Hearing Officer is authorized to dismiss a request for a Fair Hearing because it is moot. The Florida Supreme Court explained in *Godwin v. State*, 593 So.2d 211 (1992) (citing *Dehoff v. Imeson*, 153 Fla. 553 (1943)) that "[a]n issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect. . . . A case is 'moot' when it presents no actual controversy or when the issues have ceased to exist." See also *J.W. v. Agency for Health Care Admin.*, 178 So. 3d 542, 544–45 (Fla. 1st DCA 2015) (explaining that because J.W. received the requested treatment, "DCF was correct to dismiss J.W.'s fair hearing request under these circumstances because, once he received the continued psychiatric treatment he'd asked for, he no longer needed agency review of Magellan's decision not to authorize the treatment. Rather, the issue at that point became whether Flagler Hospital could be paid by Medicaid for

the services it had rendered without prior authorization.”). Accordingly, Petitioner’s appeal regarding the issue of four (10) additional personal care services hours is moot and will be dismissed.

### **B. Homemaker Services**

23. Petitioner was receiving four (4) hours each week of homemaker services, and he requested an additional six (6) hours each week of homemaker services. *See supra* ¶ 7. In the NPAR, dated July 15, 2023, Respondent denied Petitioner’s request. *See supra* ¶ 8. On or about August 9, 2023, Respondent approved three (3) additional hours each week of homemaker services, for a total of seven (7) hours each week. *See supra* ¶ 10. At issue is the three (3) hours of homemaker services each week that have not been approved by Respondent. *See supra* ¶ 8.

24. As provided in the LTC policy, homemaker services is 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.” In regards to his IADLs, for [REDACTED], Petitioner needs total assistance (cannot do at all); for li [REDACTED] [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED], Petitioner needs no assistance. According to the 701B Assessment, Petitioner always has assistance with [REDACTED] IADLs, except [REDACTED] for which [REDACTED] needs no assistance. *See supra* ¶ 5. Petitioner also receives ten (10) hours of personal care services hours, which includes assistance with both [REDACTED] ADLs and IADLs. As provided in the Long Term Plan of Care, Petitioner

needs a minimum of 4.5 hours, daily, to assist with [REDACTED]

[REDACTED]. See supra ¶ 6.

25. Petitioner bears the burden of proof to show that it is medically necessary for Petitioner to receive the additional three (3) hours of homemaker services. At the Fair Hearing, Dr. Jarvis provided testimony that based on the 701B and the Sunshine Health Policy, seven (7) hours of homemaker services per week is more than adequate to meet the medical necessity criteria. See supra ¶ 13. In this case, Petitioner [REDACTED] and has a minimum or moderate amount of informal support for [REDACTED] homemaker needs. See supra ¶ 24. According to the Sunshine Health policy, those services are for “the provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. 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.” See supra ¶ 13. Petitioner is unable [REDACTED] [REDACTED]. See supra ¶ 4. The record shows that Petitioner’s informal supports provide a minimum or moderate amount of the member’s homemaker services and personal services. See supra ¶ 2. According to the Homemaker Service Determination Tables allotting time for each component of homemaker services, the amount of time to be allotted for [REDACTED] IADLs each week should be as follows: 15 – 90 minutes for housekeeping; 15 – 75 minutes for shopping; 15 – 90 minutes for laundry; and approximately 75 minutes per day for meal preparation, times seven days, or 525 minutes per week. See supra ¶ 14. In sum,

Petitioner needs nine and a half (9 1/2) to thirteen (13) hours of homemaker services per week, according to the Sunshine Health Homemaker Service Determination Tables. See supra ¶ 14. Based on the foregoing, the record shows that additional homemaker services are “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of [Petitioner’s] needs.” See supra ¶ 21. Accordingly, the record shows that the additional homemaker services at issue are medically necessary.

26. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner proved by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for additional homemaker services was incorrect.

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

Respondent’s denial of personal care services is **DISMISSED** as **MOOT**.

Respondent’s denial of homemaker services is **REVERSED**. Petitioner’s appeal based on

Respondent’s denial of homemaker services is **APPROVED**.

**DONE** and **ORDERED** this 24th day of October, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki  
23-FH1785 and 23-FH1786  
2023.10.24 08:35:15 -04'00'

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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]  
[REDACTED]

**Sunshine State Health Plan, Inc.**  
**SunshineHealth\_MFH@centene.com**

**AHCA Medicaid Hearing Unit**  
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