



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

FILED

Oct 17, 2023, 9:53 am
OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1809

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 28, 2023, at 10:04 a.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[Redacted]
Petitioner

For the Respondent:

Christian Pacheco
Senior Director of Quality Improvement
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.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared for the Fair Hearing on [REDACTED] own behalf. Petitioner's daughter, [REDACTED] appeared for the Fair Hearing as a witness for Petitioner.

Christian Pacheco ("Mr. Pacheco"), Senior Director of Quality Improvement for Sunshine State Health Plan, Inc. ("Sunshine") appeared for the Fair Hearing on behalf of Respondent. The following individuals appeared for Fair Hearing as witnesses for Respondent: John Carter, M.D. ("Dr. Carter"), Medical Director for Sunshine; Gwendolyn Johnson, LTC Supervisor for Sunshine; Whitney Davis, LTC Coordinator for Sunshine; Ashara Howard, Care Coordinator for Sunshine; and Agaita Durr, Care Coordinator for Sunshine.

The following individuals appeared for Fair Hearing as observers: Marta Galcador, Appeals and Grievance for Sunshine; Dr. Julie Shamma, Medical Director for Sunshine; and Chrissie Simmons, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA").

Petitioner did not introduce any exhibits for Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred-forty (140)-page evidence packet. The one hundred-forty (140)-page packet appears in the Office of Fair Hearings document management system as the file title "MFH packet [Petitioner].pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred-forty (140)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

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

2. Petitioner is [REDACTED]. *Id.* Petitioner lives in the community with [REDACTED]. *Id.* at 47. Petitioner’s medical history includes [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 52-53, 54.

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”) dated April 25, 2023, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: for [REDACTED], Petitioner needs total assistance (cannot do at all); for using the [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED] Petitioner needs supervision or prompt. *Id.* at 50. Petitioner uses an assistive device (electric chair) for [REDACTED]. *Id.* In regard to [REDACTED] instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) for [REDACTED]
[REDACTED]. *Id.* at 51. Petitioner needs assistance (but not total help) for using the [REDACTED]
[REDACTED]. *Id.*

4. As provided in the 701B dated July 19, 2023, Petitioner needs total assistance (cannot do at all) for all ADLs, except [REDACTED]. *Id.* at 68. Petitioner needs no assistance for [REDACTED]. *Id.* Petitioner’s need for assistance with [REDACTED]. *Id.* Petitioner

uses an assistive device (electric chair) for [REDACTED]. *Id.* Regarding [REDACTED] IADLs, Petitioner's needs remain unchanged from the 701B dated April 25, 2023. *Id.* at 69.

5. Petitioner requested an additional twenty-eight (28) hours per week of personal care services. Petitioner's request was partially denied in the Notice of Adverse Benefit Determination ("NABD") dated April 28, 2023. *Id.* at 4-8. 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 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 28 hours per week of Personal Care Services and the addition of 1 case per month of Disposable Liners is partially approved. The member's present care plan includes:

- ✓ 6 hours per week of Personal Care Services
- ✓ 6 hours per week of Homemaker Services
- ✓ 1 case per month of Adult Briefs
- ✓ 1 case per month of Disposable Underpads

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will approve an extra 10 hours per week of Personal Care Services (and will deny the remaining requested 18 hours per week of Personal Care Services) and will deny the addition of 1 case per month of Disposable Liners. The updated care plan will include:

- 16 hours per week of Personal Care Services
- 6 hours per week of Homemaker Services
- 1 case per month of Adult Briefs
- 1 case per month of Disposable Underpads

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care)

Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

...

Id. at 4-5.

6. Petitioner requested a plan appeal and received a Notice of Plan Appeal (“NPAR”) dated June 15, 2023, upholding the denial of additional personal care services. *Id.* at 88-90. The NPAR explained as follows:

The reason for our decision was on appeal Sunshine Health will deny the requested 18 hours/week of Personal Care Services), and will deny the addition of 1 case/month of Liners as not medically needed. The approved care plan will include: 16 hours/week of Personal Care Services and 6 hours/week of Homemaker Services, and 1 case/month of Briefs and 1 case/month of Disposable Underpads. The prior decision is upheld. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

...

Id. at 88-89.

7. On July 19, 2023, Petitioner requested a Fair Hearing to challenge the denial of the additional Personal Care services. On August 2, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 28, 2023, at 10:00 a.m. Eastern Standard Time.

8. [REDACTED] testified to the following at Fair Hearing:

a. Petitioner needs help [REDACTED].

[REDACTED] believes 18 hours of service per week is bare minimum for care.

- b. Petitioner is not able to get out of bed alone. Petitioner stays in bed on days [REDACTED] does not have help causing [REDACTED] muscles to weaken. [REDACTED] asserts that Petitioner sometimes has no help for 3 to 4 days a week.
- c. [REDACTED] works 55 hours per week and also has a minor child.
- d. [REDACTED] argues that Petitioner's [REDACTED] who lives in the home is not dependable support for Petitioner and is not willing to help. *Id.* at 47, 80. [REDACTED] argues that multiple times a week Petitioner lays in [REDACTED] own feces for 6-8 hours due to [REDACTED] lack of help. [REDACTED] contends that [REDACTED] should not be considered available support.

9. Dr. Carter testified to the following at Fair Hearing:

- a. Sunshine took into consideration the request for the sixty-nine (69) year old recipient with multiple medical conditions. *See* ¶ 2. Petitioner's original plan of care in April of 2023 included twelve (12) hours per week of combined services which included six (6) hours per week of personal care services and six (6) hours per week of homemaker services, and five (5) home delivered meals. *Id.* at 98-102. The current plan of care includes twenty-two (22) hours of combined services which includes sixteen (16) hours per week of personal care and six (6) hours per week of homemaker, and five (5) home delivered meals. *Id.* at 41-42, 98-102.
- b. Sunshine used the LTC Ancillary Service Criteria for the request for additional services. *See* ¶ 10. Together with the responses from the 701Bs, Sunshine considered the following determinants for services: for the living situation element, Petitioner lives with [REDACTED] who does not work outside home; for the informal supports element, Petitioner has at least one support in area, [REDACTED].

█, although █ works full-time outside of the home but is involved with Petitioner's care; for the needs of supervision, Petitioner is frail but there is no report of █ wandering or is disoriented; and Petitioner has no other services in place by another insurance provider. *Id.* at 47, 51, 65, 69, 77-78, 80.

- c. Because member is approved for twenty-two (22) hours of combined services, Sunshine's position is that Petitioner's current plan of care should be sufficient for █ needs in consideration of █ in the home plus another support who lives in the community.

10. The Sunshine Health Long Term Care Ancillary Service Criteria (May 2014) ("FL.LT.UM.09") provides as follows in regard to personal 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.

...

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:
 - 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) 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 [c]all 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

[f]) Services in Place

- Provided by Sunshine Health

- Provided by other Provider insurance

...

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 medications 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.

...

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
 1. Muscle weakness, unstable gait or unstable balance

...

Id. at 114, 117-119, 124-126.

CONCLUSIONS OF LAW

11. 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).

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

13. Because Petitioner is requesting a new service, 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.)

14. 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 with respect to home health 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 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

...

1.3.9 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 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 Personal Care Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained Personal Care, 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.

...

15. 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.

16. 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.

17. 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	15–30 minutes day for all monitoring tasks performed

intake/output.	
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PC Policy at pages 5 – 7, and 10

18. Petitioner requested an additional twenty-eight (28) hours per week of personal care services. In the NABD, dated April 28, 2023, Respondent denied Petitioner’s request. *See* ¶ 5. Respondent cited the lack of medical necessity as the basis for its decision. *See* ¶ 5. However, Respondent did not specify which prong of medical necessity it used to make its decision. *See* ¶ 5. Respondent approved an additional ten (10) hours per week of personal care services. *See* ¶ 5. Accordingly, eighteen (18) hours per week of personal care services are in dispute. *See* ¶ 6. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. *See* ¶ 13.

19. 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* ¶ 14. 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* ¶ 16. 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* ¶ 10, 14.

20. In the instant case, Petitioner’s current care plan totals twenty-two (22) hours of combined services which include sixteen (16) hours per week of personal care services and six (6) hours per week of homemaker services. *See* ¶ 9. The record is very clear that Petitioner suffers

from multiple medical conditions and requires support with these problems. See ¶ 2, 3-4, 8. As provided in the most recent 701B dated July 19, 2023, Petitioner needs total assistance (cannot do at all) for all ADLs, except [REDACTED]. See ¶ 4. Petitioner needs no assistance for [REDACTED]. See ¶ 4. The 701B dated April 25, 2023, indicated Petitioner needs assistance (but not total help) for [REDACTED] however, the 701B dated July 19, 2023, does not indicate Petitioner's level of care except that Petitioner uses an assistive device (electric chair) for walking/mobility. See ¶ 3, 4. In regard to [REDACTED] IADLs, Petitioner's needs remain unchanged between the 701B dated April 25, 2023, and 701B dated July 19, 2023, showing that Petitioner needs total assistance (cannot do at all) for [REDACTED]. See ¶ 3-4. Petitioner needs assistance (but not total help) for using the [REDACTED]. See ¶ 3-4. Petitioner lives with [REDACTED] at home and Petitioner's [REDACTED] lives in the community. See ¶ 2, 9.

21. According to [REDACTED] testimony, Petitioner is not able to get out of bed alone and Petitioner stays in bed on days [REDACTED] does not have help causing [REDACTED] muscles to weaken. See ¶ 8. [REDACTED] explained that Petitioner sometimes has no help for 3 to 4 days a week due to Petitioner's [REDACTED] unwillingness to assist [REDACTED]. See ¶ 8. As an example, [REDACTED] testified that multiple times a week Petitioner lays unchanged for 6-8 hours. See ¶ 8. For these reasons, [REDACTED] contended that Petitioner's [REDACTED] should not be considered as an available support for Petitioner's care. See ¶ 8. Where the PC Policy provides some guidance for general allowances for ADLs, see ¶ 17, Petitioner did not introduce supporting evidence specific to the hands-on care required (e.g., a daily schedule, frequency of ADLs and IADLs, duration of each ADL and IADL, etc.) that are not already captured in the twenty-two (22) hours of combined services.

22. The undersigned finds that Dr. Carter provided sufficient, credible evidence to demonstrate that the additional eighteen (18) hours per week of personal care services are not warranted in the totality of the circumstances of this case. *See* ¶ 9. In accordance with Petitioner’s needs with ADLs and IADLs, Respondent approved ten (10) additional hours per week of personal care services. *See* ¶ 5-6, 9. Further, Dr. Carter established that Respondent took into consideration the request for personal care services is for a [REDACTED] LTC member with multiple medical conditions. *See* ¶ 9. Together with the responses from the 701Bs and the FL.LT.UM.09, Respondent determined that Petitioner’s current plan of care should be sufficient for [REDACTED] needs in consideration of [REDACTED] adult son in the home plus another support who lives in the community. *See* ¶ 9. In view of the record, the crux of the dispute turned on the scope of Petitioner’s natural support. [REDACTED] argument that Petitioner’s [REDACTED] should not be considered an available support due to [REDACTED] purported unreliability lends itself toward the impression that the personal care services request is primarily intended for the convenience of the recipient. *See* ¶ 13. Section 1.3.4 of the LTC Policy and the Definitions Policy both maintain that medically necessary services should not be “primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” *See* ¶ 15, 16. Accordingly, Petitioner has not demonstrated that the additional personal care services were “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.” Thus, Petitioner did not meet [REDACTED] burden.


23. Therefore, 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 Respondent’s denial of the additional eighteen (18) hours of personal care

services, weekly, was medically necessary. In light of all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that the requested services are not in excess of the Petitioner's needs. Accordingly, the undersigned finds that Respondent's denial of additional personal care services was correct.

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**.

DONE and ORDERED this 17th day of October, 2023 in Tallahassee, Leon County, Florida.


Kimberly Roche
23-FH1809
2023.10.17
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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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