



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

**FILED**

Oct 24, 2023, 12:47 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA CASE NO.: 23-FH1813

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 13, 2023, at 1:00 p.m. Eastern Standard Time.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Markeshi Lee  
Medicaid Fair Hearing Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

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

**PRELIMINARY STATEMENT**

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

[REDACTED] appeared on behalf of the Petitioner. Petitioner's [REDACTED]

[REDACTED] attended as a witness for Petitioner.

Markeshi Lee, Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) appeared on behalf of Respondent. Dr. Wayne Sherman (“Dr. Sherman”), Long Term Medical Director for Humana, attended as a witness for Respondent.

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

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty-eight (288)-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”, and “Evidence Packet\_Part5.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and eighty-eight (288)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Petitioner did not submit evidence to the Office of Fair Hearings.

**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. Petitioner is [REDACTED]. *Id.* Petitioner [REDACTED]. *Id.* at 48. Petitioner’s [REDACTED]. *Id.* at 48. Petitioner’s [REDACTED] lives in Florida.

3. Petitioner is diagnosed with the following: [REDACTED];

[REDACTED] *Id.* at 53 - 54. In the past, Petitioner has had [REDACTED]. *Id.* Petitioner needs supervision during the day. *Id.* at 56.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated July 21, 2023, ("701B"), Petitioner's needs for activities of daily living ("ADLs") are as follows: for [REDACTED] Petitioner uses assistive devices and also needs assistance (but not total help); for [REDACTED] Petitioner needs assistance (but not total help); for [REDACTED], Petitioner needs supervision or prompt; for [REDACTED], Petitioner uses assistive devices and needs supervision or prompt; and for transferring, Petitioner needs supervision or prompt. *Id.* at 51. Petitioner rarely has assistance with [REDACTED] ADLs. *Id.*

5. As provided in the 701B, Petitioner's needs total assistance (cannot do at all) for her instrumental activities of daily living ("IADLs") of [REDACTED] [REDACTED] Petitioner needs assistance (but not total help) for [REDACTED] [REDACTED] *Id.* at 52. Petitioner has the following type of assistance with the following IADLs: [REDACTED] [REDACTED], she never has assistance; for using [REDACTED] rarely has assistance; and [REDACTED] [REDACTED] always has assistance. *Id.*

6. In Respondent's Plan of Care for Petitioner, dated July 21, 2023, Petitioner is authorized to receive twelve (12) hours of personal care services each week; eleven (11) hours of homemaker services each week; three (3) hours of adult companion care services each week;

seven (7) home delivered meals each week; monthly incontinence supplies and personal emergency response system monitoring and maintenance (PERS). *Id.* at 69 – 76, 86.

7. On or about April 19, 2023, Petitioner’s physician, Dr. Yoel Cardoso, wrote a Personal Care Services Plan of Care for Petitioner after her office visit, summarized as follows: [REDACTED]

[REDACTED] she needs assisted transfer from bed to chair, and is permitted physical activities as tolerated; is [REDACTED]; and [REDACTED] expected health outcome or rehabilitation potential is “unchanged.” *Id.* at 9 – 10. Dr. Cardoso recommended that Petitioner be provided eight (8) hours of daily personal care services for [REDACTED]. *Id.* at 10.

8. Petitioner requested an additional thirty-five (35) hours of personal care services. Petitioner’s request was denied in the Notice of Adverse Benefit Determination (“NABD”), dated July 25, 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.

...

- 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 35 hours of personal care service each week. You have several (multiple) medical problems. You do not have trouble making your needs known. You sometimes have trouble thinking clearly or remembering things. You have a personal emergency response system (PERS). You receive 7 home delivered meals each week. You have not had any recent changes in your health. You have not recently been in the hospital.

You live with (*sic*) [REDACTED]. You use a walker to move around (walk). You need supervision transferring (move from bed to chair). You need some help [REDACTED] [REDACTED] You need supervision toileting. You need help with [REDACTED] [REDACTED] You are being approved for an additional 5 hours of personal care service each week. The hours you are receiving should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

*Id.* at 12 – 13.

9. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated July 25, 2023, upholding the denial. *Id.* at 21 – 22. The NPAR explained as follows:

The reason for the decision was based on the information received.

You are appealing the denial of 30 of the requested additional 35 hours of personal care (PC) service each week. [Petitioner] has requested additional 35 hours of PC and were approved with 5 hours of PC. [REDACTED] currently receives 11 hours of homemaker (HMK), 12 hours of PC (after approval), and 3 hours of adult

companion care services per week. [REDACTED] also receives 7 home delivered meals (HDM) per week, and personal emergency response system (PERS) monthly for emergencies. [REDACTED] resides at home alone. [REDACTED] is alert and oriented to person and place but not to time. [REDACTED] has multiple medical problems. We have reviewed [REDACTED] documents and assessed [REDACTED] needs. [REDACTED] does not have significant change in [REDACTED] medical condition. The current 26 hours of home health aide services along with [REDACTED] 7 HDM, and 24/7 PERS monitoring for emergencies should be sufficient for [REDACTED] needs. We are therefore, upholding the decision of the medical director and denying your appeal for additional PC hours.

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.*

10. On July 21, 2023, Petitioner requested Fair Hearings to challenge the denial of personal care services. On August 24, 2023, the undersigned issued an Order Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 13, 2023, at 1:00 p.m. EST.

11. Petitioner's [REDACTED], testified that [REDACTED] recently had a [REDACTED] [REDACTED] so [REDACTED] has become weaker since the 701B assessment in July of 2023, and [REDACTED] is fully incontinent now. [REDACTED] testified that Petitioner needs assistance for [REDACTED] [REDACTED]. [REDACTED] further testified that all of Petitioner's [REDACTED], including [REDACTED], work full-time. [REDACTED] argues that Petitioner needs more service hours at night to help [REDACTED] [REDACTED] to get [REDACTED] to bed, and to read [REDACTED] books for brain activity. [REDACTED] contends that Petitioner needs more exercise, but the caregiver cannot take Petitioner on walks because of [REDACTED] risk for falling.

12. Petitioner's [REDACTED], testified that [REDACTED] needs prompting to eat, or [REDACTED] will forget. [REDACTED] further testified that Petitioner is [REDACTED], and [REDACTED]. [REDACTED] testified that Petitioner's [REDACTED] feeds [REDACTED] dinner everyday, one of [REDACTED] puts [REDACTED] to bed at night, and on the weekend everyone takes turns, coordinating their schedules. [REDACTED] argues that [REDACTED] is a fall risk, and should not be left alone for the five or six hours during the day, because in the past [REDACTED] has fallen. [REDACTED] contends that adult day care is not an option for [REDACTED] because they do not cater to patient's like Petitioner, who is [REDACTED] they are more for those who are more independent.

13. Dr. Sherman is a Medical Director for Humana. Dr. Sherman testimony established that all Petitioner's medical records and 701B assessment were taken into consideration when determining that Petitioner needed twelve (12) hours of personal care services. Dr. Sherman contended that there has been no further evidence in the record that shows additional personal care services hours are medically necessary. Dr. Sherman testified that Dr. Cardoso's April 19, 2023, letter was considered when making the determination, but in that letter there was no additional information based on medical necessity showing that Petitioner would need more than twelve (12) hours of personal care, together with the other home health care services Petitioner receives.

#### **CONCLUSIONS OF LAW**

14. 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).

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

16. 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.)

17. The 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

...

**1.3.9 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)

...

#### **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

...

#### **4.2.2.6 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.

#### **4.2.1.9 Homemaker Services**

The purpose 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.

18. 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.

19. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

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.

20. Petitioner requested thirty (35) additional hours of personal care services each week, of which five (5) additional hours were approved, for a total of twelve (12) hours. See supra ¶ 9, 10.

In the NPAR, dated July 25, 2023, Respondent upheld the denial of the remaining thirty (30) requested additional hours of personal care services each week. *See supra* ¶ 10. The denial was upheld in that Petitioner’s request was not medically necessary because it did not meet all the criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services, including that the services “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; and 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: to enable the enrollee to maintain or regain functional capacity; or 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.” *See supra* ¶ 9.

21. As provided in the LTC Policy, personal care is 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.” As provided in the 701B on the record, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: for [REDACTED], Petitioner uses assistive devices and also needs assistance (but not total help); for [REDACTED] Petitioner needs assistance (but not total help); for [REDACTED] Petitioner needs supervision or prompt; for using the [REDACTED] Petitioner uses assistive devices and needs supervision or prompt; and [REDACTED], Petitioner needs supervision or prompt. Petitioner rarely has assistance with [REDACTED] ADLs. *See supra* ¶ 4. Regarding [REDACTED] IADLs, Petitioner’s

needs total assistance (cannot do at all) for [REDACTED] instrumental activities of daily living (“IADLs”) of [REDACTED]. Petitioner needs assistance (but not total help) for using [REDACTED]. Petitioner has the following type of assistance with the following IADLs: for [REDACTED] [REDACTED] has assistance most of the time; for [REDACTED] never has assistance; for [REDACTED] rarely has assistance; and for [REDACTED] always has assistance.

See supra ¶ 5.

22. As Petitioner bears the burden of proof, Petitioner must show that Respondent’s denial of personal care services was incorrect. Here, [REDACTED]’ and [REDACTED]’s testimony and evidence did not prove that there is a medical necessity for Petitioner to receive an additional thirty (30) hours of weekly personal care services, as there was no evidence of any significant changes to Petitioner’s ability to perform ADLs and IADLs, or the amount of time to complete those activities. See supra ¶ 21. Petitioner currently receives, each week, twelve (12) hours of personal care services, eleven (11) hours of homemaker services, three (3) hours of adult companion care services, and seven (7) home delivered meals, along with monthly incontinence supplies and around the clock PERS monitoring for emergencies. See supra ¶ 6, 21.

23. Based on the foregoing, the record does not show that the additional personal care 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; [b]e 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; [b]e furnished in a manner not

primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.” See supra ¶ 18. Accordingly, the record does not show that the additional personal care services at issue are medically necessary.

24. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for personal care services was incorrect.

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

Respondent’s denial of personal care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial of personal care services is **DENIED**.

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



Debbie K. Winicki  
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**DEBBIE K. 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]

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

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