



**FILED**

Nov 09, 2023, 11:18 am

OFFICE OF FAIR HEARINGS

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

[Redacted]

**PETITIONER,**

**AHCA Case No.: 23-FH1878**

**Plan ID No.: [Redacted]**

**vs.**

**SUNSHINE STATE HEALTH PLAN, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

[Redacted],

**PETITIONER,**

**AHCA Case No.: 23-FH1880**

**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 September 8, 2023, at 10:14 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

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

**STATEMENT OF ISSUE**

The first 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.

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

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED] [REDACTED] appeared for Fair Hearing to provide testimony on behalf of Petitioner.

Chantal Pierre ("Ms. Pierre"), Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared for Fair Hearing on behalf of Respondent. John Carter, M.D. ("Dr. Carter"), Medical Director for Sunshine, appeared for Fair Hearing as a witness for Respondent. Andrea Hoffman, Long-Term Care Coordinator for Sunshine, appeared for Fair Hearing as a witness for Respondent. Rebecca Drake, Supervisor of Care Coordination for Sunshine, appeared for Fair Hearing as a witness for Respondent. Marie Bruno, Care Coordinator for Sunshine, appeared for Fair Hearing as a witness for Respondent.

Valentyna, interpreter number 700697 of Cyacom, appeared for Fair Hearing to offer translation services.

The following individuals appeared for Fair Hearing as observers: Diana Hearod, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"); and [REDACTED] [REDACTED]

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a thirty (30)-page evidence packet. The thirty (30)-page packet appears in the Office of Fair Hearings' document management system as file titles "23-FH1880, 23-FH1878 Received Mail Supporting Documents.pdf." Absent an objection from the Petitioner, the undersigned admitted the thirty (30)-page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty-two (162)-page evidence packet. The one hundred and sixty-two (162)-page packet appears in the Office of Fair Hearings' document management system as file titles "MFH packet [Petitioner].pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred and sixty-two (162)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine Long-Term Care program. See RCE 1 at page 2.
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.* at 45. Petitioner lives in the community with [REDACTED]. *Id.* at 31, 45-46. Petitioner is diagnosed with [REDACTED]. See RCE 1 at 52-54, 70-71 and PCE 1 at 4, 7. Petitioner has been [REDACTED], and has a history of [REDACTED]. *Id.* at 54, 72. Petitioner has also threatened to [REDACTED] others. *Id.* Petitioner was hospitalized from [REDACTED] at [REDACTED],

and from [REDACTED], [REDACTED]. *Id.* at 47, 65. Petitioner cannot be safely left alone. *Id.* at 15, 31.

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”) dated June 27, 2023, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: Petitioner needs supervision or prompt for [REDACTED]. *Id.* at 67. Petitioner needs no assistance for all other ADLs. *Id.* In regard to [REDACTED] instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]. *Id.* at 68. Petitioner needs no assistance with [REDACTED]. *Id.*

4. [REDACTED] is [REDACTED] and is the Petitioner’s [REDACTED] and caregiver. *Id.* at 29, 59, 77. [REDACTED] has been providing care for Petitioner for two (2) years or more. *Id.* [REDACTED] does not work outside of the home. *Id.*

5. Petitioner initially requested an additional seven (7) hours per week of homemaker services and an additional thirty-three (33) hours per week of adult companion care services. In Notice of Adverse Determinations (“NABDs”), dated March 16, 2023, Respondent approved an additional four (4) hours per week of homemaker services, and denied the remaining homemaker services and all additional companion care services. *Id.* at 4-8. The NABDs contained identical rationale and explained the basis of their decision as follows, in pertinent part:

- ✓ We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (*See Rule*)
- ...
- ✓ Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;

2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

The facts that we used to make our decision are: The request for 7 hours per week of Homemaker Services and 33 hours per week of Companion Care Services is partially approved. Based on the assessment, Sunshine Health will approve 4 hours per week of Homemaker Services and will deny the remaining requested 3 hours per week of Homemaker Services and the addition of 33 hours per week of Companion Care Services. The member lives with [REDACTED] who can assist with shared homemaking tasks and provide companionship. The updated care plan will include 4 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

*Id.* at 4-5.

6. On June 24, 2023, Petitioner requested a plan appeal for the denial of an additional three (3) hours per week of homemaker services and the denial of additional thirty-three (33) hours per week of adult companion care services. *Id.* at 118-119. In Notice of Plan Appeal Resolutions ("NPARs") dated June 29, 2023, Respondent upheld the denial of the remaining three (3) hours per week of homemaker services and thirty-three (33) hours per week of adult companion care services. *Id.* at 124-126. The NPARs contained identical rationale and explained as follows:

...

The reason for our decision was Sunshine Health will deny the requested 3 hours per week of Homemaker Services and the addition of 33 hours per week of Companion Care Services. The member lives with family who can assist with shared homemaking tasks and provide companionship. The updated care plan will include 4 hours per week of Homemaker Services. 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 Board Certified in Internal Medicine.

...

*Id.* at 124.

7. On July 31, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional homemaker services in AHCA case number 23-FH1878 and the denial of additional adult companion care services in AHCA case number 23-FH1880. On August 16, 2023, the undersigned issued a notice, to all parties of record, consolidating both cases and an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions (“Scheduling Order”), setting the hearing for September 8, 2023, at 10:00 a.m. EST.

8. As of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: six (6) hours per week of personal care services and four (4) hours per week of homemaker services. *Id.* at 30-41.

9. [REDACTED] testified to the following:

- a. [REDACTED] has not worked since 2022 and would like to return to work.
- b. [REDACTED] believes Petitioner needs about 24-hour care per day for [REDACTED] safety as [REDACTED] cannot be left alone. [REDACTED] believes Petitioner needs companion care services but does not want [REDACTED] to be placed in a group home due to [REDACTED] past trauma.
- c. [REDACTED] [REDACTED] helps care for Petitioner, but [REDACTED] has four children of [REDACTED] own.
- d. [REDACTED] reports experiencing financial problems and crises in [REDACTED] life.

10. Dr. Carter testified to the following:

- a. Sunshine took into consideration the request for the twenty-nine (29) year old recipient who suffers from [REDACTED]. See ¶ 2. Petitioner's current plan of care includes six (6) hours per week of personal care services and four (4) hours per week of homemaker services through the participant direct option ("PDO") program, in which Petitioner's [REDACTED] agreed to participate. See ¶ 9.
- b. Sunshine used the LTC Ancillary Service Criteria together with the responses in the 701B to review the request of additional services. See ¶ 3-4, 12.
- c. According to Sunshine's LTC Ancillary Service Criteria policy, ancillary services are to be secondary to the primary supports available in the home. *Id.* at 144.
- d. The 701B dated June 27, 2023, indicates that [REDACTED] assisted in answering the questions. *Id.* at 63.
- e. Sunshine took into consideration Petitioner's needs for ADLs and IADLs. See ¶ 4.
- f. Sunshine also considered Petitioner's living situation and informal supports as determinants for services as part of their review for homemaker and adult companion care services. In light of these determinants, Dr. Carter explained that Petitioner lives with [REDACTED] who is [REDACTED] caregiver and who does not work outside home. *Id.* at 146-147, 150-152.
- g. Overall, Sunshine's position is that Petitioner's current plan of care should be sufficient for Petitioner's needs.

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

**PURPOSE:**

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

...

**1. Determinants for Services**

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

- a) Activities of Daily Living (ADL’s)/Instrumental Activities of Daily Living (IADL’s)
  - Independent where member is able to provide the task without support, with or without assistive devices
  - Minimal functional impairment where the ADL’s require one of the following:
    - Supervision
    - At least minimum assistance
    - Member ambulates with assistance of a person or a device
    - Member transfers require at least minimum assistance
  - Moderate functional impairment where two of the follow apply
    - Member has ADLs requiring at least minimal assistance
    - Member ambulates with assistance of a person or device
    - Member transfers require at least minimum assistance
  - Maximum and persistent functional impairment without available caregiver support where all of the following exist:
    - Member has ADLs requiring total assistance
    - Member is non-ambulatory
    - Member transfers require one (1) to two (2) person assist
    - Member’s treating physician has certified that member meets Maximum functional impairment.
- b) Living situation consideration
  - Lives alone.
  - Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
  - Lives with non-family (with consideration of the number of days and hours that non- family members are not available to assist the member).
- c) Supervision needs, including:

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

d) Available Supports

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

e) Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

...

## **2. Adult Companion Care**

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

### Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental Illness requiring supervision
- Parkinson's disease
- Multiple Sclerosis
- ALS
- Congestive Heart Failure
- COPD

- Cancer
  - End Stage Renal disease
  - TBI
  - Other diagnosis as deemed medically necessary by Medical Director
- b) Four (4) Dimensions of Determination
- Need for Supervision – safety risk if left without supervision
    - See Section C.1.c. for more details
  - Informal Supports
    - None
    - Few friends/family in area
    - Family nearby
  - Living Situation
    - Lives alone
    - Lives with others but is alone for extended periods of time due to the necessary absence of a caregiver
    - Lives with caregiver and others
  - Services in Place
    - Sunshine Health provided and provided by other provider/insurance

...

## **6. Homemaker Services**

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

### Approval Criteria

Homemaker Services reviews include four (4) criteria:

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

Covered Homemaker service may include:

- a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes,

taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

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

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

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

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

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

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

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

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

- Special food preparation
  - Assembling food on plates
  - Getting food to the table
- d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all laundromat and/or cleaning fees.

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

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

...

See RCE1 at 144-152.

#### **CONCLUSIONS OF LAW**

12. 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).

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

14. Because Petitioner is requesting new services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a

preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

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

**1.1 Description and Program Goal**

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

...

**1.3 Definitions**

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

**1.3.1 Activities of Daily Living (ADLs)**

ADLs include:

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

...

**1.3.5 701-B Comprehensive Assessment**

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

...

**1.3.9 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

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

...

#### **1.3.14 Medically Necessary or Medical Necessity**

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

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

And, one of the following:

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

...

#### **1.3.16 Natural Supports**

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

### **4.0 Coverage Information**

#### **4.1 General Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

#### **4.2 Specific Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

**4.2.1 Home and Community-Based Supportive Services**

The LTC program benefit includes coverage of the following home and community-based supportive services:

**4.2.1.1 Adult Companion Care**

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

**4.2.1.9 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 page 3-10.

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.

#### **Homemaker Services AHCA Case Number 23-FH1878**

17. In the instant case, Petitioner requested an additional seven (7) hours per week of homemaker services. *See* ¶ 5. In the NABD, dated March 16, 2023, Respondent approved four (4) hours per week of homemaker services, while denying the remaining three (3) hours. *See* ¶ 5. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. *See* ¶ 14.

18. 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* ¶ 15. Respondent's FL.LT.UM.09 mirrors the LTC Policy in that homemaker services are used to provide general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained

homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. See ¶ 11, 15.

19. Petitioner is currently approved to receive six (6) hours per week of personal care services and four (4) hours per week of homemaker services. See ¶ 8.

20. Here, Petitioner did not establish that the additional three (3) hours per week of homemaker services were not in excess of Petitioner's needs. The testimony and documents in the record show Petitioner requires assistance with IADLs due to [redacted] medical conditions. See ¶ 2-3. As demonstrated in the 701B dated June 27, 2023, Petitioner needs total assistance (cannot do at all) with all IADLs except [redacted]. See ¶ 3. Petitioner needs no assistance with [redacted]. See ¶ 3. According to Dr. Carter's testimony, Respondent took into consideration Petitioner's needs for ADLs and IADLs, as well as [redacted] living situation and informal support as part of their review of the requested homemaker services. See ¶ 10. Respondent determined that Petitioner's four (4) hours per week of homemaker services should be sufficient hours to meet [redacted] needs. See ¶ 10. The record reflects that [redacted] does not work outside the home and is Petitioner's caregiver. See ¶ 4, 10. Petitioner did not introduce any evidence to demonstrate any unmet needs with any IADLs with the currently approved service hours. See ¶ 9. [redacted] testified that [redacted] would like to return to work since [redacted] has not been working since [redacted]. See ¶ 9. Absent adequate evidence to the contrary, the record does not appear to support any unmet needs with general household activities [redacted] and routine household care [redacted] at this time. As such, the undersigned finds that Petitioner has not met [redacted] burden.

21. 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 three (3) additional hours per week of homemaker services are not in excess of the Petitioner's needs. Therefore, the record does not demonstrate that the requested additional homemaker services are medically necessary. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of the additional hours of homemaker services was incorrect.

**Adult Companion Care Services AHCA Case Number 23-FH1880**

22. In the instant case, Petitioner requested an additional thirty-three (33) hours per week of adult companion care services. See ¶ 5. In the NABD, dated March 16, 2023, Respondent denied Petitioner's request. See ¶ 5. However, Respondent did not specify which prong of medical necessity it used to make its decision. See ¶ 5-6. Petitioner has the burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. See ¶ 14.

23. 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 ¶ 15. According to Respondent's FL.LT.UM.09, the provision of adult companion care services does not entail hands-on nursing care, but rather, is used to "provide non-medical care, supervision, and socialization to a functionally impaired adult." See ¶ 11.

24. Here, the testimony and documents in the record show Petitioner requires support due to extensive safety risks. See ¶ 2. Petitioner is diagnosed with [REDACTED]. See ¶ 2. Petitioner has been [REDACTED].

[REDACTED] See ¶ 2. Petitioner has also [REDACTED]. See ¶ 2. Petitioner was [REDACTED] from [REDACTED] [REDACTED] and from [REDACTED] [REDACTED]. See ¶ 2. [REDACTED], who is Petitioner's [REDACTED] and caregiver, does not work outside the home. See ¶ 4. [REDACTED] testified that [REDACTED] and would like to return to work, however, [REDACTED] believes Petitioner needs about 24-hour care per day for [REDACTED] safety as [REDACTED] cannot be left alone. See ¶ 2, 9. [REDACTED] believes Petitioner needs companion care services but does not want [REDACTED] placed in a group home due to [REDACTED]. See ¶ 9. The undersigned finds that Petitioner offered credible evidence to warrant active supervision to prevent [REDACTED]. See ¶ 2, 9. However, this goes beyond the scope of the intent of adult companion care services – that is providing opportunities for social enrichment for impaired individuals. See ¶ 11. The limited scope of adult companion care services does not appear to offer a meaningful provision specific and consistent with Petitioner's greater safety and supervision needs. The record appears clear that Petitioner may benefit from additional supervision for [REDACTED] safety; however, the purpose of the requested adult companion care service does not appear to align as the most appropriate service available to meet Petitioner's needs.

25. 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 thirty-three (33) additional hours per week of adult companion care services are individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment. Therefore, the record does not demonstrate that the requested additional adult companion care services are medically necessary. Accordingly, the undersigned


finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of the additional hours of adult companion care services was incorrect.

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

Respondent's denial of additional homemaker services in AHCA case number 23-FH1878 is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's denial of additional adult companion care services in AHCA case number 23-FH1880 is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE and ORDERED** this 9th day of November, 2023 in Tallahassee, Leon County, Florida.

  
Kimberly Roche  
23-FH1878 & 23-  
FH1880  
2023.11.09 08:34:21  
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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**

**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:**



**Sunshine State Health Plan, Inc.**

**SunshineHealth\_MFH@centene.com**

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

## Notice of Nondiscrimination Policy

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This Notice is provided as required by Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act and implementing regulations. This Notice is available, upon request, in alternative formats. Individuals who require free communication aids and services to effectively participate in AHCA’s programs, services, and activities are invited to make their requests to the Civil Rights Compliance Coordinator at the contact information listed below. If you believe that AHCA has failed to provide these services or discriminated in another way on the basis of race, color, national origin, age, disability, or sex you can file a grievance in person, by mail, or by telephone with:

Civil Rights Compliance Coordinator  
2727 Mahan Drive, Mail Stop #3  
Tallahassee, FL 32308  
Voice: (850) 412-3661  
TTY: (800) 955-8771



**Spanish ATENCIÓN:** si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-(888) 419-3456 (TTY: 1-800-955-8771).

**French Creole Atansyon:** Si w pale Kreyòl Ayisyen, gen sèvis èd pou lang ki disponib gratis pou ou. Rele 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Vietnamese CHÚ Ý:** Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Portuguese ATENÇÃO:** Se fala português, encontram-se disponíveis serviços linguísticos, grátis. Ligue para 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Chinese 注意 :** 如果您使用繁體中文, 您可以免費獲得語言援助服務。請致電 1-(888) 419-3456 (TTY: 1-800-955-8771)

**French ATTENTION:** Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-(888) 419-3456 (ATS: 1-800-955-8771).

**Tagalog PAUNAWA:** Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-(888) 419-3456 (TTY: 1-800-955-8771).

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**German ACHTUNG:** Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Korean 주의:** 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-(888) 419-3456 (TTY: 1-800-955-8771) 번으로 전화해 주십시오.

**Polish UWAGA:** Jeżeli mówisz po polsku, możesz skorzystać z bezpłatnej pomocy językowej. Zadzwoń pod numer 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Gujarati નોંધ:** જો તમે ગુજરાતી બોલતા હો, તો નિ:શુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 1-(888) 419-3456 (TTY: 1-800-955-8771).

**Thai เรียบน:** ถ้าคุณพูดภาษาไทยคุณสามารถใช้บริการช่วยเหลือทางภาษาได้ฟรี โทร 1-(888) 419-3456 (TTY: 1-800-955-8771).