FILED

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OFFICE OF FAIR HEARINGS

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

,

PETITIONER, **AHCA Case No.: 23-FH1942**

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.
________________________________/

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on September 18, 2023, at 1:12 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:
Petitioner's Authorized Representative

For the Respondent: Marielisa Amador
Medical Health Care Program Analyst
Agency for Health Care Administration

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 eight (8) hours per week of personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically for the Fair Hearing. [redacted] ("[redacted]"), Petitioner's [redacted] and Authorized Representative, appeared on behalf of Petitioner. Amanda Ortez ("Ms. Ortez"), Waiver Support Care Coordinator with [redacted] ("[redacted]"), appeared as a witness for Petitioner.

Marielisa Amador, Medical Health Care Program Analyst for Agency for Health Care Administration ("AHCA"), appeared on behalf of Respondent. Dr. Chris Kunis ("Dr. Kunis"), Medical Director with eQHealth Solutions of Florida and Kepro, Inc. ("eQHealth"), attended as a witness for Respondent.

Adriana, translator number 247326, provided Spanish translation services during the hearing.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and forty-one (141)-page evidence packet and an eighty (80)-page evidence packet. The one hundred and forty-one (141)-page evidence packet appears in the Office of Fair Hearings' document management system as "[redacted] FH 09.18.2023.pdf." The eighty (80)-page evidence packet appears in the Office of Fair Hearings' document management system as "23-FH1942 AHCA Evidence (Pages 1-80 of 80).pdf." Absent an objection from Petitioner, the undersigned admitted the one hundred and forty-one (141)-page evidence packet and an eighty (80)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1") and Respondent's Composite Exhibit 1 ("RCE 2"), respectively.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. *See* RCE 1 at page 21. eQHealth is a Quality Improvement Organization ("QIO") contracted by the agency to review prior authorization requests for services. *See* RCE 2 at page 2.

2. As of the date of the Fair Hearing, Petitioner is [redacted]. *See* RCE 1 at 21. Petitioner lives [redacted]. *Id.* at 22. Petitioner is diagnosed with [redacted], [redacted], and is [redacted]. *Id.* at 21 – 22. Petitioner's most recent [redacted]. *Id.* at 22. Petitioner is on [redacted]. *Id.* Petitioner is [redacted]. *Id.* Petitioner is [redacted], [redacted], [redacted], and [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. *Id.* Petitioner receives [redacted] *Id.* Petitioner lives [redacted]. *Id.* Petitioner requires total assistance with all of [redacted] activities of daily living ("ADLs"). *Id.* Petitioner is totally dependent due to disturbances such as [redacted], [redacted], [redacted], or [redacted], that is not appropriate for [redacted] age. *Id*. at 50.

3. The Agency's Outpatient Review History states the following, in pertinent part:

> CLINICAL RATIONAL FOR DECISION: Request is for [redacted]. Deny this request . ([redacted]).

PR RECON DETERMINATION: [redacted] The [redacted] does not work and has no physical limitations.

[sic]

RCE 1 at 22.

4. On July 14, 2023, Petitioner requested fifty-six (56) hours of personal care services per week. *Id.* at 26. The personal care services are to be distributed eight (8) hours per day, Sunday through Saturday. *Id.* On the Reconsideration Review Request Form, dated August 1, 2023, [redacted] stated that Petitioner's request for personal care services is because Petitioner needs assistance with [redacted] ADLs and because [redacted]'s [redacted] "rely 100% on [[redacted]] help". *Id.* at 72.

5. On July 17, 2023, Respondent issued a Notice of Outcome ("NOO"), denying Petitioner's request for personal care services from August 1, 2023 to August 5, 2023; August 6, 2023 to January 27, 2024; and January 28, 2024 to January 31, 2024. *Id.* at 26 – 29. The NOO stated, in pertinent part:

> Code: 59122
> Description: Personal Care Services
> From: 8/6/23
> Thru: 1/27/24
> Approved: Total hours - 0
> Denied: Total hours – 1,400
> . . .
> The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administration Code, Specifically the requested services are not medically necessary under the following standard(s):
>
> Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.
>
> The rationale for our decision is as follows:

PR Principal Reason – Denial:

The service is denied because it duplicates services furnished by another provider.

Request is for PCS services under CDC+ program for this [redacted] Deny this request . ([redacted]).
[sic]
. . .

Id. at 26.

6. On August 3, 2023, Respondent issued a Notice of Reconsideration Determination ("NRD"), upholding the denial of personal care services. *Id.* at 35 – 38. The NRD states as follows, in pertinent part:

> . . .
> The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administration Code, Specifically the requested services are not medically necessary under the following standard(s):
>
> Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.
> . . .
>
> The medical basis for the reconsideration decision is as follows:
>
> Request is for [redacted] can provider care . Deny this request . ([redacted]).
> [sic]
> . . .

Id. at 40.

7. On August 9, 2023, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On September 1, 2023, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 18, 2023, at 1:00 p.m. EST.

8. , Petitioner's , testified as follows:

a. is the sole caregiver for Petitioner. Petitioner is in all aspects of life. Petitioner needs for , , , etc.

b. said that cannot see a dentist or doctor, or work outside of the home because is taking care of Petitioner.

c. is asking for help because cannot do other things.

d. Petitioner cannot be alone.

e. Petitioner depends on for all of ADLs.

f. needs the help of and to take care of Petitioner when needs to go somewhere else because , , needs to be healthy.

g. is also .

h. is not employed. is not seeking work outside of the home because does not want to leave Petitioner or home alone.

i. Petitioner currently receives ████, ████, ████ ████, and ████ that takes place in Petitioner's home. ████ does not leave ██ ████ home alone, so Petitioner receives ██ therapy in the home.

j. Petitioner spends part of ██ day ████ and a part of the day ████. Petitioner has a ████.

k. Petitioner is homeschooled.

9. Petitioner's physician, ████., submitted a prescription for home health services. The prescription states as follows, in pertinent part:

> Home health aid 8 hrs per day 7 days a week for 6 months.
> . . .

RCE 1 at 55.

10. Ms. Ortez is Petitioner's care coordinator. Ms. Ortez testified as follows:

a. Ms. Ortez has seen ████'s ████, ████ ████

b. Petitioner is receiving therapy in the home, but the therapists are not helping ██ ████ with Petitioner's ADLs.

c. There are no natural supports for ████ in the area.

d. Ms. Ortez visits Petitioner every three (3) months, depending on ████'s needs.

11. Dr. Kunis is Medical Director for eQHealth. Dr. Kunis testified as follows:

a. Respondent uses physician specialists and nurses to review the medical necessity decisions for cases like Petitioner's.

b. Petitioner's personal care services are provided by the Consumer-Directed Care Plus Program ("CDC+ Program"). The purpose of the CDC+ program is to allow payment for services of a family member who would be assisting in the care of a child, such as Petitioner. Usually the care is outside of the parental home. Per the Agency's rules and regulations, care givers must provide as much care as they can as an able-bodied caregiver. Whenever care cannot be provided by the caregiver, the CDC+ Program would kick in for additional services.

c. Dr. Kunis reviewed the Outpatient Review History. *See* RCe 1 at 21 – 22.

d. Dr. Kunis also reviewed the Agency for Persons with Disability Person-Centered Support Plan and the iBudget Florida HCBS Waiver Eligibility Work Sheet ("Work Sheet"). *See* RCE 1 at 61 – 68. The Work Sheet document mentions respite care for the benefit of the parent, [redacted]. Respite is a separate program that is not under review for the CDC+ Program.

e. Based on the information reviewed, Dr. Kunis agrees with Respondent's determination and recommends that the CDC+ Program denial be upheld.

f. The CDC+ Program does not fit the circumstances where there are complexities within the [redacted]' household and a lack of additional family support.

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 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.)

15. States must provide Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

> Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

16. Petitioner is under age 21, and therefore eligible for EPSDT services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Section 409.905(2), Florida Statutes, limits EPSDT services with a medical necessity standard:

> The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

17. The Agency's Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PCS Policy") has been incorporated, by reference, into Rule 59G-4.215, F.A.C. *See* RCE 2 at 38 – 47. The PC Policy provides as follows, in pertinent part:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

. . .

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 (ADL)

As defined in Rule 59G-1.010, F.A.C.

1.3.2 Babysitting

Custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient.

. . .

1.3.9 Instrumental Activities of Daily Living (IADL)

As defined in Rule 59G-1.010, F.A.C.

1.3.10 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

. . .

2.0 Eligible Recipient

2.1 General Criteria

An eligible recipient must be enrolled in the Florida Medicaid program on the date of service and meet the criteria provided in this policy.

Provider(s) must verify each recipient’s eligibility each time a service is rendered.

2.2 Who Can Receive

Florida Medicaid recipients under the age of 21 years requiring medically necessary personal care services. Some services may be subject to additional coverage criteria as specified in section 4.0.

. . .

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

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

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

. . .

4.2.1 Parental Responsibility Florida

Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed

. . .

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

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

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.
. . .
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	15–30 minutes day for all monitoring tasks performed

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 intake/output.	

RCE 2 at 40 – 44.

18. The Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement handbook (October 2015) ("CDC+ Handbook), incorporated by reference in Fla. Admin. Code R. 59G-13.088, describes the CDC+ program as "a Florida Medicaid program that permits certain Consumers to self-direct their own Personal Assistance Services." *See* RCE 2 at 54 – 80. The CDC+ Handbook as follows, in pertinent part:

> **Medical necessity**
> Medicaid reimburses services that are determined medically necessary and do not duplicate another provider's service.
>
> Rule 59G-1.010, Florida Administrative Code (F.A.C.) defines "medically necessary" or "medical necessity" as follows:
> "[T]he medical or allied care, goods, or services furnished or ordered must:
>
> (a) Meet the following conditions:
>
> 1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
> 2. 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;
> 3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program and not be experimental or investigational;
> 4. 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
> 5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider."
> . . .

> **“(c) 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.”**
> **. . .**
> **Personal Care Assistance**
> Description
> Assistance with eating, meal preparation, bathing, dressing, personal hygiene, and activities of daily living. Also includes light housekeeping when these activities are essential to the health, safety, and welfare of the Consumer and when no one else is available to perform them. **Personal Care Assistance may not be used solely for supervision.**

RCE 2 at 70, 80.

19. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines the commonly used terms as follows:

> **2.2 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
>
> . . .
> **2.64 Instrumental Activities of Daily Living (IADLs)**
> IADLs include:
> - Grocery shopping
> - Laundry
> - Light housework
> - Meal preparation
> - Medication management
> - Money management
> - Personal hygiene
> - Transportation
> - Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)
>
> . . .
> **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 severe 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.

RCE 2 at 17, 22 – 23.

20. The Florida Medicaid Authorization Requirements Policy (June 2016) ("Authorization Requirements Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services. *See* Respondent's Composite Exhibit 2, pages 30-36. The Authorization Requirements Policy states as follows:

. . .

1.2 Definitions

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

1.3.1 Authorization

The process of obtaining approval for reimbursement of a service based on medical necessity.

. . .

1.3.6 Provider

The term used to describe any entity, facility, person, or group that has been approved for enrollment or registered with Florida Medicaid.

1.3.7 Quality Improvement Organization

Entity designated to perform utilization review, quality assurance, and quality improvement activities for Florida Medicaid-covered services rendered by fee-for-service providers (also known as the QIO).

. . .

2.0 Authorization Requirements

. . .

2.4.2 Requests for Additional Information

The QIO may request additional information, as necessary, to determine medical necessity.

. . .

3.0 Determination Process

3.1 Review Criteria

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, **the QIO's physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA's medical necessity definition**.

3.2 Review Process

The QIO will review each authorization request and will approve, deny, or request additional information. **The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted**.

RCE 2 at 32 – 34.

21. In the instant case, Petitioner requested fifty-six (56) hours of personal care services per week. *See* supra ¶ 4. The personal care services were denied based on medical necessity. *See* supra ¶ 5, 6. Specifically, Respondent determined that "[t]he request for services is denied in whole or in part because they are not medically necessary" and because the services requested were not "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." *See* supra ¶ 6.

22. Personal care services provide "medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for

themselves if they did not have a medical condition or disability." *See* supra ¶ 17. These services are authorized when the parent is not able to provide ADL or IADL care. *See* supra ¶ 17. The Florida Medicaid program mandates that the recipient's parent must participate in providing care to the fullest extent possible. *See* supra ¶ 17. testified that the requested services will help because cannot do other things, because does not want to leave Petitioner or home alone, and because cannot see a dentist or doctor, or work outside of the home because is taking care of Petitioner. *See* supra ¶ 8. However, the Florida Medicaid program prohibits personal care services intended for babysitting. *See* supra ¶ 17. "Babysitting" is defined as custodial care or supervision unrelated to the services at issue. *See* supra ¶ 17. Here, testified that Petitioner needs assistance with all of ADLs, that assists Petitioner with everything, and that Petitioner cannot and has not been left alone. *See* supra ¶ 8. Dr. Kunis testified that he agrees with Respondent's determination and recommends that the CDC+ Program denial be upheld. There are no identified gaps in Petitioner's care. Further, Dr. Kunis provided credible and persuasive testimony that the approved services are sufficient to meet Petitioner's needs.

23. Personal care services must also be medically necessary. *See* supra ¶ 18, 19. Under the PCS Policy and the CDC+ Handbook, personal care services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. *See* supra ¶ 18, 19. To be medically necessary, the requested personal care services must meet the five criteria set forth in section 2.83 of the Definitions Policy. *See* supra ¶ 19. Based on the documentation and testimony provided at the Fair Hearing, Respondent denied Petitioner's request for fifty-six (56) hours per week of personal care services because the services requested were not "[i]ndividualized, specific, and consistent

with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs." *See* supra ¶ 6.

24. Here, Petitioner bears the burden of proof regarding the denial of fifty-six (56) hours per week of personal care services. *See* supra ¶ 14. The definition of personal care services most closely aligns with ADL tasks. The PCS Policy provides general time allowances for ADLs. *See* supra ¶ 17. According to 's sworn testimony, Petitioner needs assistance with all of ADLs and assists Petitioner with everything. *See* supra ¶ 8. did not provide evidence (e.g., a daily schedule, a schedule of ADLs and IADLs, the amount of time Petitioner requires for each of ADLs and IADLs) to support the request for personal care service hours. did not explain which ADLs Petitioner needs assistance with and is not currently receiving said assistance.

25. testified that Petitioner should receive the requested services because , , needs the help of and to take care of Petitioner when needs to go somewhere else because , , needs to be healthy. *See* supra ¶ 8. However, services may not be furnished in a manner primarily intended for the convenience of the recipient, *the recipient's caretaker*, or the provider. *See* supra ¶ 18, 19. (Emphasis added). Here, the requested service hours are primarily intended for the convenience of the caretaker, . Petitioner failed to show how the requested services are medically necessary.

26. Therefore, upon consideration of the testimony provided, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable laws and policies, the

undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of fifty-six (56) hours per week of personal care services was incorrect.

DECISION

Respondent's denial of fifty-six (56) hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED.**

DONE AND ORDERED this 30th day of October, 2023 in Tallahassee, Leon County, Florida.

Kameisha Presley
23-FH1942
2023.10.30 08:40:33 -04'00'

____

KAMEISHA PRESLEY, 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.

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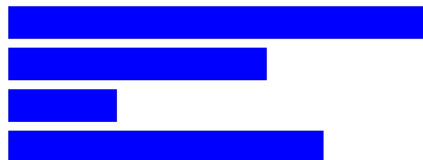

AHCA Medicaid Hearing Unit
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