



FILED

Dec 22, 2023, 9:55 am

OFFICE OF FAIR HEARINGS

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

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH1946

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____/ [REDACTED],

PETITIONER,

AHCA Case No.: 23-FH1947

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____/

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on November 2, 2023, at 9:32 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

objection from Respondent, the undersigned admitted Petitioner’s 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 seventy-two (172)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ Case Management system as “MFH packet [Petitioner].pdf”. Absent an objection from Petitioner, the undersigned admitted Respondent’s packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

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

2. As of the time of the Fair Hearing, Petitioner is [REDACTED]. *Id.* at 24. Petitioner lives with [REDACTED] and [REDACTED] in a private residence. *Id.* at 16. [REDACTED] is Petitioner’s Direct Service Worker (“DSW”) under the Participant Direction Option (“PDO”) program.

3. [REDACTED] assisted Petitioner with providing the responses to the questions on Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated July 25, 2023 (“701B Assessment”). See RCE 1 at 74 – 91. According to the Caregiver Section of the 701B, [REDACTED] has cared for Petitioner for two or more years, provides fifty (50) hours per week of care, and is very confident in [REDACTED] ability to continue to provide care for Petitioner. *Id.* at 89.

4. According to the 701B Assessment dated June 8, 2023, Petitioner has the following health conditions: [REDACTED],

[REDACTED]

[REDACTED]. *Id.* at 70 – 71. Petitioner has been diagnosed with [REDACTED]. *Id.* at 72. In the last month prior to the 701B Assessment dated June 8, 2023, Petitioner was [REDACTED]. *Id.* at 73. Petitioner needs supervision. *Id.* Petitioner is currently receiving skilled nursing specialty care daily and [REDACTED] several times a day. *Id.* at 71.

5. According to the 701B Assessment dated June 8, 2023, regarding Petitioner’s Activities of Daily Living (“ADLs”), Petitioner needs total assistance (cannot do at all) with all of the ADLs: [REDACTED]. *Id.* at 68. Petitioner has assistance most of the time with all of the ADLs. *Id.*

6. According to the 701B Assessment dated June 8, 2023, regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with all of the IADLs: [REDACTED]. *Id.* at 20. Petitioner has assistance most of the time with all of the IADLs. *Id.*

7. The notes and summary of the 701B Assessment observe, in pertinent part:

...
Member[’s] [REDACTED] moved in with member to take care of [REDACTED].
...
Member is alert and oriented x3.
...
There are no cognitive problems present.
...
[REDACTED] states that she will care for [REDACTED] as [REDACTED] will not have [REDACTED] to go a nursing facility.

...
RCE 1 at 75 – 76, 90.

8. In AHCA Case No. 23-FH1946 (Plan ID. No. OP0700000039), Petitioner requested an additional ten (10) hours per week of personal care services and an additional ten (10) hours per week of homemaker services. *Id.* at 4, 6. On August 18, 2022, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) denying the requested services. *Id.* at 6 – 14. Petitioner requested a plan appeal. *Id.* at 4. On September 2, 2022, Respondent issued a Notice of Plan Appeal Resolution (“NPAR”), denying the requested services. *Id.* at 4, 107.

9. In AHCA Case No. 23-FH1947 (Plan ID No. OPUj0000492), Petitioner requested an additional ten (10) hours per week of homemaker services. On March 10, 2023, Respondent issued an NABD denying the requested services. The NABD stated as follows, in pertinent part:

We determined that your requested services are **not medically necessary** because the services do not meet either of the reason(s) checked below: (See Rule)

...

Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

And one of the following:

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

...

The facts that we used to make our decision are: The request for an extra 10 hours per week of Homemaker Services is denied for lack of medical necessity. Based on the

assessment the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 20 hours per week of Personal Care Services and 6 hours per week of Homemaker services. The member lives with family who can assist with shared homemaking tasks as informal support. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Services Criteria.

...

Id. at 15 – 16.

10. In AHCA Case No. 23-FH1947, Petitioner requested a plan appeal concerning the denial of additional homemaker services. *Id.* at 4. On May 11, 2023, Respondent issued an NPAR denying the requested homemaker services. *Id.* at 103. The NPAR stated the reason for Respondent's denial as follows, in pertinent part:

On 04/27/2023, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated 03/10/2023, NA Notice of Adverse Benefit Determination BD Number OPUj0000492, *DENYING* the extra 10 hours per week of Homemaker Services provided to [Petitioner].

On 05/11/2023, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby Denies your plan appeal. As a result, [Petitioner] *will not receive* additional requested services, effective 05/11/2023.

The reason for our decision was on appeal the request for an extra 10 hours per week of Homemaker Services is denied as not medically needed. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes: 20 hours per week of Personal Care Services and 6 hours per week of Homemaker Services. The prior decision is upheld.

...

RCE 1 at 103.

11. On August 9, 2023, Petitioner requested a Fair Hearing in AHCA Case Nos. 23-FH1946 and 23-FH1947. *Id.* at 4. On September 8, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, setting the Fair Hearing for September 28, 2023, at 1:00 p.m. EST. During the convened hearing, Respondent asserted that the Fair Hearing request for AHCA Case No. 23-FH1946 (Plan Identification Number

OP0000039) appeared to be untimely. On September 29, 2023, the undersigned issued an Order Granting Continuance and an Order to Show Cause why Petitioner's Fair Hearing request for AHCA Case No. 23-FH1946 (Plan Identification Number OP0000039) should not be dismissed for untimeliness.

12. Based on Petitioner's response to the Order to Show Cause, on October 18, 2023, the undersigned issued an Order Scheduling Preliminary Hearing and Second Order Scheduling Fair Hearing by Telephone and Prehearing Instructions rescheduling the Fair Hearing for November 2, 2023, at 9:30 a.m. EST. At the preliminary hearing, the parties were given an opportunity to provide argument on whether Petitioner's Fair Hearing request for AHCA Case No. 23-FH1946 (Plan Identification Number OP0000039) should be dismissed for untimeliness. The undersigned reserved a ruling until the Final Order.

13. At the October 18, 2023, Fair Hearing, Petitioner's authorized representative and DSW, Ms. McVeigh, testified as follows:

- a. There was a Fair Hearing held on March 10, 2023, regarding an appeal concerning the personal care services.
- b. The payroll company informed [REDACTED] to keep timesheets for the personal care services [REDACTED] provided to Petitioner.
- c. Petitioner's health condition decreased in August of 2022.
- d. Petitioner requested additional homemaker services because Petitioner is unable to perform any homemaker tasks and [REDACTED] is doing everything for Petitioner.

- e. Petitioner reapplied for additional homemaker services in August of 2022 after Petitioner [REDACTED].
- f. [REDACTED] was unable to timely respond to requests because of a misunderstanding that the fair hearings were being split into two different cases.
- g. [REDACTED] is a paid employee of Petitioner and believes it is a conflict of interest to also be considered a natural support of Petitioner.
- h. [REDACTED] believes it is not a societal norm for an adult child to have to provide personal care services or homemaker services for an elderly parent.
- i. [REDACTED] stated that [REDACTED] is not available to assist Petitioner with unpaid services.
- j. [REDACTED] moved in with Petitioner due to a fear of Petitioner failing to thrive.
- k. Petitioner lives with [REDACTED] and [REDACTED]. [REDACTED] does not work outside of the home, but [REDACTED] does.
- l. Petitioner's day starts at about 7:00 a.m. and ends around 12:00 p.m. with personal care services. Petitioner goes to bed around 7:00 p.m.
- m. Petitioner may need more baths and changes due to frequent [REDACTED]
[REDACTED]
- n. [REDACTED] believes that the current service hours for Petitioner do not cover [REDACTED] needs.
- o. [REDACTED] stated that [REDACTED] is not willing to provide informal support on top of the services [REDACTED] is providing to Petitioner as [REDACTED] direct service worker. [REDACTED] believes [REDACTED] should not be required to give any services or assistance that are not paid.

14. Dr. Metinko is a Medical Director for Sunshine Health. Dr. Metinko testified as follows:
- a. Dr. Metinko reviewed Petitioner's medical conditions and medications.
 - b. Dr. Metinko reviewed Petitioner's ADL and IADL needs.
 - c. There is no documentation that Petitioner requires moment to moment supervision or that Petitioner cannot be left alone.
 - d. Dr. Metinko opined that Petitioner's currently approved services meet Petitioner's needs given the summary in the 701B.
 - e. The services that Respondent provides through personal care services or homemaker services must be medically necessary, supplement what the family can reasonably provide, and are intended to mitigate any gaps. It is expected that adults who share a living space will share in the maintenance of that space in terms of meal preparation, maintaining the cleanliness of the shared space, and errands of the home.
 - f. Respondent calculated Petitioner's service needs to be a total of twenty-four (24) to twenty-six (26) hours per week of combined services. Petitioner's service hours can be increased in the future as Petitioner's condition changes.
 - g. Dr. Metinko opined that based on the information reviewed, there is not a medical necessity for Petitioner to receive additional personal care services or homemaker services.
15. Ms. Hoffman testified as follows:

- a. Respondent determines a member's service hours based on the member's needs and informal support available in the home. Long term care service hours are to fill the gaps.
- b. Based on the 701B completed with [REDACTED], Petitioner has assistance most of the time because [REDACTED] lives with family members.
- c. A direct service worker is not excluded or prohibited from providing natural support to a family member.

16. Petitioner currently receives twenty (20) hours per week of personal care service hours and six (6) hours per week of homemaker services through the PDO program.

17. In making its determination, Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09 ("LT.UM.09 Policy"). See RCE 1 at 147 - 171. The LT.UM.09 Policy states as follows, in pertinent part:

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

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).

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. Service 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 Service 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.

Housekeeping Considerations:

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

- For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.

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

Shopping Considerations:

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

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

Meal Preparation considerations

- 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
- Will additional supports allow the member to eat more often or improve nutritional status

d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all Laundromat and/or cleaning fees.

Laundry Considerations:

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

7. Personal Care Services

In accordance with Rule 59G-4.215, F.A.C., for member under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparing of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the member. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years. A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member. Personal care services include but may not be limited to the following:

- Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- Assisting the member in following through with physician orders
The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member

- Performing household services (changing bed linen or arranging furniture), when such services are essential to the member’s health and comfort.
- . . .

RCE 1 at 147, 150 – 151, 156 – 159, and 161 – 165.

CONCLUSIONS OF LAW

18. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes. This order is the final administrative decision of AHCA under section 409.285(2)(a).

19. This hearing was held as a *de novo* proceeding pursuant to Rule 59G-1.100(17)(b), Florida Administrative Code (“F.A.C.”).

20. The burden of proof in this proceeding is governed by Rule 59G-1.100(17)(g), F.A.C., which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

21. Because Petitioner is requesting new services, Rule 59G-1.100(17)(g), F.A.C., assigns the burden of proof to the 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.).

22. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“March 2017”)

("SMMC LTC Policy"). The Agency's SMMC LTC Policy has been incorporated, by reference, into Rule 59G-4.192, F.A.C. The SMMC LTC Policy provides as follows:

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
- 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)

...

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.

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. 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 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.

...

4.2.1.15 Respite Care

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee’s natural supports on a planned or an emergency basis.

...

4.2.2 Mixed Services

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of

these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

SMMC LTC Policy at 3 – 5, 7, 9 – 10.

23. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Rule 59G-1.010, F.A.C, defines “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 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.

Definitions Policy at 8.

24. The Personal Care Services Coverage Policy (“PCS Policy”), which is incorporated by reference in Rule 59G-4.215, F.A.C., states as follows:

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.

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

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.

...

1.3.6 Home Health Services

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

...

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

5.1 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 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.	15–30 minutes day for all monitoring tasks performed

PC Policy at 1, 3 – 5.

AHCA Case No. 23-FH1946 (Plan Id. No. OP0700000039)

25. In AHCA Case No. 23-FH1946 (Plan ID. No. OP0700000039), the Office of Fair Hearings received a request for a Fair Hearing from Petitioner on August 9, 2023. *See supra* ¶ 8. Rule 59G-1.100(8)(g), Florida Administrative Code (“F.A.C”), requires that “a Fair Hearing request by an enrollee must be received by the Agency within 120 days of the date a required [Notice of Plan Appeal Resolution] NPAR is sent to the enrollee”. Rule 59G-1.100(9)(b)(3), F.A.C., authorizes a Hearing Office to deny or dismiss a Fair Hearing request that is untimely.

26. In the instant case, the NPAR is dated September 2, 2022. *See supra* ¶ 8. The Petitioner’s Authorized Representative requested a Fair Hearing on August 9, 2023, which is more than 120 days from September 2, 2022. Therefore, it appears that the request is untimely.

27. On September 29, 2023, the undersigned issued an Order to Show Cause (“Order”) why the Fair Hearing request should not be dismissed for failure to timely file the request. The Order explained that Rule 59G-1.100(b)(g), Florida Administrative Code, requires that “[a] fair hearing request by an enrollee must be received by the Agency within 120 days of the date the required NPAR is sent to the enrollee.” The Order notified Petitioner that failure to show cause by October 10, 2023, would result in dismissal of the case.

28. On October 10, 2023, the Office of Fair Hearings received email correspondence from Petitioner’s Authorized Representative listing [REDACTED] grievances and frustrations for the appeal process. Based on the response, the undersigned scheduled the matter for preliminary hearing on November 2, 2023. During the preliminary hearing, Petitioner’s Authorized Representative testified that the NPAR at issue is identical to the NPAR that was the subject of a Fair Hearing previously held on March 10, 2023. Further, [REDACTED] testified that [REDACTED] was unable to timely respond to requests in the previous case because of a misunderstanding that the Fair Hearings were being split into two different cases. However, [REDACTED] testimony did not show good cause for failure to timely file the Fair Hearing request in AHCA Case No 23-FH1946.

AHCA Case No. 23-FH1947 (Plan Identification Number OPUj0000492)

29. In the instant case, Respondent denied ten (10) hours per week of homemaker services. *See supra* ¶ 8, 9. As established on the record by the evidence and testimony, Respondent denied Petitioner’s request because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. *See supra* ¶ 8, 9.

30. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do

not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 20. Section 4.2.1.9 of the SMMC LTC Policy defines homemaker services as 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.” See supra ¶ 20.

31. The evidence presented in this case does not reflect that thirteen (13) additional hours per week of homemaker services are warranted. Dr. Metinko testified that Petitioner’s currently approved services meet Petitioner’s needs given the summary in the 701B. See supra ¶ 12. Regarding █ IADLs, Petitioner needs total assistance (cannot do at all) with all of the IADLs:

█

█ See supra ¶ 6. Petitioner has

assistance most of the time with all of the IADLs. See supra ¶ 6. █ testified that the current service hours for Petitioner do not cover all of █ needs. See supra ¶ 11. Dr. Metinko testified that there is no documentation that Petitioner requires moment to moment supervision or that Petitioner cannot be left alone. See supra ¶ 12.

32. Petitioner has multiple medical conditions, including █

█

█. See supra ¶

4, 7. Petitioner is currently receiving skilled nursing specialty care daily and █

█ specialty care several times a day. See supra ¶ 4. Although Petitioner’s medical conditions impact █ assistance needs with █ ADLs and IADLs, Petitioner is receiving twenty (20) hours per week of personal care services and six (6) hours per week of homemaker services.

See supra ¶ 8. Dr. Metinko opined that there is not a medical necessity for Petitioner to receive additional homemaker services. See supra ¶ 12.

33. The SMMC LTC Policy requires that the additional homemaker services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” See supra ¶ 20. Here, Petitioner bears the burden of proof regarding the denial of ten (10) hours per week of homemaker services. See supra ¶ 19. ██████████ testified that ██████ is not willing to provide informal support on top of the services ██████ is providing to Petitioner as his direct service worker. See supra ¶ 11. Further, ██████████ testified that ██████ should not be required to give any services or assistance that are not paid. See supra ¶ 11. However, Dr. Metinko testified that services are intended to supplement the assistance that the family can reasonably provide based , and Ms. Hoffman testified that a direct service worker is not excluded or prohibited from providing natural support to a family member. See supra ¶ 12, 13. Section 1.3.16 of the LTC Policy provides that natural supports are “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community- based services and supports.” See supra ¶ 20. ██████████ moved in with Petitioner to take care of him. See supra ¶ 7. ██████████ assisted Petitioner with providing the responses to the 701B. See supra ¶ 3. ██████████ does not work outside of the home, has cared for Petitioner for two or more years, provides fifty (50) hours per week of care, and is very confident in ██████ ability to continue to provide care for Petitioner. See supra ¶ 3, 11. Thus, although ██████████ testified that ██████ is unwilling to provide natural support, the greater weight of record evidence supports that ██████████ has been willing and able to provide natural supports for Petitioner. ██████████ has continued to provide care for Petitioner. In

light of these facts, [REDACTED] assertion that [REDACTED] is no longer willing to provide natural support is not credible.

34. Considering the totality of Petitioner's circumstances, including the medical diagnoses, level of functional need for assistance with IADLs, amount of currently approved services, and the natural support provided by the family that [REDACTED] lives with, Petitioner failed to prove by a preponderance of the evidence that request for an additional thirteen (13) hours per week of homemaker services are not "in excess of [Petitioner's] needs." See supra ¶ 21.

35. In light of both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner failed to meet the burden of proving that thirteen (13) hours per week of homemaker services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of homemaker services was incorrect.

DECISION

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

AHCA Case No. 23-FH1946 (Plan Identification Number OP0700000039) is dismissed without prejudice and is now closed.

Respondent's denial of additional homemaker services in AHCA Case NO. 23-FH1947 is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of homemaker services is **DENIED**.

DONE AND ORDERED this 22nd day of December 2023, in Tallahassee, Leon County, Florida.

K. Presley

Kameisha Presley
23-FH1946 & 23-
FH1947
2023.12.22 08:41:37
-05'00'

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.

COPIES FURNISHED TO:

[REDACTED]
[REDACTED]

Sunshine State Health Plan, Inc.
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com