



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

FILED

Dec 11, 2023, 10:22 am

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1953

Plan ID No.: [Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1954

Plan ID No.: [Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1955

Plan ID No.: [Redacted]

vs.

HUMANA MEDICAL 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 September 20, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner’s Authorized Representative

For the Respondent: Markeshi Lee
Medicaid Fair Hearing Specialist
Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of an additional sixty-nine (69)-hours per week of Adult Companion Care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of an additional eight (8)-hours per week of Homemaker services was incorrect.

The third issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s denial of an additional twenty-one (21)-hours per week of Personal Care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] Petitioner’s Authorized Representative and niece, appeared at the hearing and provided testimony on Petitioner’s behalf.

Markeshi Lee, Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) represented Respondent. Dr. Avra Bowers (“Dr. Bowers”), Medical Director for Humana, provided testimony on behalf of the Respondent.

Suzanne Chillari, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a four (4)-page evidence packet and a fourteen (14)-page evidence packet. The four (4)-page evidence packet appears in the Office of Fair Hearings Case Management system as “[Petitioner Name] Fair Hearing request.pdf.” The fourteen (14)-page evidence packet appears in the Office of Fair Hearings Case Management System as “23-FH1953, 23-FH1954, 23-FH1955 Supporting Documents.pdf.” Absent an objection from Respondent, the undersigned admitted the four (4)-page evidence packet as Petitioner’s Composite Exhibit 1 (“PCE 1”) and the fourteen (14)-page evidence packet as Petitioner’s Composite Exhibit 2 (“PCE 2”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and forty-five (345)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ Case Management system as “Evidence Packet_Part1.pdf”; “Evidence Packet_Part2.pdf”; “Evidence Packet_Part3.pdf”; “Evidence Packet_Part4.pdf”; “Evidence Packet_Part5.pdf”; “Evidence Packet_Part6.pdf.” Absent an objection from Petitioner, the undersigned admitted the three hundred and forty-five (345)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”)

FINDINGS OF FACT

1. Petitioner is an enrolled member of Humana’s Long-Term Care (“LTC”) plan. *See* RCE 1 at 2. Humana is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in the State of Florida.

2. As of the time of the hearing, Petitioner was an [REDACTED] who lives [REDACTED] in a private residence. *Id.* at 92. [REDACTED] ensures Petitioner is never left alone. *Id.* at 93. The Petitioner has 24 hour per day care between the Respondent-provided services, family, friends and neighbors. *Id.* at 96. A bed alarm has been installed. *Id.* at 99-100.

3. Petitioner has the following health conditions: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* 93, 97-99.

4. [REDACTED] provided the responses to the questions on Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated June 6, 2023. (“701B Assessment”). *Id.* at 92.

5. According to the 701B Assessment, regarding Petitioner’s Activities of Daily Living (“ADLs”), Petitioner needs assistance (but not total help) with [REDACTED]
[REDACTED]; Petitioner uses assistive devices for [REDACTED]
[REDACTED] Petitioner needs supervision or prompt with [REDACTED]. *Id.* at 95.

6. According to the 701B Assessment, regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]

[REDACTED] Petitioner needs assistance (but not total help) with [REDACTED]. *Id.* at 96. Regarding socialization, Petitioner talks to friends, relatives or others once a day, spends time with someone who does not live with [REDACTED] two to six times per week and participates in activities outside the home that interest [REDACTED] once a week. *Id.* at 105. Petitioner always has assistance with [REDACTED] ADLs and IADLs except for [REDACTED]. *Id.* at 95-96. Petitioner is [REDACTED]. [REDACTED] requires constant supervision. *Id.* at 100.

7. According to the Supplemental Assessment, dated August 29, 2023, Petitioner's [REDACTED], provides natural support and provides ten (10)-hours of assistance on Sundays. *Id.*

8. Petitioner requested an additional sixty-nine (69)-hours per week of Adult Companion Care. On April 17, 2023, Respondent issued a Notice of Adverse Benefit Determination ("NABD") denying her request for an additional sixty-nine (69)-hours weekly of Adult Companion Care. *Id.* at 24-25. The NABD stated the reasons for Respondent's denial 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:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan’s approved review criteria and guidelines.

You have requested an additional 8 hours of Homemaker service each week; an additional 21 hours of Personal Care service each week; and an additional 69 hours of Adult Companion Care each week.

You have several (multiple) medical problems. You do not have [REDACTED]. You have trouble [REDACTED]. You do not [REDACTED].

You have not recently been in the hospital.

You live [REDACTED]. You have 2 family members that provide natural support (care) for you. You use a [REDACTED]. You need some [REDACTED]. You need some help [REDACTED]. You need help with [REDACTED].

Your request for an additional 8 hours of Homemaker service each week; an additional 21 hours of Personal Care service each week; and an additional 69 hours of Adult Companion Care each week is being denied as not medically necessary.

The hours you are receiving should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

Id. at 24-25.

9. Petitioner requested an additional eight (8)-hours weekly of Homemaker services. On April 17, 2023, Respondent issued a NABD denying Petitioner’s request. *Id.* at 32. The NABD stated the reasons for Respondent’s determinations 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:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan's approved review criteria and guidelines.

You have requested an additional 8 hours of Homemaker service each week; an additional 21 hours of Personal Care service each week; and an additional 69 hours of Adult Companion Care each week.

You have several (multiple) medical problems. You do not have [REDACTED]. You have [REDACTED]. You [REDACTED].

You have not recently been in the hospital.

You live [REDACTED]. You have 2 family members that provide natural support (care) for you. You use a [REDACTED]. You need some help [REDACTED]. You need some help [REDACTED].

You need help [REDACTED].

Your request for an additional 8 hours of Homemaker service each week; an additional 21 hours of Personal Care service each week; and an additional 69 hours of Adult Companion Care each week is being denied as not medically necessary.

The hours you are receiving should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

Id. at 32-33.

10. Petitioner requested an additional twenty-one (21)-hours weekly of Personal Care services. In an NABD dated April 17, 2023, Respondent denied the request. *Id.* at 40-41. The NABD stated the reasons for Respondent’s determinations 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:

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law – specifically see checked box above) and reflects the application of the Plan’s approved review criteria and guidelines.

You have requested an additional 8 hours of Homemaker service each week; an additional 21 hours of Personal Care service each week; and an additional 69 hours of Adult Companion Care each week.

You have several (multiple) medical problems. You do not have trouble [REDACTED]. You have trouble [REDACTED]. You do not [REDACTED].

You have not recently been in the hospital.

You live [REDACTED] You have 2 family members that provide natural support (care) for you. You use a [REDACTED] You need some [REDACTED]

Your request for an additional 8 hours of Homemaker service each week; an additional 21 hours of Personal Care service each week; and an additional 69 hours of Adult Companion Care each week is being denied as not medically necessary. The hours you are receiving should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

11. Petitioner requested a plan appeal based on the denial of her request for an additional sixty-nine (69)-hours of Adult Companion Care. In a Notice of Plan Appeal Resolution (“NPAR”), dated July 5, 2023, the plan appeal was denied. *Id.* at 49 The NPAR stated the reasoning for the denial as follows, in pertinent part:

On June 9, 2023, we received your timely plan appeal request regarding Humana Healthy Horizons Long-Term Care Plan’s Notice of Adverse Benefit Determination dated April 17, 2023, authorization 171640105, denying the request for 69 additional Adult Companion Care hours weekly to be provided to [Recipient].

On July 3, 2023, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director who is a DO and board certified in Internal Medicine, who, hereby denies your plan appeal.

The reason for the decision was based on the information received. You have requested that the additional 69 hours of Adult Companion Care service each week that was denied in the initial request be reconsidered (appeal).

[Recipient] has several (multiple) medical problems. [REDACTED] does not have trouble [REDACTED] often has trouble [REDACTED] lives [REDACTED] uses a [REDACTED] needs some [REDACTED] needs some help [REDACTED]

The denial of 69 additional hours of Adult Companion Care service each week is being upheld. The hours [REDACTED] is currently receiving should be enough to meet [REDACTED] medical needs and can be divided into shifts to better meet [REDACTED] needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the plan's approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

Id. at 49.

12. Petitioner requested a plan appeal regarding the denial of her request for eight (8)-hours of Homemaker services. In an NPAR dated July 5, 2023, Respondent denied the plan appeal. *Id.* at 52-53. The reasoning for the denial was explained as follows, in pertinent part:

On June 9, 2023, we received your timely plan appeal request regarding Humana Healthy Horizons Long-Term Care Plan's Notice of Adverse Benefit Determination dated April 17, 2023, authorization number 171641328, denying the request for 8 additional Homemaker hours provided to [Recipient].

On July 3, 2023, after consideration of the information you provided to Humana Long-Term Care Plan in support of your plan appeal, was reviewed by a medical director whose is a D.O. and board certified in Internal Medicine hereby denies your plan appeal.

The reason for the decision is based on the information received. You have requested that the additional 8 hours of Homemaker service each week that was denied in your initial request be reconsidered (appeal) for [Recipient].

[REDACTED] has several (multiple) medical problems. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The denial of 8 additional hours of Homemaker service each week is being upheld. The hours she is currently receiving should be enough to meet her medical needs and can be divided into shifts to better meet your needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the Plan's approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

Id. at 52-53.

13. Petitioner requested a plan appeal based on Respondent’s denial of her request for twenty-one (21) additional Personal Care hours. In an NPAR dated July 5, 2023, the plan appeal was denied. *Id.* at 56. The NPAR explained the reason for the denial as follows, in pertinent part:

On June 9, 2023, we received your timely plan appeal request regarding Humana Healthy Horizons Long-Term Care Plan’s Notice of Adverse Benefit Determination dated April 17, 2023, authorization number 171642561 denying the request for 21 additional Personal Care hours provided to [Recipient].

On July 3, 2023, after consideration of the information you provided to Humana Long- Term Care Plan in support of your plan appeal, was reviewed by a medical director who is a D.O. and board certified in Internal Medical hereby denies your plan appeal.

The reason for the decision is based on the information received. You have requested that the additional 21 hours of Personal Care service each week that was denied in your initial request be reconsidered (appeal) for [Recipient]

[REDACTED]

The denial of 21 additional hours of Personal Care service each week is being upheld. The hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your needs.

This determination of the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of the Plan’s approved review criteria and guidelines, defined in Chapter 59G-1.010 (2.83) Florida Administrative Code.

Id. at 56.

14. On August 11, 2023, Petitioner requested a Fair Hearing due to the denial of additional Adult Companion Care, Homemaker and Personal Care hours. On August 22, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing for September 20, 2023, at 1:00 p.m. EST.

15. At the Fair Hearing, [REDACTED] testified as follows:

- a. [REDACTED] believes that currently, Petitioner's needs are met.
- b. In case of emergency, [REDACTED] would contact [REDACTED] to care for Petitioner at night.
- c. Petitioner has [REDACTED] who lives nearby but [REDACTED] believes [REDACTED] is unable to help with Petitioner's care due to [REDACTED] own health.
- d. [REDACTED] believes Petitioner's [REDACTED] cannot provide nighttime care due to job and family obligations.
- e. Family members, friends and neighbors have been able to help.
- f. Petitioner has not been left alone since [REDACTED] due to [REDACTED] coordinating 24-hour care: 10 hours a day by Humana, 14 hours a day by family, neighbors or friends.

16. At the Fair Hearing, Dr. Bowers testified as follows:

- a. Petitioner does not [REDACTED] and there are family members who help Petitioner during the hours that Humana is not providing care.
- b. The June 6, 2023, assessment was compiled from information provided by [REDACTED]
[REDACTED]

- c. Petitioner is [REDACTED] but is not suffering from [REDACTED] warranting twenty-four-hour care.
- d. Seventy hours per week of care are being provided.

17. Petitioner is currently authorized to receive the following home and community-based services: twenty-one (21)-hours per week of Adult Companion Care services, fourteen (14)-hours per week of Homemaker services and thirty-five (35)-hours per week of Personal Care services.
Id. at 1.

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 Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.100(17)(b).

20. Because Petitioner is requesting additional services, Fla. Admin. Code R. 59G-1.100(17)(g) 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.).

21. The Florida Medicaid Statewide Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to Adult Companion, Homemaker and Personal Care services:

1.1 Description and Program Goal

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

...

1.3 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)

1.3.10 LTC Supplemental Assessment

An evaluation conducted by the LTC plan of the level of natural supports that are available to the enrollee and to capture additional information regarding the functional needs of the enrollee.

...

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.

...

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.

...

4.2.2 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.

...

6.2 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.

Id. at 155-163.

22. The Florida Medicaid Definitions Policy (“Definitions Policy”), incorporated by reference

in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate 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 page 7.

Adult Companion Care Services

23. In the instant case, Petitioner requested an additional sixty-nine (69)-hours per week of Adult Companion Care services. *See* ¶ 11. In an NPAR dated July 5, 2023, Respondent denied Petitioner’s plan appeal. *Id.* As established on the record by the evidence and testimony, Respondent denied Petitioner’s request because the requested services were not medically necessary. *See* ¶ 8, 9. Respondent did not identify the specific prong of medical necessity that was not met. *See* ¶ 11.

24. Florida Medicaid LTC plans cover services that meet all of the following: are determined medically necessary; do not duplicate another service; and meet the criteria as specified in the LTC Policy. *See ¶ 21.*

25. According to the LTC policy, Adult Companion Care is defined as:

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.

See ¶ 21.

26. The evidence presented in this case does not reflect that an additional sixty-nine (69) hours per week of Adult Companion Care services are medically necessary. Petitioner's [REDACTED] other family members and neighbors provide natural support in addition to the LTC services authorized by Humana. *See ¶ 15.* [REDACTED] testified that Petitioner is never alone, and [REDACTED] receives everything [REDACTED] needs. *See ¶ 15.*

27. Regarding socialization, according to the 701 B Assessment, Petitioner talks to friends, relatives or others once a day, spends time with someone who does not live with [REDACTED] two to six times per week and participates in activities outside the home that interest [REDACTED] once a week. *See ¶ 5-6.*

28. According to the record, Petitioner is currently authorized to receive the following home and community-based services: twenty-one (21)-hours per week of Adult Companion Care services, fourteen (14)-hours per week of Homemaker services and thirty-five (35)-hours per week of Personal Care services. *See ¶ 17.*

29. Although Petitioner does [REDACTED] receives companionship and supervision through both natural supports and the seventy (70)-hours weekly of combined LTC services that Respondent has previously authorized.

30. Based upon Petitioner's comprehensive needs assessment, and the LTC policy regarding medical necessity, the record does not demonstrate that an additional sixty (69)-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, and not in excess of the patient's needs". See ¶ 22. Therefore, the record does not demonstrate that the requested services are medically necessary. Further, additional Adult Companion Care services would duplicate other services that are already in place.

31. In light of both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Exhibit 2, Petitioner's Composite Exhibit 1, Petitioner's Composite Exhibit 2, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that an additional sixty-nine (69) hours per week of Adult Companion Care 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 the requested additional Adult Companion Care services was incorrect.

Homemaker Services

32. In the instant case, Petitioner requested an additional eight (8)-hours per week of Homemaker services. See ¶ 12. In an NPAR dated July 5, 2023, Respondent denied Petitioner's plan appeal. *Id.* As established on the record by the evidence and testimony, Respondent denied

36. Petitioner lives [REDACTED] in a private residence. See ¶ 2. Petitioner has [REDACTED] who provide natural support. See ¶ 2, 7. Petitioner did not identify any homemaker tasks or needs of Petitioner's that were not being fulfilled by the current plan of care. See ¶ 15.

37. Fla. Admin. Code R. 59G-1.010, requires that the requested 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 ¶ 20.

38. Petitioner is currently authorized to receive the following home and community-based services: twenty-one (21)-hours per week of Adult Companion Care services, fourteen (14)-hours per week of Homemaker services and thirty-five (35)-hours per week of Personal Care services. See ¶ 17.

39. In addition to currently receiving Homemaker services to help with household activities and household care, Petitioner's currently authorized Personal Care services can also assist "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." See ¶ 21.

40. Petitioner provided no time estimates for each of her IADLs, which most closely align to Homemaker services, and did not explain why Petitioner requires additional assistance with IADLs. Further, Petitioner provided no evidence (e.g., a daily schedule, a schedule of ADLs and IADLs, the amount of time needed for each ADL and IADL) to support the approval of an additional eight (8) hours of Homemaker services per week. Similarly, Petitioner's 701B Assessment, which was completed with input from [REDACTED], indicates that Petitioner always has assistance with [REDACTED] ADLs and IADLs except for using the telephone. See ¶5-6. Petitioner did not explain what IADLs would no longer be covered if the requested additional hours of

Homemaker services are not approved in this matter.

41. Considering the totality of Petitioner's circumstances, including ■■■ diagnoses, level of functional need for assistance with ADLs and IADLs, amount of currently approved services, and the fact that ■■■ has the natural support of her family, friends and neighbors, Petitioner failed to prove by a preponderance of the evidence that an additional eight (8) hours per week of Homemaker services are not "in excess of [Petitioner's] needs." See ¶ 20.

42. Based upon Petitioner's current comprehensive needs assessment, and the LTC policy regarding medical necessity, the record does not demonstrate that an additional eight (8)-hours per week of Homemaker services are: "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 ¶ 22. Therefore, the record does not demonstrate that the requested services are medically necessary.

43. In light of both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Exhibit 2, Petitioner's Composite Exhibit 1, Petitioner's Composite Exhibit 2, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner failed to meet ■■■ burden of proving that an additional eight (8) 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 the requested additional Homemaker services was incorrect.

Personal Care Services

44. In the instant case, Petitioner requested an additional twenty-one (21)-hours per week of Personal Care services. See ¶ 13. In an NPAR dated July 5, 2023, Respondent denied Petitioner's

plan appeal. *Id.* As established on the record by the evidence and testimony, Respondent denied Petitioner's request because the requested services were not medically necessary. See ¶ 8, 9. Respondent did not identify the specific prong of medical necessity that was not met. See ¶ 12.

45. The LTC Policy and the Definitions Policy require that the additional Personal Care services must "[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." See ¶ 21.

46. Petitioner's currently authorized Personal Care services are provided:

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.

See ¶ 20.

47. The evidence presented in this case does not reflect that an additional twenty-one (21) hours per week of Personal Care services are warranted. Specifically, regarding ADLs and IADLs, Petitioner needs assistance (but not total help) with [REDACTED]. [REDACTED] Petitioner uses assistive devices for [REDACTED]. [REDACTED] Petitioner needs supervision or prompt [REDACTED]. Petitioner needs total assistance (cannot do at all) with [REDACTED]. [REDACTED] Petitioner needs assistance (but not total help) with [REDACTED]. Petitioner did not provide any evidence regarding any ADLs or IADLs that would no longer be met without the authorization of the requested additional services.

48. Based upon Petitioner's current comprehensive needs assessment, and the LTC policy regarding medical necessity, the record does not demonstrate that an additional twenty-one (21)-hours per week of Personal Care services are: "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs". See ¶ 22. Therefore, the record does not demonstrate that the requested services are medically necessary.

49. While Petitioner does live [REDACTED] the combined services of seventy (70)-hours per week in addition to care from [REDACTED] natural supports should be sufficient for Petitioner's needs. Based upon [REDACTED] testimony, all of Petitioner's needs are being met. See ¶15.

50. Considering the totality of Petitioner's circumstances, including [REDACTED] diagnoses, level of functional need for assistance with ADLs and IADLs, amount of currently approved services, and the natural support provided by [REDACTED] family, friends and neighbors, Petitioner failed to prove by a preponderance of the evidence that an additional twenty-one (21) hours per week of Personal Care services are not "in excess of [Petitioner's] needs." See ¶ 21 and 22.

51. In light of both parties' testimony, Respondent's Composite Exhibit 1, Petitioner's Exhibit 1 and 2, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that an additional twenty-one (21) hours per week of Personal Care 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 additional Personal Care services was incorrect.


DECISION

Respondent's denial of an additional sixty-nine (69)-hours per week of Adult Companion Care Services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

Respondent's denial of an additional eight (8)-hours per week of Homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

Respondent's denial of an additional twenty-one (21)-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 11th day of December 2023, in Tallahassee, Leon County, Florida.


Lynne Ringers
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LYNNE RINGERS, 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:




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