



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

FILED

Nov 30, 2023, 10:19 am

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1959

Plan ID No.: [Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1960

Plan ID No.: [Redacted]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on September 15, 2023, at 10:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Markeshi Lee
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 additional personal care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of additional homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED] [REDACTED] Petitioner's Authorized Representative and [REDACTED] appeared for the Fair Hearing to provide testimony on behalf of Petitioner. [REDACTED] Petitioner's [REDACTED], appeared for the Fair Hearing as a witness for Petitioner.

Markeshi Lee ("Ms. Lee"), Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana"), appeared for the Fair Hearing on behalf of Respondent. Dr. Wayne Sherman ("Dr. Sherman"), Medical Director for Humana, appeared for the Fair Hearing as a witness for Respondent.

Diana Hearod, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the Fair Hearing as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and eighty-six (386)-page evidence packet. The evidence packet appears in the Office document management system as the file titles "Evidence Packet [Confidential]_Part1.pdf," "Evidence Packet [Confidential]_Part2.pdf," "Evidence Packet [Confidential]_Part3.pdf," "Evidence Packet [Confidential]_Part4.pdf," "Evidence Packet [Confidential]_Part5.pdf," "Evidence Packet [Confidential]_Part6.pdf," and "Evidence Packet [Confidential]_Part7.pdf." Absent an objection

from the Petitioner, the three hundred and eighty-six (386)-page packet was admitted 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”) program. See RCE 1 at pages 1. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida. *Id.* at 225.

2. Petitioner is [REDACTED]. *Id.* at 133. Petitioner resides in the community with [REDACTED] spouse. *Id.* Petitioner’s primary caregiver and [REDACTED], does not reside in the home with Petitioner and does not work outside of the home. *Id.* at 146, 153, 184-185. Petitioner has the following health conditions: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 59-61, 136-139. Petitioner

has [REDACTED]. *Id.* at 126, 135, 139. Petitioner uses a [REDACTED]. *Id.*

3. According to Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), dated March 26, 2023, Petitioner needs assistance (but not total help) with all Activities of Daily Living (“ADLs”) except [REDACTED]. *Id.* at 136. Petitioner needs no assistance with

[REDACTED] *Id.* Petitioner uses [REDACTED]

[REDACTED] *Id.* Petitioner’s Fall Risk Assessment dated March 26, 2023, which states that Petitioner needs assistance (but not total help) with [REDACTED]

risk from current living conditions. *Id.* at 126-127. Petitioner visited t [REDACTED]
[REDACTED]. *Id.* With regard to Instrumental Activities
of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with all IADLs except
[REDACTED] *Id.* at 137. Petitioner needs assistance (but not total help) with [REDACTED]
[REDACTED] *Id.*

4. Petitioner requested an additional nine (9) hours per week of personal care services.
Petitioner’s request was denied in a Notice of Adverse Determinations (“NABD”), dated April 3,
2023. *Id.* at 24-28. The NABD explained the basis of the 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 under treatment, and not in excess of the patient’s
needs;
2. Be reflective of the level of service that can be safely furnished, and for
which no equally effective and more conservative or less costly treatment
is available statewide; and
3. Be furnished in a manner not primarily intended for the convenience of
the recipient, the recipient’s caretaker, or the provider;

And one of the following:

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

...
✓ **Other authority.**

The facts that we used to make our decision are:

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

You have requested an additional 11 hours of direct service worker (PDO) homemaker service each week, and an additional 9 hours of direct service worker (PDO) personal care service each week.

You have several (multiple) medical problems. You do not have [REDACTED]
[REDACTED] You sometimes have [REDACTED]
[REDACTED] You have a personal emergency response system (PERS).

You have not had any recent changes in your health. You have not recently been in the hospital. You live with your spouse who shares in household responsibilities.

You use [REDACTED] You need some help [REDACTED]
[REDACTED] You need help [REDACTED] You need some help
[REDACTED]. You need help with [REDACTED].

Your request for an additional 11 hours of direct service worker (PDO) homemaker service each week and an additional 9 hours of direct service worker (PDO) personal care service each week are 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.

5. Petitioner also requested an additional eleven (11) hours per week of homemaker services. Petitioner’s request was denied in a Notice of Adverse Determination (“NABD”), dated April 3, 2023. *Id.* at 32-36. The NABD explained the basis of the 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:
 4. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs;
 5. 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

6. 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:

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

...

✓ **Other authority.**

The facts that we used to make our decision are:

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

You have requested an additional 11 hours of direct service worker (PDO) homemaker service each week, and an additional 9 hours of direct service worker (PDO) personal care service each week.

You have several (multiple) medical problems. You do not have [REDACTED]. You sometimes have [REDACTED]. You have a personal emergency response system (PERS).

You have not had any recent changes in your health. You have not recently been in the hospital. You live with your spouse who shares in household responsibilities.

You use a [REDACTED]. You need some [REDACTED]. You need help [REDACTED]. You need some help [REDACTED]. You need help with [REDACTED].

Your request for an additional 11 hours of direct service worker (PDO) homemaker service each week and an additional 9 hours of direct service worker (PDO) personal care service each week are 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.

6. On April 11, 2023, Petitioner requested a plan appeal for the denial of additional personal care services. *Id.* at 41. On May 10, 2023, Respondent issued a Notice of Plan Appeal Resolution ("NPAR") upholding its decision. *Id.* at 41-43. The NPAR states the following, in pertinent part:

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

You have requested that the additional 9 hours of direct service worker (DSW) personal care service each week that was denied in the initial request be

reconsidered (appeal). [Petitioner] has several (multiple) medical problems. [REDACTED] does not have trouble [REDACTED]. [REDACTED] sometimes has trouble [REDACTED]. [Petitioner] has a personal emergency response system. [REDACTED] lives with [REDACTED] spouse. [REDACTED] uses a [REDACTED] [REDACTED] uses a [REDACTED]. [Petitioner] needs some help [REDACTED]. [REDACTED] needs some help [REDACTED]. [REDACTED] needs some help [REDACTED] needs help with [REDACTED].

The denial of 9 additional hours of direct service worker (DSW) personal care service each week is being upheld. The hours [Petitioner] 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 41-42.

7. On April 11, 2023, Petitioner also requested a plan appeal for the denial of additional homemaker services. *Id.* at 45. On May 10, 2023, Respondent issued a NPAR denying Petitioner's request for additional homemaker services. *Id.* at 45-47. The NPAR states the following, in pertinent part:

The reason for the decision was based on the information received. You have requested that the additional 11 hours of direct service worker (DSW) homemaker service each week that was denied in the initial request be reconsidered (appeal). [Petitioner] has several (multiple) medical problems. [REDACTED] does not have [REDACTED] [REDACTED] sometimes has [REDACTED] [REDACTED] has personal emergency response system. [Petitioner] lives with [REDACTED] spouse. [REDACTED] uses a [REDACTED] [REDACTED] uses a [REDACTED] [REDACTED] needs some help [REDACTED]. [REDACTED] needs some help [REDACTED]. [Petitioner] needs some help [REDACTED] needs help with [REDACTED].

The denial of the additional 11 hours of direct service worker (DSW) homemaker service each week is being upheld. [Petitioner] lives with others who share in the household responsibilities. 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 45-46.

8. On August 9, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner to challenge the denial of additional personal care services in AHCA Case Number 23-FH1959 and the denial of additional homemaker services in AHCA Case Number 23-FH1960. On August 22, 2023, the Office issued a notice, to all parties of record, consolidating both cases and scheduling the consolidated Fair Hearing to be convened by telephone on September 15, 2023, at 10:00 a.m. EST.

9. As of the date of the Fair Hearing, Petitioner is authorized to receive the following Florida Medicaid LTC services: twelve (12) hours per week of personal care services; ten (10) hours per week of homemaker services; and a personal emergency response system ("PERS"). *Id.* at 152-169, 174.

10. [REDACTED] testified at the Fair Hearing as follows:

a. Petitioner is [REDACTED] with multiple medical issues including [REDACTED]. *See* ¶ 2.

b. Significant changes in Petitioner's health, including [REDACTED] [REDACTED] prompted the request for additional services to help with Petitioner's safety and wellbeing. *Id.* at 139.

- c. [REDACTED] argued that Petitioner experienced [REDACTED], as well as a close fire scare due to [REDACTED] increased medical and mental deficiencies.
- d. [REDACTED] live about 12-13 miles away from Petitioner which makes it difficult to help care for [REDACTED].

11. [REDACTED] testified at the Fair Hearing as follows:

- a. [REDACTED] argued that Petitioner has vertigo and had a [REDACTED] [REDACTED], that raises more concern for additional care.
- b. [REDACTED] argued that the additional hours are not simply for the Petitioner's care but also for [REDACTED] safety.
- c. [REDACTED] works outside the home.

12. Dr. Sherman testified at the Fair Hearing as follows:

- a. Humana took into consideration Petitioner's needs for some help with all ADLs except [REDACTED] and total assistance needed for all IADLs except [REDACTED] in making their determination. *Id.* at 136-137. Dr. Sherman contends that Humana used the information in the 701B along with provision of a PERS to determine the medical necessity of Petitioner's twenty-two (22) hours per week of combined home health services.
- b. The 701B dated May 26, 2023, indicates that [REDACTED] assisted in answering the questions. *Id.* at 133.
- c. Dr. Sherman explained that a fall risk is a factor in medical necessity but contends that there is no evidence showing more medical necessity for additional hours.

CONCLUSIONS OF LAW

13. 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 (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

14. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule (“Fla. Admin. Code R. 59G-1.100(17)(b)”).

15. Because Petitioner is requesting new services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

16. 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. *Id.* at 195-216. The Florida Medicaid LTC Policy provides the following, in pertinent part:

1.0 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.

...

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 restrictive setting

...

4.2.1 Home and Community-Based Supportive Services

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

4.2.1.9 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.

Id. at 197-203. (Emphasis added).

17. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

2.83 Medically Necessary or Medical Necessity

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at page 7.

18. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“PC Policy”) has been incorporated, by reference, into Rule 59G-4.215, F.A.C. The PC Policy provides 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.

...

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

...

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 pages 3 – 8, and 10.

Personal Care Services in AHCA case number 23-FH1959

19. In the instant case, Petitioner requested an additional nine (9) hours per week of personal care services. See ¶ 4, 6. In the NABD, dated April 3, 2023, Respondent denied Petitioner’s request. See ¶ 4. However, Respondent did not specify which prong of medical necessity it used to make its decision. See ¶ 4, 6. Petitioner has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. See ¶ 15.

20. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. See ¶ 16. The Definitions Policy requires that the requested 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 ¶ 17. Under Florida Medicaid, the purpose of personal care services is “[t]o 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.” See ¶ 16, 18.

21. Petitioner is authorized to receive the following Florida Medicaid LTC services: twelve (12) hours per week of personal care services; ten (10) hours per week of homemaker services; a personal emergency response system. See ¶ 9. Regarding ADLs, Petitioner needs assistance (but not total help) with all ADLs except [REDACTED]. See ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with all IADLs except [REDACTED]. See ¶ 3. Petitioner has multiple medical conditions, including [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. See ¶ 2. Petitioner uses a [REDACTED]
[REDACTED], which is consistent with [REDACTED] Fall Risk Assessment that shows Petitioner needs assistance (but not total help) with [REDACTED]. See ¶ 2, 3.

22. The evidence presented in this case does not reflect that Petitioner requires an additional nine (9) hours per week of personal care services. [REDACTED] testified that significant recent changes in Petitioner's health prompted the request for additional services to help with Petitioner's safety and wellbeing. See ¶ 10. [REDACTED] both provided testimony that the request for additional hours is for Petitioner's safety and wellbeing. See ¶ 10-11. [REDACTED] explained that Petitioner has vertigo and had a [REDACTED], that raises more concern for additional care. See ¶ 11. According to Dr. Sherman's testimony, Respondent took into consideration Petitioner's need for some help with all ADLs except [REDACTED], as well as the provision of [REDACTED] PERS in cases of emergency. See ¶ 12. As testified by Dr. Sherman, a fall risk is a factor in medical necessity, but the record does not show a justification for additional hours based on this alone. See ¶ 12. As testified by Dr. Sherman, Respondent took into consideration Petitioner's needs with ADLs and IADLs to determine that Petitioner requires twenty-two (22) hours per week of combined home health services at this time. See ¶ 12.

23. Furthermore, although the PC Policy provides general guidance for general allowances for ADLs, see ¶ 18, Petitioner provided no time estimates for each ADL to explain the amount of time Petitioner requires for such needs. Petitioner provided no evidence (e.g., a daily schedule, caregiver's responsibilities) to justify the approval of an additional nine (9) hours of personal care services per week. See ¶ 10-11. [REDACTED] testified that [REDACTED], live about 12-13 miles away from Petitioner which makes it difficult to help care for [REDACTED]. See ¶ 10. Petitioner's primary caregiver and [REDACTED] does not reside in the Petitioner's home but does not work outside of the home. See ¶ 2. No testimony was offered to show that the primary caregiver is no longer able to provide adequate care for Petitioner.

Petitioner failed to explain how the requested additional hours of personal care services will be utilized to meet Petitioner's needs if approved in this matter. Absent clear documentation of what unmet needs are present with the current approved services, the justification for additional personal care services cannot be clearly determined.

24. Considering the totality of Petitioner's circumstances, including [REDACTED] diagnoses, level of need for ADLs and IADLs, currently approved services, and availability of natural supports, Petitioner did not prove by a preponderance of the evidence that an additional nine (9) hours per week of personal care services are not in excess of Petitioner's needs. See ¶ 15.

25. In light of both parties' testimony and evidence, the LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner did not meet [REDACTED] burden of proving that an additional nine (9) 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 the requested additional personal care services was incorrect.

Homemaker Services in AHCA case number 23-FH1960

26. In the instant case, Petitioner also requested an additional eleven (11) hours per week of homemaker services. In the NABD, dated April 3, 2023, Respondent denied Petitioner's request. See ¶ 5. However, Respondent did not specify which prong of medical necessity it used to make its decision. See ¶ 5, 7. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent's determination was incorrect. See ¶ 15.

27. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate

another service; and (c) meet the criteria as specified in the LTC Policy. See ¶ 16. Section 4.2.1.9 of the 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 ¶ 16.

28. The record reflects that additional homemaker services are not warranted under the circumstances of this case. The evidence shows that Petitioner’s primary caregiver and [REDACTED] does not work outside of the home. See ¶ 2. Petitioner resides in the home with [REDACTED] spouse who ordinarily would share in the household responsibilities. See ¶ 2. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with all IADLs except [REDACTED]. See ¶ 4.

29. Petitioner did not introduce evidence on how additional homemaker services would be used to meet Petitioner’s needs for IADLs, which most closely align with homemaker service tasks. Petitioner did not demonstrate the amount of time [REDACTED] requires for IADLs that are not already captured in the 701B. According to [REDACTED] testimony, the requests for additional services were due to the significant changes in Petitioner’s health. See ¶ 10-11. [REDACTED] argued that the additional hours are not simply for the Petitioner’s care but also for [REDACTED] safety. See ¶ 10. According to Dr. Sherman’s testimony, Respondent took into consideration Petitioner’s needs for total assistance with all IADLs except [REDACTED] in making their determination. See ¶ 12. [REDACTED] live about 12-13 miles away from Petitioner which makes it difficult to help care for [REDACTED]. See ¶ 10-11. The record does not show that the primary caregiver is no longer able to provide adequate care for Petitioner. See ¶ 2.

Moreover, the record shows Petitioner has a PERS as a provision in case of emergency. See ¶ 9, 12. Petitioner failed to specify how the requested additional hours of homemaker services will be utilized to meet Petitioner's "general household activities (such as meal preparation) and routine household care (including laundry and pest control)," if approved in this matter. As Petitioner did not present additional evidence on this issue, Petitioner did not establish by a preponderance of the evidence that eleven (11) additional hours per week of homemaker services are not in excess of Petitioner's needs at this time.

30. In light of both parties' testimony and evidence, and the LTC Policy, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that an additional eleven (11) 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.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

Respondent's denial of additional homemaker services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of homemaker services is **DENIED**.

DONE and ORDERED this 30th day of November, 2023, in Tallahassee, Leon County, Florida.



Laura Gallagher
for Kimberly Roche
23-FH1959 23-FH1960
2023.11.30 10:08:04
-05'00'

KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop #11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:



Humana Medical Plan, Inc.
GAMedicaidRightFax@humana.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com

