



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

FILED

Nov 09, 2023, 10:19 am

OFFICE OF FAIR HEARINGS

[REDACTED]
PETITIONER,

AHCA Case No.: 23-FH1987

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 September 19, 2023, at 1:07 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner

For the Respondent:

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

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for an additional sixteen (16) hours per week of personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (“Petitioner”) appeared at the Fair Hearing on [REDACTED] own behalf.

Chantal Pierre, Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. (“Sunshine Health”), appeared on behalf of Respondent. Dr. John Carter (“Dr. Carter”), Long-Term Care Medical Director for Sunshine Health, attended as a witness for Respondent. The following employees of Sunshine Health attended as witnesses but did not testify at the Fair Hearing: Katie Maldonado, Utilization Management; Ashley Bottin, Long Term Care Case Manager; Andrea Hoffman, Long-Term Care Coordinator 2; Tracey Pisaneschi, Supervisor Case Management; and Alshenetha Williams-Jamerson, Care Coordinator Supervisor.

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

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and six (106)-page evidence packet. The evidence appears in the Office of Fair Hearings’ document management system as “MFH Packet [Petitioner’s Last Name].pdf”. Absent an objection from Petitioner, the undersigned admitted the one hundred and six (106)-page evidence 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 2. Sunshine Health is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. *Id.* at 29. [REDACTED] lives in a private residence with [REDACTED]. *Id.* at 29, 45. Petitioner's [REDACTED] [REDACTED] is Petitioner's caregiver. *Id.* at 30. Petitioner has the following health conditions: [REDACTED] [REDACTED] [REDACTED] *Id.* at 51 – 52.

3. Petitioner answered the questions for the Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B Assessment"), dated July 14, 2023. *Id.* 45 – 61. As provided in the 701B Assessment, Petitioner needs the following assistance with [REDACTED] activities of daily living ("ADLs"): needs total assistance (cannot do at all) with [REDACTED] needs assistance (but not total help) with [REDACTED]; [REDACTED] [REDACTED] and needs no assistance with [REDACTED]. *Id.* at 49. Petitioner rarely has assistance with [REDACTED]; has assistance most of the time with [REDACTED] [REDACTED]; always has assistance with [REDACTED]; and needs no assistance with [REDACTED]. *Id.*

4. As provided in the 701B Assessment, Petitioner's assistance needs with her instrumental activities of daily living ("IADLs") are as follows: needs total assistance (cannot do at all) with [REDACTED]; needs assistance (but not total help) with [REDACTED] [REDACTED]; uses an assistive device with [REDACTED]; and needs no assistance with [REDACTED]. *Id.* at 50. Petitioner rarely has assistance with [REDACTED]; has assistance most of the time with [REDACTED] always has assistance with [REDACTED] [REDACTED]; and needs no assistance with [REDACTED]. *Id.*

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

Member is a [REDACTED] who lives with [REDACTED] in a one-story home. All of member's family members work full time outside the home. [REDACTED] provides care to member daily before work.

...

... Member's [REDACTED] comes home every few hours from work to provide [REDACTED] care to member. Member needs caregiver to help with getting [REDACTED] to therapy 2-3x per week.

Member needs assistance with [REDACTED]. [REDACTED] assists with [REDACTED] when [REDACTED] is home as needed. Member can arrange [REDACTED] own transportation however, [REDACTED] needs someone to accompany [REDACTED] to appts. [REDACTED] uses pill minder for managing [REDACTED] own medications. [REDACTED] is able to express requests for shopping and needs someone to obtain the items from the store. [REDACTED] is able to make cereal and easy prep meals. [D]iagnoses con't: [REDACTED].

... [REDACTED] does not require supervision however, [REDACTED] needs someone to assist [REDACTED] with care every few hours ([REDACTED]).

... [REDACTED] is able to prepare simple meals for [REDACTED]

Member's [REDACTED] is [REDACTED] primary caregiver when [REDACTED] is not working.

RCE 1 at 46 – 61.

6. Petitioner requested an additional twenty-four (24) hours per week of personal care services. In the Notice of Adverse Benefit Determination (“NABD”), dated July 19, 2023, Respondent partially denied Petitioner’s request *Id.* at 4 – 12. The NABD explained the basis of the decision as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons 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.

...

- Other Authority

...

The facts that we used to make our decision are:

The request for extra services (an extra 24 hours per week of Personal Care Services) is partially approved. The member’s present care plan includes:

- 12 hours per week of Personal Care Services
- 4 hours per week of Homemaker Services
- 5 meals per week of Home Delivered Meals

Based on the assessment of the member’s care needs and household and caregiver status, Sunshine Health will approve an extra 8 hours per week of Personal Care Services and will deny the remaining requested 16 hours per week of Personal Care Services. The updated care plan approved by Sunshine Health will include:

- 20 hours per week of Personal Care Services
- 4 hours per week of Homemaker Services
- 5 meals per week of Home Delivered Meals

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillar Service Criteria.

...

Id. at 4 – 5.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated August 3, 2023, upholding the partial denial of additional personal care services.

Id. at 63 – 66. The NAPR states, in pertinent part:

On 08/01/2023 we received your timely plan appeal request about Sunshine Health’s Notice of Adverse Benefit Determination dated 07/09/2023, Notice of Adverse

Benefit Determination Number T10040719239424, partially denying the service to be provided to [Petitioner].

On 08/02/2023, 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 service, effective 08/02/2023.

The reason for our decision was the request for an additional 16 hours per week of Personal Care Services is denied as not medically needed. The prior decision is upheld. The care plan approved by Sunshine Health will include: 20 hours per week of Personal Care Services and 4 hours per week of Homemaker Services and 5 meals per week of Home Delivered Meals. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director Board Certified in Internal Medicine.

...

Id. at 63.

8. On August 14, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On September 1, 2023, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 19, 2023, at 1:00 p.m. EST.

9. Petitioner testified as follows:

- a. Petitioner's [REDACTED] works as Petitioner's Direct Service Worker ("DSW") under the Participant Direction Option ("PDO") Program and has a job outside of the home. [REDACTED] works from 8:00 a.m. to 4:00 p.m., Monday through Friday, and sometimes on Saturday. [REDACTED] assists Petitioner with [REDACTED] [REDACTED].
- b. Petitioner's [REDACTED] misses work if [REDACTED] has to take Petitioner to appointments.
- c. Petitioner is home alone for six (6) to seven (7) hours each day.
- d. Petitioner's [REDACTED] cannot assist because of their work schedules.

- e. Petitioner goes to physical therapy and occupation therapy two (2) to three (3) times per week.

10. Dr. Carter is a Long-Term Care Medical Director for Sunshine Health. Dr. Carter testified as follows:

- a. Petitioner has a severe case of [REDACTED].
- b. Petitioner receives outpatient therapy. Petitioner uses a motorized wheelchair and a Hoyer lift in the home.
- c. Dr. Carter reviewed Petitioner's ADLs and IADLs. See RCE 1 at 49 – 50.
- d. Dr. Carter reviewed portions of the LTC (Long Term Care) Ancillary Service Criteria Policy ("LTC Ancillary Policy") (FL.LT.UM.09). See RCE 1 at 81 – 105. Dr. Carter explained that "ancillary" refers to secondary or supplemental services that are reviewed for approval or non-approval when Respondent assesses a member and his/her primary supports.
- e. Petitioner currently receives twenty-four (24) hours of combined services, which includes twenty (20) hours per week of personal care services, four (4) hours per week of homemaker services, and five (5) home delivered meals each week.
- f. [REDACTED] performs PDO hours before and after [REDACTED] job outside the home.
- g. Petitioner requires partial but not total assistance with some of [REDACTED] ADLs, lives with three (3) adult family members, and Petitioner has exercised [REDACTED] right to appoint [REDACTED] mother as [REDACTED] DSW under the PDO program.

h. Respondent believes the presently approved services are enough to meet Petitioner's needs, considering [REDACTED] needs for assistance and [REDACTED] household support.

11. In making its determination, Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09 ("LT.UM.09 Policy"). RCE 1 at 81 – 105. 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).

...

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:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. 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
- d. 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
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

RCE 1 at 81, 84 – 85, 95.

CONCLUSIONS OF LAW

12. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

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

15. The Statewide Medicaid 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 personal care and homemakers:

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.

...

1.3.1 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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation

- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

1.3.14 Medically Necessary or Medical Necessity

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

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

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

And, one of the following:

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

...

1.3.16 Natural Supports

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

...

4.1 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

...

4.2.1.1 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.

...

4.2.2.6 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 individual 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. [emphasis supplied]

LTC Policy at 2 – 8.

16. The Personal Care Services Coverage Policy (“PC 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.

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 LTC Policy also provides the following regarding medical necessity:

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.

LTC Policy at 2 – 3.

19. 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:

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.

20. Petitioner requested an additional sixteen (16) hours per week of personal care services. *See supra* ¶ 6. The additional personal care services were denied based on medical necessity. *See supra* ¶ 6, 7. Respondent explained that Petitioner’s request was not medically necessary but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. *See supra* ¶ 6.

21. 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 LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 15. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. *See supra* ¶ 15. The comprehensive assessment includes the completion of the 701B Comprehensive Assessment and the LTC Supplemental Assessment. *See supra* ¶ 15.

22. The evidence presented reflects that Respondent’s denial of an additional sixteen (16) hours per week of personal care services is warranted under the circumstances of this case. As provided in the LT.UM.09 Policy, *see supra* ¶ 11, and in the SMMC LTC Policy, *see supra* ¶ 15, personal care services are 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 or member. The record reflects that Petitioner lives in a private residence with [REDACTED]. *See supra* ¶ 2, 5, 9 and 10. Petitioner testified that [REDACTED] cannot assist because of their work schedules. *See supra* ¶ 5, 9. Petitioner’s [REDACTED] is [REDACTED] primary caregiver when [REDACTED] is not working. *See supra* ¶ 5. Regarding [REDACTED] ADLs, Petitioner needs total assistance (cannot do at all)

with [REDACTED] needs assistance (but not total help) with [REDACTED]
[REDACTED]; and needs no assistance with [REDACTED]. See
supra ¶ 3. The 701B Assessment states that Petitioner rarely has assistance with using the
[REDACTED]; has assistance most of the time with [REDACTED]; always
has assistance with [REDACTED] and needs no assistance with [REDACTED]. See supra ¶ 3.
Regarding [REDACTED] IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED]
[REDACTED] needs assistance (but not total help) with [REDACTED]
[REDACTED]; and needs no assistance
with [REDACTED]. See supra ¶ 4. The 701B Assessment states that
Petitioner rarely has assistance with [REDACTED]; has
assistance most of the time with [REDACTED] always has assistance with [REDACTED]
[REDACTED] and needs no assistance with [REDACTED]
[REDACTED]. However, Petitioner testified that [REDACTED] is only alone for six (6) to seven (7) hours per day, that [REDACTED]
lives with adult family members, and that [REDACTED] is [REDACTED] DSW under the PDO program. See
supra ¶ 9. Petitioner's 701B Assessment observes that Petitioner does not require supervision.
See supra ¶ 5. Although the 701B Assessment states Petitioner rarely has assistance with some
of [REDACTED] ADLs and IADLs, Petitioner currently receives twenty (20) hours of personal care services
and four (4) hours of homemaker services each week for a total of twenty (20) hours of care. See
supra ¶ 6, 7, 10.

23. The PCS Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-4.215,
provides general guidance concerning the time allotted for personal care tasks. Petitioner
testified that [REDACTED] works as [REDACTED] DSW and assists Petitioner with [REDACTED],

during [REDACTED] lunch break, and after work. See supra ¶ 9. Petitioner's 701B Assessment observed that Petitioner needs assistance with [REDACTED] [REDACTED]. See supra ¶ 5. However, Petitioner provided no time estimates for each ADL or IADL to explain the amount of time Petitioner requires for [REDACTED] ADLs or IADLs. Allotting thirty (30) minutes of time for each of Petitioner's ADLs ([REDACTED] [REDACTED]) and taking into account Petitioner's medical conditions, the current twenty (20) hours per week of personal care services appear to be reasonable. Further, Petitioner did not explain how the requested additional hours of personal care services would be utilized to meet Petitioner's hands on care needs if approved in this matter. Given the fact that Petitioner already has personal care services to assist with [REDACTED] ADLs and IADLs, Petitioner has not established that [REDACTED] currently authorized services are insufficient to meet [REDACTED] personal care needs.

24. Petitioner testified that [REDACTED] is in need of the requested additional personal care services because [REDACTED] misses work if [REDACTED] has to take Petitioner to appointments. See supra ¶ 9. Based on this testimony, the request for additional personal care hours corresponds more with adult companion care services, which are 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." See supra ¶ 15.

25. Therefore, upon consideration of the testimony provided, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional sixteen (16) hours per week of personal care services was incorrect.

DECISION

Respondent's denial of an additional sixteen (16) 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 9th day of November, 2023 in Tallahassee, Leon County, Florida.



Kameisha Presley

23-FH1987

2023.11.09

09:24:42 -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:



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

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com