



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

FILED

Dec 08, 2023, 10:46 am

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH2034

Plan ID No.: [Redacted]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH2035

Plan ID No.: [Redacted]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 3, 2023, at 9:00 a.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner's Authorized Representative

For the Respondent:

Deborah Havey-Levy
Program Integrity Manager
UnitedHealthCare of Florida, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional personal care services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional homemaker services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative, [REDACTED]

[REDACTED] appeared on behalf of Petitioner. [REDACTED]

[REDACTED] attended as witnesses for Petitioner.

Deborah Havey-Levy ("Ms. Havey-Levy"), Program Integrity Manager for UnitedHealthCare of Florida, Inc. ("UnitedHealth" or "Respondent") appeared on behalf of Respondent. Dr. Sloan Karver ("Dr. Karver"), Long Term Care Medical Director for UnitedHealth attended as a witness for Respondent.

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and ninety-two (192)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file titles "23-FH2034 & 23-FH2035 Respondent's Statement of Matters_Part1 (Pgs. 1 – 34).pdf," and "23-FH2034 & 23-FH2035 Respondent's Statement of Matters_Part2 (Pgs. 35 – 192).pdf," Absent an objection from the

Petitioner, the undersigned admitted the two hundred and ninety-two (292)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a forty-five (45)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file titles “23-FH2034 & 23-FH2035 Additional Documents.pdf,” “23-FH2034 & 23-FH2035 Email Correspondence.pdf,” “23-FH2034 & 23-FH2035 Email Correspondence(2).pdf,” “23-FH2034 & 23-FH2035 Email Correspondence(3).pdf,” and “23-FH2034 & 23-FH2035 Email Correspondence(4).pdf,” Absent an objection from the Respondent, the undersigned admitted the forty-five (45)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

FINDINGS OF FACT

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

2. Petitioner is [REDACTED]. *Id.* at 17. Petitioner lives with [REDACTED]. See *infra* at ¶ 10. Petitioner’s primary caregiver is [REDACTED]. Petitioner’s other [REDACTED] assists, as well. *Id.* at 19 – 20. [REDACTED] works part-time, on Sundays and Wednesdays; [REDACTED] is retired but has a dog walking business. *Id.* at 16. [REDACTED] is with [REDACTED] one hundred and eleven (111) hours per week, and [REDACTED] is with [REDACTED] twenty-eight (28) hours per week. *Id.* at 20.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]

[REDACTED]. *Id.* at 45 – 46. Petitioner has [REDACTED]. *Id.* at 44. In the past, Petitioner has had [REDACTED]. *Id.* Petitioner was recently diagnosed with [REDACTED] by [REDACTED] physician, Dr. Jose R. Garcia Guerra. See page 2 of PCE 1.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated April 5, 2023, (“701B”), Petitioner’s needs for activities of daily living (“ADLs”) are as follows: for [REDACTED], Petitioner needs assistance (but not total help), but [REDACTED] needs supervision or prompt for [REDACTED]. [REDACTED] Petitioner needs no assistance; and Petitioner uses [REDACTED]. *Id.* at 43. Petitioner has assistance most of the time with [REDACTED] ADLs, except for [REDACTED] for which [REDACTED] needs no assistance. *Id.* Petitioner needs supervision, as [REDACTED] experiences [REDACTED] daily. *Id.* at 48.

5. As provided in the 701B, Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: for [REDACTED], [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help) and supervision or prompt. *Id.* at 44. Petitioner always has assistance with [REDACTED] IADLs. *Id.*

6. Petitioner requested an additional 21 hours of personal care services, weekly, and an additional 24.5 hours of homemaker services, weekly. On May 26, 2023, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) that approved 10 hours of personal care and 7 hours of homemaker services, weekly. *Id.* at 5 – 9. The NABD explained the basis of the denial 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.

...

The facts that we used to make our decision are:

Your assessment tells us that you need some help with [REDACTED]

[REDACTED] You have not had a change in this.

You asked for 21 hours a week of personal care.

Your assessment tells us that you need some help with [REDACTED]

[REDACTED]. You have not had a change in this.

You asked for 24.5 hours a week of homemaker services.

Your caregiver helps you.

I will approve 10 hours a week of personal care and 7 hours a week of homemaker services to meet your needs.

In my clinical opinion, your personal care and homemaker needs can be met by the approved services and supports. These hours can be split to meet your needs during the day.

...

Pages 5 – 6 of RCE 1.

7. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated August 10, 2023, upholding the denials. *Id.* at 78 – 80. The NPAR explained, in pertinent part, as follows:

Mari Riley., MD, specializing in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Administrative Code 59G-1.010(166).

Part 1 of 2: Your appeal was reviewed by a medical director, Dr. Mari Riley. She is a medical doctor. She is board certified in family medicine. We looked at your records. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. You asked for additional personal care. You would like 11 more hours a week. You want more help with daily activities. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving a total of 10 hours a week. You have family who can help some. You can help yourself some. This should meet your personal care needs. Also, you have another paid service for help. This is homemaker service 7 hours a week. That is why we cannot approve what you asked for. Please talk about this with your doctor.

Part 2 of 2: Your appeal was reviewed by a medical director, Dr. Mari Riley. She is a medical doctor. She is board certified in family medicine. We looked at your records. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. You asked for additional homemaker service. You would like 17.5 more hours a week. You need want more help with homemaker duties. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving a total of 7 hours a week. You have family who can help some. You can help yourself some. You have another paid service for help too. This is personal care 10 hours a week. Your personal care aide can clean-up after caring for you. This should meet your needs. That is why we cannot approve what you asked for. Please talk about this with your doctor.

I have reviewed this case as a Florida licensed physician and agree with this decision to uphold the denial. I also agree with the rationale that has been utilized for this decision. Fatima Hussain, MD

The plan pays for required services and supplies provided for the purpose of preventing, diagnosing or treating a sickness, injury, disease or symptoms. The plan authorizes UnitedHealthcare to determine whether a service or supply is eligible for coverage under the plan.

...

Pages 78 – 79 of RCE 1.

8. On August 21, 2023, Petitioner requested Fair Hearings to challenge the denial of personal care services and homemaker services. On September 12, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for October 3, 2023, at 9:00 a.m. EST

9. On September 15, 2023, Petitioner’s physician, Jose R. Garcia Guerra, wrote a letter concerning Petitioner, which states:

I am writing this letter regarding my patient [REDACTED]. Unfortunately, [REDACTED] has [REDACTED]. Patient’s cognitive status requires supervision of [REDACTED] daily affairs and decisions. [REDACTED] has no medical decision capacity. [REDACTED] current condition will not allow [REDACTED] to assume any financial responsibilities. This is a progressive disorder and patient’s condition will deteriorate in the near future. No improvement or recovery is expected. I will appreciate any efforts assisting my patient and [REDACTED] family with any problems they have due to [REDACTED] condition.

Page 2 of PCE 1.

10. [REDACTED]’s testimony established that [REDACTED] care is very complicated and [REDACTED] has been caring for [REDACTED] mother for seven (7) years, including moving into [REDACTED] home despite having [REDACTED] own home just to be able to better care for [REDACTED]. [REDACTED] testified that Petitioner cannot be left alone for three (3) to four (4) hours in the afternoon because [REDACTED] has dementia and would be endangered. [REDACTED] and [REDACTED], [REDACTED] would like to be paid under the Participant Directed Option (“PDO”) program with additional hours of care for their [REDACTED] in order to continue caring for their [REDACTED] in [REDACTED] own home. [REDACTED] testified that

hospice care was providing home care services to Petitioner, but [REDACTED] stopped that on the belief that the hospice care prevented Petitioner from receiving more home health care from United based on duplication of services. [REDACTED] explained that [REDACTED] works part time, on Sundays and Wednesdays, and [REDACTED] comes to help then. [REDACTED] further explained that [REDACTED] needs to be paid if [REDACTED] is to continue caring for [REDACTED]. [REDACTED] further explained that [REDACTED] does not want home health aides coming to the home because when different aides show up each week, instead of one or two steady ones, Petitioner gets very agitated due to [REDACTED]. [REDACTED] testified that [REDACTED] would like [REDACTED] to remain in [REDACTED] own home until [REDACTED] death. Petitioner's witness, [REDACTED], testified that [REDACTED] cannot leave [REDACTED] alone, and that [REDACTED] has often sat with the [REDACTED] as a friend so that [REDACTED] could get things done, like insurance paperwork. Petitioner's witness, [REDACTED], testified that Petitioner is easily confused and could cause harm to [REDACTED] as [REDACTED] needs daily supervision and care around the clock.

11. Dr. Karver's testimony established that this case this case was reviewed based on medical necessity, not on the financial need of Petitioner's [REDACTED]. Dr. Karver testified that based on the evidence, Petitioner's house is very compact, 1,100 square feet, and it is shared with [REDACTED]. Dr. Karver testified that the issue in this case is not for how many personal care or homemaker hours [REDACTED] can be paid, rather it is based on what is best for the patient and what is medically necessary. Dr. Karver testified that UnitedHealth has offered facilities, respite care, and caregiver training to Petitioner. Dr. Karver contends that the case was evaluated on all Petitioner's medical records and also on the natural support that Petitioner has living with [REDACTED] or in close proximity.

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. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

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

15. In the instant case, Petitioner requested new services. As such, 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 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 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.

...

1.3.1 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
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

1.3.16 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 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

...

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.1.15 Respite Care

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

...

4.2.2.6 Personal Care

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

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

...

6.0 Documentation

...

6.2 Specific Criteria

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

LTC Policy at pages 1-8.

17. The LTC Policy also addresses 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 pages 2-3.

18. 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.

A. Personal Care Services

19. In this case, Respondent denied Petitioner’s request for an additional eleven (11) hours of personal care services per week because they were not medically necessity. *See supra* ¶ 6, 7. Respondent’s NABD and NPAR did not specify which of the five medical necessity criteria are not met. *See supra* ¶ 6, 7. However, as established by the evidence and testimony, the additional personal care services for Petitioner are not medically necessary. *See supra* ¶ 7, 10, 11.

20. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 16. As provided in the LTC Policy, personal care is 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.” See supra ¶ 16.

21. The evidence presented in this case reflects that Respondent’s denial of additional personal care services is warranted under the circumstances of this case. Specifically, in regards to [REDACTED] ADLs, for [REDACTED] Petitioner needs assistance (but not total help), but [REDACTED] needs supervision or prompt for [REDACTED]; for [REDACTED], Petitioner needs no assistance; and Petitioner uses [REDACTED]. See supra ¶ 4. Petitioner has assistance most of the time with [REDACTED] ADLs, except for [REDACTED] for which [REDACTED] needs no assistance. See supra ¶ 4.

22. Regarding her IADLs, for [REDACTED] [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help) and supervision or prompt. See supra ¶ 5. Petitioner always has assistance with [REDACTED] IADLs. See supra ¶ 5.

23. Section 1.3.16 of the SMMC LTC Policy provides that natural supports are “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” See supra ¶ 16. With regard to living arrangements, Petitioner lives with [REDACTED], as [REDACTED] primary caregiver, and [REDACTED] also assists with

care. See supra ¶ 2. works part-time on Sundays and Wednesdays, and is retired but has a dog walking business. See supra ¶ 2. Petitioner needs supervision due to health conditions. See supra ¶ 4. Petitioner has recently been diagnosed with See supra ¶ 9.

24. As Petitioner bears the burden of proof, Petitioner must show that the denial of eleven (11) additional hours each week of personal care services was incorrect. Here, the Petitioner receives ten (10) hours of personal care services per week and seven (7) hours of homemaker services. See supra ¶ 7. Petitioner has not shown evidence of why ten (10) hours per week in personal care services is insufficient to meet Petitioner's medical needs. According to Petitioner's 701B assessment, has assistance most of the time with ADLs, and all of the time with IADLs. See supra ¶ 4. Additionally, Petitioner's are able to assist their with ADLs and IADLs. See supra ¶ 2, 10. Petitioner did not explain how much time it takes for daily ADLs and IADLs to be completed, and why eleven (11) additional hours each week of personal care services were medically necessary.

25. The Definitions Policy requires that 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 supra ¶ 18. The NPAR explains that Petitioner "has family who can help some" and that receives "homemaker services 7 hours week." See supra ¶ 7. Considering the LTC Policy's definitions for natural supports and personal care services, supra ¶ 18, Petitioner has not demonstrated that Petitioner's aforementioned needs, supra ¶ 2 – 5, and 7, are not sufficiently met by the ten (10) hours per week of personal care services and seven (7) hours of homemaker services. Given that Petitioner has not

established that additional hours each week of personal care services is warranted in this matter, the eleven (11) additional hours of personal care services at issue are “in excess of [Petitioner’s] needs.” See supra ¶ 18.

26. Based on the foregoing, the record does not show that the additional 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 Petitioner’s needs; and furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” See supra ¶ 18.

27. Further, although Petitioner’s provider recommended an indeterminate amount of will assistance for Petitioner and her family with any problems they have due to [REDACTED] condition of [REDACTED], supra ¶ 9, “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.” See supra ¶ 18. Accordingly, the record shows that the additional personal care services at issue do not meet medical necessity criteria.

28. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for additional personal care services is incorrect.

B. Homemaker Services

29. In this case, Respondent denied Petitioner’s request for an additional seventeen and one-half (17.5) hours of homemaker services per week because they were not medically

necessity. *See supra* ¶ 6, 7. Respondent’s NABD and NPAR did not specify which of the four medical necessity criteria are not met. *See supra* ¶ 6, 7. However, as established by the evidence and testimony, the additional homemaker services for Petitioner are in excess of Petitioner’s needs. *See supra* ¶ 7, 10, 11.

30. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 16. As provided in the LTC Policy, homemaker services are to provide “the provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, **when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.**” *See supra* ¶ 16.

31. The evidence presented in this case reflects that Respondent’s denial of additional homemaker services hours per week is warranted under the circumstances of this case. IADL tasks most closely align to the definition of homemaker services. *See supra* ¶ 16. Regarding Petitioner’s IADLS, for [REDACTED] [REDACTED] Petitioner needs total assistance (cannot do at all); for [REDACTED] [REDACTED] Petitioner needs assistance (but not total help) and supervision or prompt. *See supra* ¶ 5. Petitioner always has assistance with [REDACTED] IADLs. *See supra* ¶ 5.

32. Section 1.3.14 of the LTC Policy requires that “LTC supportive services must . . . [b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” *See supra* ¶ 16. Pertinent to

this matter, section 1.3.14 of the LTC Policy provides that natural supports are “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” See supra ¶ 16. With regard to living arrangements, Petitioner lives with [REDACTED] as [REDACTED] primary caregiver, and [REDACTED] also assists with [REDACTED] care. See supra ¶ 2. [REDACTED] works part-time on Sundays and Wednesdays, and [REDACTED] is retired but has a dog walking business. See supra ¶ 2. Petitioner needs supervision due to health conditions. See supra ¶ 4. Petitioner has recently been diagnosed with [REDACTED] [REDACTED] See supra ¶ 9.

33. Petitioner bears the burden of proof to show that Respondent incorrectly denied Petitioner’s request for seventeen and one-half (17.5) additional homemaker hours each week. At the Fair Hearing, Dr. Karver explained that Petitioner lives with [REDACTED] who provides natural support by sharing in the household activities. See supra ¶ 11. Petitioner’s [REDACTED] works part-time on Sundays and Wednesdays outside the home. See supra ¶ 2. Otherwise, [REDACTED] did not present any evidence that [REDACTED] has obligations or appointments that require [REDACTED] to be temporarily absent from the home on a regular basis or unable to assist with general household tasks. Dr. Karver opined, based on the 701B review and the Plan’s allotted time for IADL tasks, seven (7) hours of homemaker services per week is more than adequate to meet Petitioner’s need for homemaker services. Additionally, Petitioner receives ten (10) hours of personal care services per week to assist with [REDACTED] ADLs and IADLs. See supra ¶ 7. [REDACTED] testified that the request for additional homemaker services is based, in part, on the need to keep [REDACTED] safe in the home, as [REDACTED] has [REDACTED] and [REDACTED] will try to do things around the house that could put [REDACTED] in danger. The record reflects that Petitioner is diagnosed with

██████████. See supra ¶ 9. However, the needs that ██████████ has identified correlate to a possible need for supervision, or adult companion care services, rather than additional homemaker services. Adult companion care services are defined as “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.” (emphasis added). See supra ¶ 16. As Dr. Karver also testified, other services, including respite care services, are available and can also be requested. See supra ¶ 12.

34. Petitioner has not shown evidence of why seven (7) hours per week in homemaker services are insufficient to meet Petitioner’s medical needs. According to Petitioner’s 701B assessment, Petitioner always has assistance with ██████ IADLs. See supra ¶ 5. Additionally, Petitioner lives with ████████████████████, who share in the household duties, and ██████ also has assistance from ██████ with ██████ IADLs. See supra ¶ 2, 7, 10.

35. Based on the foregoing, the record does not show that additional 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.” Accordingly, the record does not show that the additional homemaker services at issue meet the medical necessity criteria.

36. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of the evidence that Respondent’s denial of Petitioner’s request for additional homemaker services is 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 8th day of December, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH2034 and 23-FH2035
2023.12.08 09:35:11 -05'00'

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

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

Copies Furnished To:

[REDACTED]
[REDACTED]
[REDACTED]

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