



**FILED**

Nov 30, 2023, 10:35 am

OFFICE OF FAIR HEARINGS

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

█

**PETITIONER,**

**AHCA Case No.: 23-FH2053**

**Plan ID No.: █**

**vs.**

**HUMANA MEDICAL PLAN, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 14, 2023, at 1:11 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner: █  
Petitioner

For the Respondent: █  
Grievance and Appeals Fair Hearing Specialist  
Humana Medical 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 additional homemaker services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner appeared for Fair Hearing on █ own behalf, and did not call any witnesses.

[REDACTED] (“[REDACTED]”), Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”) appeared for Fair Hearing on behalf of Respondent. Dr. Manohar Chenchugalla (“Dr. Chenchugalla”), Medical Director for Humana, appeared for Fair Hearing as witnesses for Respondent.

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-nine (279)-page evidence packet. The two hundred and seventy-nine (279)-page packet appears in the Office of Fair Hearings document management system as the file title “Evidence Packet 23-FH2053.pdf.” Absent an objection from the Petitioner, the undersigned admitted the two hundred and seventy-nine (279)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana’s Long-term Care (“LTC”) program. See RCE 1 at page 1, 27. Humana is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

2. Petitioner is [REDACTED]. *Id.* Petitioner [REDACTED]. *Id.* at 28. Petitioner’s friend and power of attorney, [REDACTED] resides in Port St. Lucie. *Id.* at 28, 36. Petitioner’s medical history includes [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 33-34.

Petitioner is on [REDACTED]. *Id.* at 34. Petitioner has been getting [REDACTED]. *Id.*

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”) dated July 13, 2023, Petitioner’s needs for activities of daily living (“ADLs”) are as follows: for [REDACTED], Petitioner

needs assistance (but not total help); [REDACTED], Petitioner needs supervision or prompt. *Id.* at

31. Petitioner uses an assistive device [REDACTED]. *Id.* In regard to [REDACTED] instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all)

[REDACTED]. *Id.* at

32. Petitioner needs assistance (but not total help) [REDACTED]

[REDACTED]. *Id.* Petitioner needs no assistance for [REDACTED]. *Id.*

4. Petitioner requested an additional seven (7) hours per week of homemaker services.

Petitioner’s request was denied in the Notice of Adverse Benefit Determination (“NABD”) dated

July 24, 2023. *Id.* at 11-12. 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 reason(s) checked below: (*See Rule*)

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs;
  2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
  3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

and one of the following:

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

The facts that we used to make our decision are:

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

You have requested an additional 7 hours of homemaker service each week and an additional 2 hours of Adult Companion Care each week.

You have [REDACTED]. You do not have [REDACTED]. You sometimes have [REDACTED]. You do not leave [REDACTED]. You have a [REDACTED]. You have not had any recent changes in your health. You have not recently been in the hospital. You [REDACTED]. You need some help [REDACTED]. You use [REDACTED] when needed. You need some help [REDACTED]. You need some help [REDACTED]. You need help with [REDACTED]. You are being approved for an additional 2 hours of homemaker service each week and an additional 2 hours of adult companion care each week. These hours should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

*Id.*

5. Petitioner requested a plan appeal and received a Notice of Plan Appeal (“NPAR”) dated July 28, 2023, upholding the denial of additional homemaker services. *Id.* at 23-25. The NPAR explained as follows:

The reason for the decision was based on the information received. You have requested that the additional 5 hours of homemaker service each week that was denied in your initial request be reconsidered (appeal).

You have [REDACTED]. You do not have [REDACTED]. You sometimes have [REDACTED].

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

The denial of 5 additional hours of homemaker service each week is being upheld. The hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your needs.

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

*Id.* at 23.

6. On August 23, 2023, Petitioner requested a Fair Hearing to challenge the denial of the additional Homemaker services. On August 25, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 14, 2023, at 1:00 p.m. EST.

7. Petitioner testified to the following at Fair Hearing:

- a. Petitioner requested the additional homemaker services so that the aide could change the linens, transfer [REDACTED] to the bathroom, bathe [REDACTED] in bed, clean up, and prepare meals. Petitioner asserted that [REDACTED] food has to be pureed or mashed to avoid choking.
- b. Petitioner asserted that [REDACTED] first home health aide's shift is 8 a.m. to 1 p.m. and Saturdays 8 a.m. to 3 p.m. Petitioner argued that there is not enough time to get all needs met in [REDACTED] second home health aide's shift Monday through Friday from 1-4 p.m., and Sundays 10:30-6:30 p.m. Petitioner explained that [REDACTED] is left home alone after 4 p.m. on Monday through Friday when [REDACTED] second aide leaves.
- c. Petitioner asserts that [REDACTED] first aide picks up [REDACTED] medications and runs [REDACTED] errands.

- d. Petitioner contended that [REDACTED] is unable to do anything for [REDACTED] due to being homebound with [REDACTED].
8. Dr. Chenchugalla testified to the following at Fair Hearing:
    - a. Petitioner's original plan of care included forty-two (42) hours per week of personal care services, three (3) hours per week of adult companion care services, and seven (7) hours per week of homemaker services, for a total of fifty-two (52) total hours per week of combined services. Petitioner's current care plan now includes nine (9) hours per week of homemaker services and five (5) hours per week of adult companion care.
    - b. Petitioner receives about eight (8) hours per day of services if distributed evenly across the week. *Id.* at 72. Humana's position is that Petitioner's services should be sufficient for [REDACTED] needs.

#### **CONCLUSIONS OF LAW**

9. 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).
10. This hearing was held as a *de novo* proceeding pursuant to Rule 59G-1.100(17)(b), Florida Administrative Code ("Fla. Admin. Code R.").
11. 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.)

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

...

**1.3.9 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
- [REDACTED] 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

...

#### **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

...

##### **4.2.1.9 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.

...

#### **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.

...

*Id.* at 91-98.

13. Petitioner requested an additional seven (7) hours per week of homemaker services. *See* ¶ 4. In the NABD, dated July 24, 2023, Respondent denied Petitioner’s request. *See* ¶ 4. Respondent cited the lack of medical necessity as the basis for its decision; however, Respondent did not specify which prong of medical necessity it used to make its decision. *See* ¶ 4. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. *See* ¶ 11.

14. According to the LTC Policy, homemaker services are a “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* ¶ 12.

15. In the instant case, the record is very clear that Petitioner suffers from multiple medical conditions and requires support with these problems. *See* ¶¶ 2, 7. As provided in the 701B, in regard to █ IADLs, Petitioner needs total assistance (cannot do at all) █. █. *See* ¶ 3. Petitioner needs assistance (but not total help) █. *See* ¶ 3. Petitioner needs no assistance for █. *See* ¶ 3. Petitioner █ and does not have assistance from family members. *See* ¶ 2. Petitioner contended that █ is unable to do anything for █ due to being homebound with █. *See* ¶ 7. Petitioner argued that the additional homemaker services were requested so that the aide can change █ linens, transfer █ to the bathroom, clean up, and prepare meals. *See* ¶ 7. Petitioner asserted

that [REDACTED] food has to be pureed or mashed to avoid choking. See ¶ 7. Petitioner asserts that [REDACTED] first aide picks up [REDACTED] medications and runs [REDACTED] errands. See ¶ 7. Petitioner also argued that there is not enough time to get all tasks done in [REDACTED] second aide's shift Monday through Friday from 1-4 p.m., and Sundays 10:30-6:30 p.m. See ¶ 7. Petitioner's current care plan now includes nine (9) hours per week of homemaker services. See ¶ 8. Petitioner did not demonstrate the amount of time [REDACTED] requires for IADLs that are not already captured in the 701B. See ¶ 7. Petitioner did not introduce any evidence to demonstrate any unmet needs with any IADLs with the currently approved service hours. See ¶ 7. Thus, absent clear evidence to the contrary, the requested additional hours of homemaker services appear to be in excess of Petitioner's needs.

16. Section 1.3.4 of the LTC Policy maintains that medically necessary services should not be "primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." See ¶ 12. Petitioner's current care plan now includes forty-two (42) hours per week of personal care services, nine (9) hours per week of homemaker services, and five (5) hours per week of adult companion care. See ¶ 8. At Fair Hearing, Petitioner testified that additional service hours were requested because [REDACTED] is left alone when [REDACTED] home health aides are unavailable at various hours during the week. See ¶ 8. Petitioner did not introduce evidence to demonstrate that the request was not for [REDACTED] own and/or [REDACTED] provider's convenience. See ¶ 7. The record does not demonstrate a clear showing of unmet needs with general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker. See ¶ 7, 12. As such, the undersigned finds that Petitioner has not demonstrated that the additional homemaker services are not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

17. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of the additional five (5) hours of homemaker services per week was medically necessary. Accordingly, the undersigned finds that Respondent's denial of additional homemaker services was correct.

**IT IS THEREFORE ORDERED AND ADJUDGED THAT:**

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

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



Laura Gallagher  
for Kimberly Roche  
23-FH2053  
2023.11.30 10:22:16  
-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**

