

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



FILED

Nov 21, 2023, 2:21 pm  
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2075

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2076

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 21, 2023, at 1:01 p.m. Eastern Standard Time.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantal Pierre  
Clinical Appeals Coordinator  
Sunshine State Health Plan, 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 home delivered meals 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 homemaker services was incorrect.

### **PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED] ("[REDACTED]"), appeared on behalf of the Petitioner. Petitioner's [REDACTED], [REDACTED], appeared as a witness for Petitioner.

Chantal Pierre, Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for Respondent: John Carter, M.D. ("Dr. Carter"), Long Term Care Medical Director for Sunshine; Asharra Howard, Care Coordinator II for Sunshine; Laurie Ortiz, LTC Coordinator for Sunshine; Theresa Bonfante, LTC supervisor for Sunshine; Kenya Murray, LTC Coordinator II for Sunshine; and Agaitha Durr, LTC Coordinator II for Sunshine.

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

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a thirty-two (32)-page evidence packet. The thirty-two (32)-page packet appears in the Office of Fair Hearings' document management system as file titles "[Petitioner] request for State Medicaid Fair hearing Part 1.pdf", "[Petitioner] request for State Medicaid Fair hearing Part 2.pdf", and "[Petitioner] request for State Medicaid Fair hearing Part 3.pdf". The undersigned admitted the thirty-two (32)-page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 171-page evidence packet. The 171-page evidence packet appears in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner].pdf". The undersigned admitted the 171-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine. *See* page 3 of RCE 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED]. *Id.* at 74. Petitioner [REDACTED]. *Id.* at 75. [REDACTED] and [REDACTED] live in New Jersey. *Id.* Petitioner is diagnosed with the following: [REDACTED].

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B"), Petitioner's needs for assistance with instrumental activities of daily living ("IADLs") are as follows: [REDACTED]

[REDACTED], Petitioner needs assistance (but not total help); [REDACTED]  
[REDACTED], Petitioner needs no assistance. *Id.* at 79.

4. Petitioner requested an additional five (5) home delivered meals, weekly. Petitioner's request was denied in the Notice of Adverse Benefit Determination ("NABD"), dated June 16, 2023. 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: The request for an additional 5 meals per week of Home Delivered Meals is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 7 hours per week of Homemaker Services and 7 meals per week of Home Delivered Meals. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Pages 6 – 7 of RCE 1.

5. Petitioner requested an additional seven (7) hours of homemaker services, weekly.

Petitioner's request was denied in the Notice of Adverse Benefit Determination ("NABD"), dated

June 16, 2023. 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 request for an additional 7 hours per week of Homemaker Services is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 7 hours per week of Homemaker Services and 7 meals per week of Home Delivered Meals. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Pages 15 – 16 of RCE 1.

6. Petitioner requested a plan appeal for the denial of home delivered meals and received a Notice of Plan Appeal Resolution ("NPAR"), dated July 20, 2023, upholding the denial of homemaker services. The NPAR explained as follows:

The reason for our decision was on appeal the request for an additional 5 meals per week of Home Delivered Meals is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 7 hours per week of Homemaker Services and 7 meals per week of Home Delivered Meals. The prior decision is upheld. 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 who is Board Certified Physician in Internal Medicine.

...

Pages 119 – 121 of RCE 1.

7. Petitioner requested a plan appeal for the denial of homemaker services and received a Notice of Plan Appeal Resolution (“NPAR”), dated August 29, 2023, that approved four (4) hours of homemaker services, but denied the remaining three (3) hours. The NPAR explained as follows:

The reason for our decision was based on additional clinical information from the case manager notes regarding the member's functional assistance needs, along with the absence of a live-in caregiver, the denial of extra services is partially overturned. Sunshine Health will now approve an extra 4 hours/week of Homemaker Services to meet the member's care needs. The denial of the remaining requested 3 hours/week of Homemaker Services is upheld. 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 who is Board Certified Physician in Internal Medicine.

...

Pages 123 – 124 of RCE 1.

8. On August 23, 2023, Petitioner requested a Fair Hearing to challenge the denial of home delivered meals and homemaker services. On September 6, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 21, 2023, at 1:00 p.m. EST.

9. [REDACTED] is Petitioner’s [REDACTED]. [REDACTED] testified to the following:

- a. Petitioner is diagnosed with [REDACTED]. It took three (3) years to situate Petitioner in independent living housing. Petitioner’s diagnoses of [REDACTED] and [REDACTED] hinder [REDACTED] ability to perform everyday tasks.
- b. Petitioner’s apartment is not maintained in a habitable condition. Petitioner put a frozen pizza in the oven while it was still in its plastic wrap, which caused a fire.
- c. Petitioner’s caregiver spends approximately 15 hours each week to keep [REDACTED] apartment from being condemned. Prior to receiving services Petitioner was almost evicted due to the condition of [REDACTED] home.

- d. Petitioner sleeps outside [REDACTED] apartment in the apartment complex's communal spaces when [REDACTED] apartment is in an uninhabitable state.
- e. If Petitioner does [REDACTED] own laundry [REDACTED] will forget it in the washing machine or dryer.
- f. Petitioner's condition has worsened – [REDACTED] is no longer able to heat meals on the stove, which [REDACTED] could formerly do.

10. Dr. Carter is a Long Term Care Medical Director for Sunshine. Dr. Carter testified to the following:

- a. Petitioner suffers from [REDACTED] and [REDACTED].
- b. As provided in the 701B, Petitioner needs assistance (but not total help) with [REDACTED], and [REDACTED]. See page 79 of RCE 1.
- c. Petitioner is presently approved to receive 11 hours of homemaker services as well as seven (7) home delivered meals, weekly. Dr. Carter believes that is not medically necessary for Petitioner to receive additional service hours or home delivered meals.

#### **CONCLUSIONS OF LAW**

11. 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).

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

13. 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.)

14. The 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 home delivered meals and 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
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

**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

...

#### **4.2.1.8 Home Delivered Meals**

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

...

#### **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.

...

15. 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.

16. The Florida Medicaid 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.

#### A. Home Delivered Meals

17. Petitioner requested an additional five (5) home delivered meals, weekly. *See* ¶ 4. In the NABD, dated June 16, 2023, Respondent denied Petitioner’s request. *Id.* Respondent explained that the request for additional home delivered meals was not medically necessary, but it did not specify which prong of medical necessity was the basis for its denial. *Id.* Respondent further explained that “the member’s currently approved services are adequate to meet the member’s care needs.” *Id.*

18. As provided in the LTC Policy, home delivered meals are to provide “nutritionally sound meals delivered to an enrollee’s home when an enrollee has difficulty shopping for, or preparing food, without assistance.” *See* ¶ 14. As provided in the record, Petitioner needs assistance (but

not total help) with [REDACTED]. Petitioner currently is approved for eleven (11) hours of homemaker services and seven (7) home delivered meals, weekly. See ¶ 10.

19. As Petitioner bears the burden of proof, Petitioner must show that Respondent's denial of five (5) additional home delivered meals was incorrect. Here, [REDACTED] explained that Petitioner's diagnoses hinder [REDACTED] ability to perform routine tasks. See ¶ 9. [REDACTED] testified that Petitioner's homemaker services are inadequate to maintain [REDACTED] apartment and provide meals as it takes approximately fifteen (15) hours each week to clean [REDACTED] apartment. *Id.* Moreover, Petitioner cannot be relied upon to heat up meals on the stove or even heat a frozen pizza in the oven. *Id.* Here, based on Petitioner's diagnoses and inability to prepare meals, it was shown that an additional five (5) meals were not in excess of Petitioner's needs. Moreover, as Petitioner struggles to provide routine care for [REDACTED], it was demonstrated that the request for services was not intended for the recipient, [REDACTED] caretaker, nor [REDACTED] provider. In all, Petitioner demonstrated that an additional five (5) home delivered meals was medically necessary for Petitioner.

20. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner proved by a preponderance of the evidence that Respondent's denial of five (5) home delivered meals, weekly, was incorrect.

#### B. Homemaker Services

21. Petitioner requested an additional seven (7) hours of homemaker services, weekly. See ¶ 5. In the NABD, dated June 16, 2023, Respondent denied Petitioner's request. *Id.* Respondent explained that the request for additional units of homemaker services was not medically necessary, but it did not specify which prong of medical necessity was the basis for its denial. *Id.*

In the NPAR, dated August 29, 2023, Respondent approved four (4) of the seven (7) hours of homemaker services, thus only three (3) hours of homemaker services, weekly, at issue. See ¶ 7.

22. As provided in the LTC Policy, homemaker services are “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 ¶ 14. As shown by the record, Petitioner needs assistance (but not total help) with [REDACTED], [REDACTED], and [REDACTED]. See ¶ 3. Petitioner is currently approved to receive eleven (11) hours of homemaker services, weekly. See ¶ 11.

23. As Petitioner bears the burden of proof, Petitioner must show that it is medically necessary to receive an additional three (3) hours of homemaker services, weekly. At the Fair Hearing, [REDACTED] explained that Petitioner’s diagnoses of [REDACTED] and [REDACTED] make routine chores difficult to perform. See ¶ 9. [REDACTED] explained that it takes [REDACTED] caregiver at least fifteen (15) hours each week to maintain [REDACTED] apartment. *Id.* Petitioner has been known to sleep in the apartment complex’s communal spaces when [REDACTED] apartment is uninhabitable. *Id.* Petitioner is at risk for eviction if [REDACTED] apartment is not maintained. *Id.* Petitioner is not capable of doing [REDACTED] own laundry. *Id.* Moreover, Petitioner cannot be relied upon to make simple meals for [REDACTED]. *Id.* Here, [REDACTED] provided compelling testimony that showed the request for additional services was not “in excess of the patient’s needs” as Petitioner’s caregiver needs approximately fifteen (15) hours to clean after Petitioner. Further, as Petitioner is at risk for eviction, the additional hours of homemaker care will enable [REDACTED] to have access to the benefits

of community living. In all, Petitioner demonstrated that an additional three (3) hours of homemaker services was medically necessary for Petitioner.


24. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner proved by a preponderance of the evidence that Respondent's denial of three (3) hours, weekly, of homemaker services was incorrect.

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

Respondent's denial of home delivered meals **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**.

Respondent's denial of homemaker services **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**.

**DONE and ORDERED** this 21<sup>st</sup> day of November 2023, in Tallahassee, Leon County, Florida.

  
Joseph Mabry  
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**JOSEPH MABRY, 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**  
**SunshineHealth\_MFH@centene.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**