



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

**FILED**

Jan 17, 2024, 4:42 pm  
OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH2077

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 November 30, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Christian Pacheco  
Grievance and Appeals, Fair Hearing Liaison  
Sunshine State Health Plan

**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 twelve (12) hours per day of home health aide services was incorrect.

**PRELIMINARY STATEMENT**

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

Christian Pacheco, Grievance and Appeals, Fair Hearing Liaison for Sunshine State Health Care, Inc. (“Sunshine”) appeared on behalf of Respondent. Dr. Maria Sammerson (“Dr. Sammerson”), Senior Medical Director for Sunshine attended as a witness for Respondent. The following attended on behalf of respondent but did not testify: Chantal Pierre, Plan Representative; Laura Buck, Supervisor; Dr. Thidapon Tanattana, Medical Director; Michelle Pigozzo, Case Manager; and Sabrina Ledgister, Senior Case Manager.

Andrew Mais, Court Reporter, appeared to transcribe the proceedings for Petitioner.

Linda Latson, (“Ms. Latson”) Registered Nurse Specialist 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 six (6) evidence packets: a three hundred and twenty-five (325)-page packet, a one hundred fifty-eight (158)-page packet, and eighty-four (84)-page packet; an eighty-three (83)- page packet; a thirty-two (32) page packet and an eighteen (18)-page packet. The three hundred and twenty-five (325)-page packet is identified in the Office of Fair Hearings document management system as file title: “23-FH2077 Evidence.pdf”; the one hundred fifty eight (158)-page packet is identified in the Office of Fair Hearings document management system as file title “Petitioner’s Summary MFH 23-FH2077 EP Nov 30.2023 (1 of 2)”; the eighty four (84)-page packet is identified in the Office of Fair Hearings document management system as file title: “23-FH2077-Petitioners summary MFH 23-FH2077 EP Nov 30.2023(Part B 2 of 2).pdf”; the eighty three (83) - page packet is identified in the Office

of Fair Hearings document management system as file title “23-FH2077 -Petitioners summary MFH 23-FH2077 EP Nov 30.2023 (Part A 2 of 2).pdf”; the thirty two (32) page packet is identified in the Office of Fair Hearings document management system as file title “23-FH2077 Emailed Evidence.pdf”; and the eighteen (18)-page packet is identified in the Office of Fair Hearings document management system as file title: “23-FH2077 Supporting Documents.pdf.” Absent an objection from the Respondent, the exhibits were admitted as follows: the three hundred and twenty-five (325)-page packet was admitted as Petitioner’s Composite Exhibit 1 (“PCE 1”), the one hundred fifty eight (158)-page packet was admitted as Petitioner’s Composite Exhibit 2 (“PCE 2”), the eighty four (84)-page packet was admitted as Petitioner’s Composite Exhibit 3 (“PCE 3”), the eighty three (83)- page packet was admitted as Petitioner’s Composite Exhibit 4 (“PCE 4”), the thirty two (32) page packet was admitted as Petitioner’s Composite Exhibit 5 (“ PCE 5”). and the eighteen (18)-page packet was admitted as Petitioner’s Composite Exhibit 6 (“PCE 6”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and eighty-six (186)-page evidence packet, an eight (8)-page packet and a seventy (70)-page packet. The one hundred and eighty-six (186)- page evidence packet appears in the Office of Fair Hearings document management system as file title “23-FH2077 MFH packet [RECIPIENT].pdf”. The eight (8)-page packet appears in the office Of Fair Hearings document management system as file title “MFH packet [RECIPIENT]-Addendum.pdf”. The eight (8) page packet appears in the Office of Fair Hearings Document Management system as file title “Addendum- to page 371.pdf.” Absent an objection from the Petitioner undersigned admitted Respondent’s evidence packets into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine Medicaid MMA since October 1, 2021. See page 2 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 20. Petitioner lives [REDACTED]  
[REDACTED]. *Id.* at 55.

3. Petitioner is diagnosed with the following conditions: [REDACTED]  
[REDACTED], [REDACTED]  
[REDACTED], [REDACTED], [REDACTED], [REDACTED]  
[REDACTED], [REDACTED], [REDACTED], [REDACTED]  
[REDACTED], [REDACTED], [REDACTED], [REDACTED]  
[REDACTED]. *Id.* at 24.

4. A Home Health Certification and Plan of Care (“POC”) dated July 12, 2023, was submitted by [REDACTED]. According to the POC, Petitioner has the following functional limitations:  
[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]  
[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]  
[REDACTED], [REDACTED], [REDACTED]  
[REDACTED]. *Id.*

5. Petitioner’s mental status is as follows: [REDACTED], [REDACTED] and [REDACTED]. *Id.* at 25. The following activities are permitted for Petitioner: [REDACTED], [REDACTED]. *Id.* at 25.

6. Petitioner requested home health aide services 24 hours per day, seven days per week.

*Id.* at 4-5. In a Notice of Adverse Benefit Determination (“NABD”), dated August 9, 2023, the request was denied. 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)*

...

- Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.

The facts that we used to make our decision are:

...

Sunshine Health Policy on Personal Care Services Coverage, FL.UM.25.00 and Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request to approve home health aide services 24 hours per day, 7 days per week, is partially approved. We are approving services for 12 hours per day 7 days per week. This based on the clinical notes and parent work schedule sent. Your child also receives private duty nursing. Which has been approved for 12 hours per day, 7 days per week. There is no medical need to overlap these services. The request for the extra 12 hours per day, 7 days per week is therefore denied.

*Id.* at 4-5.

7. Respondent filed an additional NABD, See RCE 2 at 188-189, on August 9, 2023, which stated as follows, in pertinent part:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons checked below: *(See Rule)*

...

Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.

Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient’s needs.

Must meet accepted medical standards and not be experimental or investigational.

Must be able to be 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.

Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.

*(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)*

The facts that we used to make our decision are:

Sunshine Health Policy on Review of Private Duty Nursing Requests, FL.UM.26. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request for private duty nursing services for 168 hours per week is partially approved. This service provides patients with long-term skilled nursing care in their own home. We are approving 84 hours per week. This is based on medical need. We are denying the extra 84 hours per week. The medical notes we got do not tell us that your child needs advanced respiratory (breathing) support. Your child does not need more than one medication given through the veins. ■ does not need continuous feedings through a feeding tube. Please discuss other options with your child's care manager or primary care doctor. A care manager is someone that helps organize your child's medical care.

*Id.*

8. Petitioner requested a plan appeal. In a Notice of Plan Appeal Resolution ("NPAR"), dated August 18, 2023, the denial of Home Health Services was upheld. *Id.* at 45. The NPAR explained as follows:

On 8/17/2023, 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, [RECIPIENT] will not receive request for Home Health Services, effective 08/17/2023.

The reason for our decision was the reconsideration request for the denial of PDN.S9123/S9124, 24 hours/7 days a week is denied, and the original denial is upheld for lack of medical necessity. Partial approval is granted for 84 hours per week. The additional 84 hours per week is denied. No new clinical

information was submitted for review. There has been no change in member's medical condition. There is no documentation of a breathing tube. Child is not technology dependent. Child is not on a ventilator. Child is not receiving medicines through an IV. Child is not on continuous monitor. There is insufficient documentation to support 24 hours per day of skilled nursing services. FL.UM.26, Review of Private Duty Nursing Requests and Florida Medicaid Home Health Services Coverage and Limitations Handbook was used in making the decision. This decision was made with regards to EPSDT File sent to coordinator for letter and closure. This decision was made by Thidaporn Tanpattana, M.D.

...

*Id.* at 45.

9. On August 22, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional attendant nursing care. On September 15, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 28, 2023, at 10:00 a.m. Eastern Standard Time. Petitioner requested and was granted a continuance. A Second Order Scheduling Fair Hearing by Telephone and Prehearing Instructions was issued October 18, 2023, setting the hearing for November 30, 2023.

10. [REDACTED] testified to the following:

- a. Currently, Petitioner is receiving 24-hour private duty nursing, 12 hours of which is paid for by [REDACTED] out of pocket. All of Petitioner's needs are being met.
- b. [REDACTED] works 8:00 a.m. to 5:00 p.m. as an Occupational Therapist with as needed work obligations on evenings and weekends. [REDACTED] sleeps at night and is unavailable to care for Petitioner during that time.

11. [REDACTED] testified to the following:

- a. [REDACTED] is a nurse and has been working with Petitioner for the past [REDACTED].

- b. [REDACTED] detailed all of Petitioner's diagnoses, with details of the conditions, how it affects Petitioner and what [REDACTED] as a nurse does in caring for Petitioner due to [REDACTED] symptoms.
- c. [REDACTED] performs ongoing vital signs and respiratory assessments to ascertain whether or not Petitioner is [REDACTED].
- d. Petitioner does not use a helmet with regard to [REDACTED].
- e. Petitioner has not had [REDACTED].

12. Dr. Sammerson testified to the following:

- a. Petitioner qualifies for private duty nursing, but the number of hours authorized are assessed on a case-by-case basis.
- b. As part of the review for medical necessity, it was considered that Petitioner does not have a feeding tube, intravenous medications, or advanced respiratory needs.
- c. [REDACTED] is trained and educated on how to care for Petitioner should there be a no-show from any of the nursing service employees.

13. In making its decision in this case, Respondent relied upon the Sunshine Health Policy and Procedure Review for Personal Care Services, FL.UM.25.00. *Id.* at 119, which states as follows, in pertinent part:

**Personal Care Services** are services that assist a member with ADLs or IADLs. These services can be provided to members up to the age of 21. Personal care service assistance can be in the form of hands-on assistance (actually performing the task for the member) or cuing along, with supervision, to ensure the member performs the personal care task properly. The personal care services must be prescribed by a treating physician, provided by a home health aide or independent personal care provider, and supervised by a registered nurse if provided through a home health agency, or supervised by the parent or legal guardian if provided by a non-home health agency, or supervised by the member, if the services are

provided by a non-home health agency and the member is a legal adult between the ages of 18 up to 21 with no legal guardian

...

**Personal Care Services Criteria:**

Personal care services are covered for members who are under the age of 21. In order to be considered for approval, the member's treating physician must order the service. The member must meet all of the following criteria:

- Member has a documented medical condition or disability that substantially limits the member's ability to perform their Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL) or has a documented cognitive impairment such as Autism which prevents him/her from knowing when or how to carry out the personal care task.
- Member has a documented functional limitation and evidence is documented
- Member requires more individual and continuous care than can be provided through a home health aide visit
- Member does not have a parent or legal guardian able to provide ADL or IADL care
- Member would normally perform the age-appropriate personal care task without the medical condition or disability, and his/her parent or legal guardian is not able to provide ADL or IADL care

*Id.*

14. In making is decision in this case, Respondent also relied upon the Sunshine Health Policy and Procedure Review of Private Duty Nursing Requests, FL.UM.26.00, *Id.* at 130-135 which states in pertinent part, as follows:

**Medically Complex:** A member is medically complex if he/she has chronic debilitating diseases or conditions of one or more physiological or organ systems that make the person dependent upon 24-hour per day medical, nursing or health supervision or intervention.

**Private Duty Nursing Services:** are services that are medically necessary skilled nursing services that can be provided to members under the age of 21 in their home or other authorized settings to support the care required by their complex medical problems and require more extensive and continual care than can be provided through a home health nurse visit. Private duty nursing is furnished for the purposes of performing skilled interventions or monitoring the effects of prescribed treatment.

**Private Duty Nursing Benefit:**

Private duty nursing (PDN) services provide skilled nursing services for members who are under the age of 21. The services must be provided in the member’s home or other authorized setting to support the care required by the child’s medically complex condition(s).

PDN is considered for members:

- Who have complex medical problems
- Require more extensive and continual care than can be provided through a home health nurse visit

**Specific Clinical Information/Criteria**

- I. Services and supplies for medically fragile children include home health and private duty nursing services directly related to their care. It is the policy of Sunshine Health Plan that services for medically fragile children are medically necessary when all of the following apply:
  - A. Member is enrolled in a Florida Medicaid Sunshine Health Plan
  - B. Member is under the age of 21 years old
  - C. Member is enrolled in complex case management OR is deemed as medically fragile/medically complex.
  - D. There is a signed plan of care and order for the requested services

**Information Required for the Initial Review**

The treating provider must submit to Sunshine Health’s utilization management department the following information when initially requesting private duty nursing services:

- Signed, completed current Plan of Care (POC)
- Documentation of the member’s medically complex condition(s), system and organ function of the member.  
...
- Documentation to support reason that the member needs more extensive and continual care than can be provided through a home health nurse visit.  
...
- Documentation on why the member needs services in the home, or other approved location.  
...
- Information on the member’s ADL and IADL needs and level of support needed.
- Summary of other services that are in place for the member in the member’s residence or other requested location.
- Clinical documentation on the need for the amount, duration and scope of private duty nursing.

*Id.*

### **CONCLUSIONS OF LAW**

15. 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).

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

17. 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.)

19. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy") which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, establishes the coverage and provision of personal care services available under the Florida Medicaid program.

The PC Policy states as follows, in pertinent part:

#### **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

...

#### **4.2.1 Parental Responsibility**

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

#### **4.2.2 Services Provided by Independent Personal Care Providers**

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.

- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

### **Early and Periodic Screening, Diagnosis, and Treatment**

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

## **5.0 Exclusion**

### **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
- . . .
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- . . .
- 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)
- . . .

Personal Care Services Coverage Policy at pages 1 – 4.

20. The Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016) (“PDN Policy”) which is incorporated by reference in Fla. Admin. Code R. 59G-4.261, establishes the coverage and provision of personal care services available under the Florida Medicaid program. The PDN Policy states as follows, in pertinent part:

**1.1 Description**

Florida Medicaid private duty nursing (PDN) services provide medically necessary skilled nursing to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.

**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.

**1.3.5 Home Health Services**

Medically necessary services that can be safely provided to the recipient in their include home health visits (skilled nursing and home health aide services), PDN, and personal care services.

**1.3.6 Medically Necessary/Medical Necessity**

As defined in Rule 59G-1.010, F.A.C.

Note: Subparagraph (a)(5) of the medical necessity definition shall not be applied when determining the medical necessity of private duty nursing services. All other medical necessity criteria apply and must be met in order to receive reimbursement from Florida Medicaid

.....

**4.2 Specific Criteria**

Florida Medicaid reimburses for up to 24 hours of PDN services per day, per recipient, when the recipient meets all of the following criteria:

- Is under the care of a physician and has a physician’s order for PDN 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  
For recipients requiring less than two hours of PDN services per day, please refer to the Florida Medicaid home health visits services coverage policy.

#### **Private Duty Nursing Provided by Parent or Legal Guardian**

Florida Medicaid may reimburse an enrolled home health agency provider for up to 40 hours per week, per recipient, for PDN services rendered by a parent or legal guardian who has a valid RN or LPN license in the state of Florida, and who is employed by the home health agency.

The initial assessment and all subsequent plan of care (POC) recertification assessments, must be completed by an RN who is employed by the home health agency provider and who is not a relative or member of the recipient's household. Any other authorized service hours must be provided by a non-relative RN or LPN.

#### **4.2.2. Services Provided by Independent RNs and LPNs**

Florida Medicaid reimburses for PDN services rendered by an independent RN or LPN in accordance with 42 CFR 440.70 (b)(1), when there is no home health agency provider available in the area to furnish the care. A physician must direct and monitor the services provided by an independent RN or LPN, and must be available to consult on the recipient's medical condition.

#### **Early and Periodic Screening, Diagnosis, and Treatment**

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

### **5.0 Exclusion**

#### **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 POC
- Babysitting
- Certification of the POC by a physician
- 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 as described in section 4.2.1)
- Services provided in any of the following locations:
  - Hospitals
  - Intermediate care facilities 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 Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

Private Duty Nursing Services Coverage Policy at pages 1 – 4.

21. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. *See* 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

22. A state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Pursuant to section 409.905(2), Florida Statutes:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

23. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. 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 severe 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.

24. The Definitions Policy also provides the following definitions that are relevant to this case:

#### **24.2 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

#### **2.64 Instrumental Activities of Daily Living (IADLs)**

IADLs include:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

Definitions Policy at pages 1 and 6.

25. In the instant case, Petitioner requested an additional twelve additional hours of home health aide services. See ¶ 6. As established on the record by the evidence and testimony, Respondent denied Petitioner's request based upon medical necessity. See ¶ 6-8.

26. Petitioner is under the age of 21, and therefore, EPSDT applies to ■■■ request for additional home health services in the form of 12 additional hours of home health aide care. See ¶ 21.

27. The Florida Medicaid program provides coverage to its recipients for home health services, including personal care services and private duty nursing services. See ¶ 13. Home health services provide “medically necessary skilled nursing and home health aide services to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.” See ¶ 13. Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. See ¶ 19. These services cannot be authorized for babysitting, companion sitting or leisure activities, escort services, housekeeping, and respite care. *Id.*

26. Personal care services and private duty nursing services, such as the home health services at issue, must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. See ¶ 23. To be medically necessary, the services requested must meet the five criteria set forth in section 2.83 of the Definitions Policy. See ¶ 23. Specifically, the type of service requested, and the quantity of service requested must not be in excess of the recipient’s needs. See ¶ 23.

27. The evidence presented in this case does not reflect that the requested services are warranted. Here, Petitioner requested an additional 12 hours of home health aide care. See ¶ 6. This was denied in an NPAR of 2023, explaining that additional attendant nursing services were not medically necessary and in excess of Petitioner’s needs. See ¶ 8.

28. Petitioner’s [REDACTED] testified that [REDACTED] is providing an additional 12 hours of private duty nursing. See ¶ 10. With the addition of those services, Petitioner is receiving overlapping services of home health aide and private duty nursing for twenty-four (24)-hours per day. [REDACTED] indicated that all of [REDACTED] needs were being met. See ¶ 10. The amount of care in place coincides directly with the Plan of Care recommended by [REDACTED]. See ¶ 4.


29. Based on the foregoing, the record shows that additional home health aid services would not be “individualized, specific and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment and are in excess of Petitioner’s needs. See ¶ 23. Therefore, the requested services are not medically necessary.

30. Upon consideration of Petitioner’s Composite Exhibits 1-6, Respondent’s Composite Exhibits 1-3, testimony provided, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of evidence that Respondent’s denial of Petitioner’s request for additional home health aide services was incorrect. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not proven that the services at issue are necessary to correct or ameliorate defect or a physical and mental illness or condition.

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

Respondent’s denial of additional home health aide services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is **DENIED**.

**DONE** and **ORDERED** this 17<sup>th</sup> day of January, 2024, in Tallahassee, Leon County, Florida.

 Joseph Mabry  
23-FH2077  
2024.01.17  
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**for LYNNE RINGERS, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**

Tallahassee, FL 32308-5407  
Office: (850) 412-3649

**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]

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