



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

**FILED**

Dec 04, 2023, 1:21 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2092

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_/

PETITIONER,

AHCA Case No.: 23-FH2114

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

\_\_\_\_\_/

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 21, 2023, at 9:00 a.m. EST.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Markeshi Lee  
Medicaid Fair Hearing Specialist  
Humana Medical Plan, Inc.

**STATEMENT OF ISSUE**

The issue in this consolidated case is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional ten (10) hours per week of personal care services was incorrect.<sup>1</sup>

**PRELIMINARY STATEMENT**

All parties appeared telephonically. [REDACTED] ("[REDACTED]"), Petitioner's Authorized Representative and [REDACTED], appeared on Petitioner's behalf. Petitioner's [REDACTED], [REDACTED] ("[REDACTED]"), appeared at the hearing and provided testimony.

Markeshi Lee, Medicaid Fair Hearing Specialist for Humana Medical Plan, Inc. ("Humana") appeared on behalf of Respondent. Dr. Avra Bowers, ("Dr. Bowers") Long Term Care Medical Director for Humana, attended as a witness for Respondent.

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

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings a forty (40)-page evidence packet. The evidence appears in the Office of Fair Hearings' case management system as "23-FH2092 and 23-FH2114 Supporting Documents.pdf." Absent an objection from Respondent, the undersigned admitted the evidence packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and eight (308)-page evidence packet. The evidence appears in the Office of Fair Hearings' case management system as "Evidence packet\_Part1.pdf," "Evidence

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<sup>1</sup> Th Notice of Plan Appeal Resolutions in Case No. 23-FH2092 (Plan ID No. [REDACTED]) and Case No. 23-FH2114, (Plan ID No. [REDACTED]) both involve a request for a total of forty (40) hours per week of personal care services. A total of thirty (30) hours per week were approved, which left a total of ten (10) hours per week in dispute.

packet\_Part2.pdf,” “Evidence packet\_Part3.pdf,” “Evidence packet\_Part4.pdf,” and “Evidence packet\_Part5.pdf.” Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent’s Composite Exhibit 1.

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Humana’s Long-term Care (“LTC”) program. See Respondent’s Composite Exhibit 1 at page 1. Humana is a managed care organization having a contract with the Agency to provide services to eligible Medicaid recipients in Florida. *Id.* at 147.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. *Id.* at 68. [REDACTED] lives in a private residence with [REDACTED], [REDACTED]. *Id.* at 68-69. [REDACTED] and [REDACTED] are Petitioner’s only source of assistance and support. *Id.* at 69. Petitioner’s primary diagnosis is [REDACTED]. *Id.* at 75. Petitioner also suffers from [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. *Id.* at 75. Petitioner is [REDACTED]  
[REDACTED] *Id.* at 70, 72. Petitioner has [REDACTED]  
[REDACTED]. *Id.* at 74. [REDACTED] receives skilled nursing services weekly, and [REDACTED] requires [REDACTED]  
[REDACTED] several times a day. *Id.* at 74, 93. Petitioner requires supervision. *Id.* at 77. Petitioner is [REDACTED]. See Petitioner’s Composite Exhibit 1 at page 24. Petitioner’s [REDACTED] and [REDACTED] is [REDACTED]. *Id.* at 59.

3. As provided in the Florida Department of Elder Affairs 701B Comprehensive Assessment, dated July 7, 2023, (“701B Assessment”) Petitioner’s needs for activities of daily living (“ADLs”)

are as follows: [REDACTED]

[REDACTED], Petitioner total needs assistance (cannot do at all). See Respondent's Composite Exhibit 1 at page 72. Further, Petitioner rarely has assistance with [REDACTED] ADLs. *Id.* Petitioner's family is not trained in the use of a Hoyer lift and has difficulty turning Petitioner. *Id.*

4. Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: [REDACTED]

[REDACTED], Petitioner needs total assistance (cannot do at all). *Id.* at 73. Petitioner always has assistance with [REDACTED] IADLs. *Id.*

5. Petitioner requested an additional twenty-two (22) hours per week of personal care services for a total of forty (40) hours per week. *Id.* at 10. In the Notice of Adverse Benefit Determination ("NABD"), dated July 28, 2023, Respondent approved an additional twelve (12) hours per week and denied the balance of Petitioner's request leaving ten (10) hours per week of personal care services at issue. *Id.* at 10-11. The NABD explained the basis of the decision as follows:

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

...

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

and one of the following:

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

...

- Other Authority

...

The facts that we used to make our decision are:

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 currently have 18 hours of personal care service each week. You have requested an additional an additional 22 hours of personal care service each week. You have [REDACTED] including [REDACTED] [REDACTED]. You have [REDACTED]. You do not [REDACTED]. You have not [REDACTED]. You have not [REDACTED]. You are enrolled in [REDACTED]. You live with your [REDACTED]. Your [REDACTED] helps care for you. Your [REDACTED] does not work outside of the home. You are [REDACTED] and [REDACTED]. You need some help [REDACTED]. You need help [REDACTED]. You need help with [REDACTED]. You have [REDACTED]. You are being approved for an additional 12 hours of personal care service each week. The hours you are receiving should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

*Id.* at 10-11.

6. Clinical notes from Petitioner’s psychiatrist, Venkata Sompalli, dated March 26, 2023, state as follows, in pertinent part:

[Petitioner], an [REDACTED], is currently [REDACTED] and in need of around-the-clock care, 7 days a week . . . Currently, [REDACTED] is completely [REDACTED], [REDACTED] . . . [REDACTED] has a history of [REDACTED] and [REDACTED]. [REDACTED] is unable to [REDACTED]. [REDACTED] is not able to [REDACTED]. [REDACTED] is unable to accomplish activities of daily living. [REDACTED] is unable to accomplish

instrumental tasks of daily living. During the evaluation, [REDACTED] was unable to give any information pertaining to personal, medical, financial, residential, legal, familial, and social affairs . . . [REDACTED] has a history of [REDACTED] and a history of [REDACTED]. [REDACTED] is totally dependent upon the family and caregivers for [REDACTED] survival, sustenance, and well being. [REDACTED] needs 24-hour care and monitoring. . . [REDACTED] has [REDACTED], history of [REDACTED], history of [REDACTED]. It is unlikely that [Petitioner] would be able to regain the higher level of functioning that existed before.

See Petitioner's Composite Exhibit 1 at pages 13-16.

7. A letter from Katie Patrick, APRN, dated August 21, 2023, states, in pertinent part:

[Petitioner] is a patient of mine for primary care services. [REDACTED] has suffered a [REDACTED] and now requires total care in the home. [REDACTED] is completely [REDACTED]. [REDACTED] cannot [REDACTED]. [REDACTED] relies on 24-hour management of tube feedings for hydration and nutrition as well as medication administration. [REDACTED] is [REDACTED] and requires management of this as well as bed baths. Caring for [REDACTED] in the home requires around-the-clock attention from the family and they would benefit from increased hours given through caregiver service. The patient requires 24/7 care.

*Id.* at 21.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR"), dated August 21, 2023, upholding the denial of ten (10) additional hours per week of personal care services. *Id.* at 20-22. The NPAR states, in pertinent part:

On 08/03/2023 we received your timely plan appeal request regarding Humana Healthy Horizons Comprehensive Plan's Notice of Adverse Benefit Determination dated 07/28/2023, [REDACTED], denying the personal care provided to [Petitioner].

On 08/18/2023, after consideration of the information you provided to Humana Healthy Horizons Comprehensive Plan in support of your plan appeal, was reviewed by, a medical director who is a DO and board certified in Internal Medicine hereby denies your plan appeal.

The reason for the decision was based on the information received. You have requested that the additional 10 hours of personal care service each week that was denied in your initial request be reconsidered (appeal). The member has [REDACTED]. [REDACTED] has trouble [REDACTED].

█ is █. █ lives with █ caregiver. █ is █. █ needs help █. █ needs help █. █ needs help with █. The denial of 10 additional hours of personal care service each week is being upheld. The hours the member is currently receiving should be enough to meet █ medical needs and can be divided into shifts to better meet █ 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 20.

9. Apart from the services at issue, Petitioner is currently approved for thirty (30) hours per week of personal care services. *Id.* at 102.

10. On August 25, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On September 6, 2023, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 21, 2023, at 9:00 a.m. EST.

11. █'s testimony established the following facts:

- Petitioner was █  
█  
█ *Id.* at 53. Petitioner was █  
█ *Id.* at 54.
- Petitioner is █ and requires regular █  
every two hours to █. *Id.* at 53.
- █ is a petite person and is physically unable to lift and turn Petitioner. *Id.*  
at 54. █ suffers from █, and a

██████████ due to Petitioner's ██████████ needs throughout the night.

12. ██████████'s testimony established the following facts:

- Petitioner originally requested 24/7 services. See Petitioner's Composite Exhibit 1 at page 31.
- Petitioner's ██████████ are the main reason why 24/7 care was requested.

13. Dr. Bowers testified that Petitioner lives with ██████ primary caregiver and ██████, ██████, who does not work outside the home. Dr. Bowers asserted that ██████████ are skilled nursing services and are not allowed as personal care services. Dr. Bowers opined that Petitioner needs at least seven (7) hours per week of homemaker services added to ██████ Plan of Care. Dr. Bowers asserted that Petitioner is in the care of hospice and should request additional services, such as assistance with ██████████, from hospice. Dr. Bowers testified that the currently approved services are adequate to meet Petitioner's needs.

#### **CONCLUSIONS OF LAW**

14. 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 (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

16. Because Petitioner is requesting additional 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, 7<sup>th</sup> Ed.)

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

**1. 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

...

#### **4.2.1.1 Adult Companion Care**

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

...

#### **4.2.2.6 Personal Care**

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

### **6.2 Specific Criteria**

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

LTC Policy at pages 1 – 8.

18. The LTC Policy also provides the following regarding medical necessity:

#### **1.3.14 Medically Necessary or Medical Necessity**

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

- (a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
- (b) All other LTC supportive services must meet all of the following:
  - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
  - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide

- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

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

LTC Policy at pages 2 – 3.

19. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at page 7.

20. Petitioner requested an additional ten (10) hours per week of personal care services. *See supra* ¶ 5. The additional personal care services were denied based on medical necessity. *See supra* ¶ 5, 8. Specifically, based on the documents and testimony, Respondent determined that the services were not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment,” and are “in excess of the patient’s needs.” *See supra* ¶ 5, 8, 13.

21. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 17. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment. *See supra* ¶ 17.

22. The evidence presented reflects that an additional ten (10) hours per week of personal care services are warranted under the circumstances of this case. 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* ¶ 17. The record reflects that Petitioner lives with [REDACTED] who does not work outside the home but is physically unable to reposition or turn the Petitioner. *See supra* ¶ 11. Although the NABD states that Petitioner has not had any recent changes in [REDACTED] health or hospital visits, the record reflects [REDACTED] this year. *See supra* ¶ 11. With regard to ADLs, Petitioner needs total assistance (cannot do

at all) with [REDACTED], [REDACTED]. See supra ¶ 3. The 701B Assessment states that Petitioner currently “rarely has assistance” with [REDACTED] ADLs. See supra ¶ 3. Regarding IADLs, which most closely align with homemaker tasks, Petitioner needs total assistance (cannot do at all) with [REDACTED] [REDACTED] [REDACTED]. See supra ¶ 4.

23. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PCS Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides general guidance concerning the time allotted for personal care tasks. The time allotted for tasks applicable for Petitioner are as follows: a full body bath (including bed bath) is allotted up to 30 minute per baths; dressing is allotted up to 15 minutes at a time; grooming and skin care is allotted between 30 and 45 minutes; eating is allotted up to 30 minutes per meal; transferring (15 minutes/every 2 hours); positioning is allotted 10 minutes every 2 hours; and toileting is allotted up between 15 – 45 minutes.

24. According to Petitioner’s documented needs in the 701B Assessment, Petitioner needs total assistance with [REDACTED] ADLs and rarely has assistance with ADLs. See supra ¶ 3. Petitioner did not provide a schedule of ADLs and/or any estimate of the time it takes to complete each ADL task. However, the record is clear that Petitioner’s medical conditions include [REDACTED] [REDACTED], [REDACTED], and [REDACTED]. See supra ¶ 2. Petitioner is [REDACTED] See supra ¶ 2. Petitioner’s [REDACTED] and [REDACTED] is [REDACTED]. See supra ¶ 2. Petitioner experiences [REDACTED] and requires frequent

██████████. See supra ¶ 3, 7. Given Petitioner's medical conditions, functional abilities and ██████████, as well as ██████████'s physical inability to position or turn the Petitioner, the undersigned concludes that thirty (30) minutes of time for each of Petitioner's ADLs ( ██████████, ██████████ ) and 10 minutes every 2 hours for positioning is reasonable. This conclusion is supported in the record by the testimony and the documentation provided by Petitioner's psychiatrist and primary care provider. See supra ¶ 3, 7. Dr. Bowers provided credible and persuasive testimony that ██████████ are not personal care service tasks. However, personal care services do include incidental homemaker services, and, in this case, Dr. Bowers testified that Petitioner could benefit from seven (7) hours of homemaker services per week. In all, the record demonstrates that the requested ten (10) additional hours per week of personal care services are not in excess of Petitioner's needs. Therefore, the requested ten (10) additional hours per week of personal care services at issue in this case were shown to be medically necessary.

25. At the fair Hearing, ██████████ and ██████████ asserted that Petitioner requested 24/7 personal care services, which amounts to one hundred and sixty-eight (168) hours per week. See supra ¶ 11, 12. Although the NPAR at issue in this case pertains to the denial of an additional ten (10) hours per week, they asserted that round the clock personal care services should be approved because that was recommended by Petitioner's providers. The documentation from the providers generally recommended round-the-clock care, but did not specify what specific types of services, or mix of services such as personal care, companion care, or skilled nursing, etc. they recommended. Moreover, "[t]he 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.”

26. Upon consideration of the testimony provided, Petitioner’s Composite Exhibit 1, Respondent’s Composite Exhibit 1, and the applicable laws and policies, the undersigned concludes that Petitioner proved by a preponderance of the evidence that Respondent’s denial of an additional ten (10) hours per week of personal care services was incorrect.

**DECISION**

Respondent’s denial of an additional ten (10) hours per week of personal care services is **REVERSED**. Petitioner’s appeal based on Respondent’s denial in this matter is **GRANTED**.

**DONE and ORDERED** this 4th day of December 2023, in Tallahassee, Leon County, Florida.

 Laura Gallagher  
23-FH2092 23-FH2114  
2023.12.04 08:57:21  
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**LAURA GALLAGHER, 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**