

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



FILED

Nov 30, 2023, 10:10 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2109

Plan ID No.: [REDACTED]

vs.

UNITED HEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice the undersigned convened a telephonic Medicaid Fair Hearing on October 10, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]  
Petitioner

For the Respondent:

Deborah L. Havey-Levy  
Program Integrity and Audit Manager  
United Healthcare of Florida, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Petitioner's request for six (6)-additional hours of personal care services weekly was incorrect.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. Petitioner, [REDACTED] (“Petitioner”) appeared on [REDACTED] own behalf.

Deborah L. Havey-Levy (“Ms. Havey-Levy”), Program Integrity and Audit Manager for United Healthcare of Florida, Inc. (“United”) appeared as a representative for Respondent. Dr. Sloane Karver (“Dr. Karver”), Long Term Care Medical Director for United, appeared as a witness for Respondent.

Marielisa Amador (“Ms. Amador”), Medical Health Care Program Analyst with the Agency for Health Care Administration (“AHCA” or “Agency”), appeared as an observer for the Agency.

Marisol Fahnert, a certified interpreter from Language Line Solutions, Inc., appeared to provide Spanish interpretation services for the Petitioner.

Petitioner did not introduce any exhibits into evidence at the Fair Hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one-hundred and seventy-two (172)-page evidence packet. This document appears in the Office of Fair Hearings’ document management system as file titles: “23-FH2109 Respondent’s Statement of Matters\_Part1 (Pgs. 1-42).pdf,” and “23-FH2109 Respondent’s Statement of Matters\_Part2(Pgs. 43-172).pdf.” Absent an objection from the Petitioner, the undersigned admitted the one-hundred and seventy-two (172)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of the United Long-Term Care (“LTC”) program. See RCE 1 at 25. United is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.* at 87.

2. Petitioner is a [REDACTED] ([REDACTED])-[REDACTED]. *Id.* at 35. Petitioner [REDACTED]. *Id.* at 36.

3. Petitioner has been diagnosed with the following conditions: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] *Id.* at 41-42.

4. The Florida Department of Elder Affairs issued a 701B Comprehensive Assessment (“701B”) dated August 24, 2023. Petitioner gave all answers to the questions in the Assessment. The 701B reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”): Petitioner needs assistance (but not total help) with [REDACTED]; Petitioner uses assistive devices for [REDACTED]. Petitioner does not need assistance with [REDACTED]. *Id.* at 39.

5. The 701B dated August 24, 2023, reflects the following regarding instrumental activities of daily living (“IADLs”): Petitioner needs total assistance with (cannot do at all): [REDACTED]  
[REDACTED]. *Id.* at 40. Petitioner needs assistance (but not total help) with [REDACTED]. Petitioner needs no assistance using the [REDACTED]. *Id.*

6. Petitioner requested six (6)-hours of additional personal care services weekly. *Id.* at 5. On June 13, 2023, Respondent issued a Notice of Adverse Benefit Determination (“NABD”) denying Petitioner’s request based upon lack of medical necessity. *Id.* at 5-6. The NABD explained the basis of the denial as follows, in pertinent part:

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all home and community-based services.

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness injury under treatment, and not in excess of the patient's needs;
2. Be reflective of the level of a service that can be safely furnished and for which no equally effective in more conservative or less costly treatment is available statewide: and
3. Be furnished in a manner not primarily intended for the convenience of the recipient the recipient 's caretaker or the provider;  
and one of the following:
  1. Enable the enrollee to maintain or regain functional capacity; or
  2. Enable an enrollee receiving long term services and supports to have access to the benefits of community living, to achieve person centered goals, and live and work in the setting of their choice.

The facts that we used to make our decision are: Your assessment tells us that you need help with [REDACTED].

You asked for 6 more hours a week of personal care.

You are getting 27 hours a week of personal care to help you.

You are getting 3 hours a week of homemaker services to help you. The aide can clean your bedroom and bathroom when doing your homemaking.

You are getting 1 home delivered meal a day to help you.

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

*Id.*

7. Petitioner requested a plan appeal on [REDACTED] request for an additional six (6)-hours of personal care services weekly. On July 26, 2023, United issued a Notice of Plan Appeal Resolution (“NPAR”). *Id.* at 82. The NPAR explained as follows in pertinent part:

On June 26, 2023 we received your timely plan appeal request regarding UnitedHealthcare Community Plan's Notice of Adverse Benefit Determination dated June 13, 2023, [REDACTED], denying the Personal Care 6 more hours a week provided to [redacted].

On July 25, 2023, after consideration of the information you provided to UnitedHealthcare Community Plan in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal.

As part of our review we look at information you or your provider gave us. We also look at your benefits. Based on our review of your appeal, we have determined that the service you requested will not be approved.

Jeffrey Beitler, MD, specializing in Orthopedic Surgery, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Administrative Code 59G-1.010(166).

Your appeal was reviewed by a medical director. [REDACTED] is a medical doctor. [REDACTED] is board certified in family medicine. We looked at your records. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. You asked for additional personal care. You would like 6 more hours a week. You want more help with daily activities. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving a total of 27 hours a week. You have family who can help some. You can help yourself some. These should meet your personal care needs. You have other paid services for help. These include homemaker service 3 hours a week and home delivered meals 31 meals a week. Your aide does not have to make these meals for you. That is why we cannot approve what you asked for.

Please talk about this with your doctor.

I have reviewed the records. I agree with the determination of Dr. Fisk 7/26/23 Jeffrey Beitler MD Board certified in Orthopedic Surgery Medical Director, UnitedHealthcare Appeals & Grievances

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

*Id.* at 82-83.

9. On August 24, 2023, Petitioner requested a Fair Hearing to challenge the denial of [REDACTED] request for an additional six (6)-hours of personal care services weekly. On September 7, 2023, the undersigned issued an Order Scheduling a Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 10, 2023, at 1:00 p.m. EST.

10. Petitioner testified to the following:
  - a. [REDACTED] believes [REDACTED] has an insufficient number of hours.
  - b. [REDACTED] is alone all day on Sunday.
11. Dr. Karver, Long-Term Care Medical Director with United, testified to the following:
  - a. Petitioner's current treatment plan consists of twenty-seven (27) hours of personal care services per week, 3 hours of homemaker services per week, and 1 home delivered meal per day.
  - b. Petitioner has a [REDACTED] ("[REDACTED]").
  - c. The denial is based upon medical necessity.
  - d. Petitioner can split [REDACTED] hours of home health aide coverage to better meet [REDACTED] needs.

**CONCLUSIONS OF LAW**

13. 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).
14. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).
15. Because Petitioner is requesting additional services, Fla. Admin. Code R. 59-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).
16. The Florida Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs

Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to the personal care services at issue:

**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

...

**4.2.2 Mixed Services**

Mixed services may exceed State Plan limit on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

**4.2.1.9 Homemaker Services**

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

**4.2.2.6 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.

...  
*Id.* at 128, 132, 134.

17. The Personal Care Services Coverage Policy, Appendix 9.1, also provides general guidance concerning time allowances for personal care tasks as follows:

Personal Care Task	General Time Allowances
<b>Bathing</b>	
<b>Full-body Bath:</b> Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
<b>Partial Bath:</b> A sponge bath includes, at minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
<b>Dressing</b>	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or prosthesis

<b>Grooming and Skin Care</b>	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
<b>Positioning</b>	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
<b>Transfers</b>	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
<b>Toileting and Maintaining Continence</b>	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
<b>Eating</b>	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
<b>Delegated Medical Monitoring and Activities</b>	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

*Id.* at 156-157.

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

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.

*Id.* at 121.

19. Petitioner requested an additional six (6)-hours of personal care services weekly. Respondent issued an NPAR dated July 26, 2023, denying the request based upon medical necessity. Specifically, the NPAR stated the following regarding Petitioner’s request: “You would like 6 more hours a week. You want more help with daily activities. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours *are more than you need.*” See ¶ 7, *emphasis added*. The specific prong of medical necessity was not

designated, however, from Respondent's explanation it can be inferred that the denial was due to the services being in excess of the patient's needs.

20. Florida Medicaid LTC plans cover services that meet all of the following: are determined medically necessary; do not duplicate another services; and meet the criteria as specified in the LTC Policy. See ¶ 16. Section 4.2.2.6 of the LTC Policy defines personal care services as intended "[t]o 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 ¶ 16. According to the Definitions Policy, services must "[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." See ¶ 18.

21. Here, Petitioner's care plan includes a total of thirty (30) hours per week of combined home health aide services, 7 home delivered meals per week, and a [REDACTED]. See ¶ 11.

22. The 701B, completed by Petitioner, reflects the following regarding Petitioner's ADLs: Petitioner needs assistance (but not total help) with [REDACTED]; Petitioner uses assistive devices for [REDACTED]. Petitioner does not need assistance with [REDACTED]. See ¶ 4.

23. The 701B reflects the following regarding IADLs: Petitioner needs total assistance with (cannot do at all): [REDACTED]. Petitioner needs assistance (but not total help) with [REDACTED]. Petitioner needs no assistance using the [REDACTED]. See ¶ 5.

24. Petitioner did not provide evidence to show that the additional services requested would not be in excess of Petitioner's needs, nor did Petitioner specify which ADLs or IADLs were not being attended to with the current plan of care. See ¶ 10. Petitioner has the burden of proof to show that the decision by Respondent was incorrect. See ¶ 15. Here, the 701B reflects that Petitioner needs assistance with [REDACTED] ADLs of [REDACTED]. The general guidelines in the PC Policy allot approximately thirty (30) minutes to bathing and approximately fifteen (15) minutes to dressing. Petitioner did not provide a schedule of ADLs or how many times per week [REDACTED] needs assistance with [REDACTED]. However, if Petitioner needs assistance with bathing every day and needs assistance with changes twice per day, that would amount to approximately 7 hours per week. Therefore, Petitioner has not shown that the requested services are not in excess of need based on the 701B.

25. While Petitioner does live alone, Dr. Karver provided credible and persuasive testimony that the combined thirty (30) hours of care per week plus the 7 home delivered meals should be sufficient to meet [REDACTED] needs. As Dr. Karver testified, Petitioner's services can be split up if needed to provide coverage on Sunday. Based upon Petitioner's living arrangement, medical conditions, and [REDACTED] functional ADL/IADL assessments, the record does not demonstrate that the following medical necessity criteria was met: "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." See ¶ 3-5, 18.

26. As Dr. Karver testified, considering Petitioner's medical condition and current level of authorized services, it appears that the amount of personal care services and overall home health aide hours per week that Petitioner receives is adequate to meet Petitioner's personal care


needs. See ¶ 11. Therefore, 6 additional hours per week of personal care services were not shown to be medically necessary.

27. Based upon the evidence submitted, testimony provided, and applicable laws and policies, the undersigned finds that Petitioner did not prove by a preponderance of evidence that the denial of personal care hours was incorrect.

**DECISION**

Respondent's denial of personal care hours is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE AND ORDERED** this 30<sup>th</sup> day of November, 2023, in Tallahassee, Leon County, Florida.

 Lynne Ringers  
23-FH2109  
2023.11.30  
07:55:31 -05'00'

---

**LYNNE RINGERS, 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:**



**UnitedHealthcare of Florida, Inc.**  
**UHC\_Hearings@uhc.com**

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