



**FILED**

Nov 30, 2023, 10:48 am

OFFICE OF FAIR HEARINGS

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

[Redacted]

**PETITIONER,**

**AHCA Case No.: 23-FH2112**

**Plan ID No.: [Redacted]**

**vs.**

**MOLINA HEALTH CARE OF FLORIDA, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

[Redacted]

**PETITIONER,**

**AHCA Case No.: 23-FH2113**

**Plan ID No.: [Redacted]**

**vs.**

**MOLINA HEALTH CARE OF FLORIDA, INC.,**

**RESPONDENT.**

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on October 18, 2023, at 10:04 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Katia Matos  
Utilization Management Director  
Molina Health Care of Florida, Inc.

**STATEMENT OF ISSUE**

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's homemaker services was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's personal care services was correct.

### **PRELIMINARY STATEMENT**

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED] (" [REDACTED]"), appeared for the Fair Hearing to provide testimony on behalf of Petitioner.

Katia Matos (" [REDACTED]"), Utilization Management Director, appeared for the Fair Hearing as representative for Molina Health Care of Florida, Inc. ("Molina"). Yunesy Cruz (" [REDACTED]"), Director of Health Care Services for the Long-term Care Program for Molina, appeared for the Fair Hearing as a witness for Respondent. Dr. Katharyn Madiwale ("Dr. Madiwale"), Medical Director for Molina, appeared for the Fair Hearing as a witness for Respondent. Caridad Bello, Government Contracts Specialist for Molina, appeared for the Fair Hearing as a witness for Respondent. Mariana Nunez, Lead at Appeals and Grievances for Molina, appeared for the Fair Hearing as a witness for Respondent.

Suzanne Chillari, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the Fair Hearing as an observer .

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent a four (4)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as the file title "23-FH2112 and 23-FH2113 Supporting Documents.pdf." Absent an objection from Respondent, the four (4)-page evidence packet was admitted 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 one hundred and sixteen (116)-page evidence packet. The evidence packet appears in the Office document management system as the file title "MFH Packet Office [Petitioner].pdf." Absent an objection from the Petitioner, the one hundred and sixteen (116)-page evidence packet was admitted into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Molina's Long-term Care ("LTC") program. Molina is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida. See RCE 1 at page 1, 15.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] ([REDACTED]) [REDACTED]. *Id.* at 21. Petitioner resides in the community with [REDACTED] adult [REDACTED], [REDACTED] ("[REDACTED]"). *Id.* at 16, 47, 50. Petitioner has the following health conditions: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 9, 21-22 and PCE 1 at 3-4. Petitioner

is [REDACTED]. See RCE 1 at 24, 47. Petitioner [REDACTED]

[REDACTED]. *Id.* at 26. Petitioner receives [REDACTED]

[REDACTED] daily. *Id.* at 22. Petitioner has been under [REDACTED] since

[REDACTED]. See ¶ 8.

3. Petitioner's [REDACTED] and caregiver, [REDACTED], works full-time outside of the home and lives three weeks each month in Ohio. *Id.* at 29-31, 49. For one week each month, [REDACTED] lives in Miami and can assist Petitioner for 2 hours on Sunday. *Id.*

4. According to Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), dated May 3, 2023, Petitioner needs total assistance (cannot do at all) with all Activities of Daily Living (“ADLs”). *Id.* at 19. Petitioner needs total assistance (cannot do at all) with all Instrumental Activities of Daily Living (“IADLs”). *Id.* at 20.

5. In a Notice of Adverse Determination (“NABD”), dated May 10, 2023, Respondent reduced Petitioner’s homemaker services. *Id.* at 63-66. The NABD explained the basis of the reduction as follows, in pertinent part:

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

...

- ✓ Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness 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 facts that we used to make our decision are: This decision was based on medical necessity (as defined by Agency for Health Care Administration's Medical Necessity as defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332).

The reason why the request was not approved is: There is a reduction Effective 05/24/2023 of Homemaker services from 16 hours to 9 hours per week by the Medical Director because the additional services are not medically necessary. You are already receiving other services that should meet your needs. You are going to receive 40 hours of assistance with these new changes. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

*Id.* at 63-64.

6. In a NABD, dated May 10, 2023, Respondent also reduced Petitioner's personal care services. *Id.* at 72-75. The NABD explained the basis of the reduction as follows, in pertinent part:

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

...

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

4. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs;
5. 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
6. 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:

3. Enable the enrollee to maintain or regain functional capacity; or
4. 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 facts that we used to make our decision are: This decision was based on medical necessity (as defined by Agency for Health Care Administration's Medical Necessity as defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332).

The reason why the request was not approved is: There is a reduction Effective 05/24/2023 of personal care services from 40 hours to 24 hours per week by the Medical Director because the additional services are not medically necessary. You are already receiving other services that should meet your needs. You are going to receive 40 hours of assistance with these new changes. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

*Id.* at 72-73.

7. Petitioner's [REDACTED], [REDACTED], wrote a letter dated May 16, 2023, requesting reconsideration of Molina's reductions of homemaker services and personal care services. The letter states as follows:

The following serves as an APPEAL to your document dated 3/17/2023 where it was stated that services were not "medically necessary" as per the attached doc.

I'm requesting a reassessment by a medical professional from Molina, or a second opinion since my [REDACTED] Diagnosis states the opposite, and is the reason why [REDACTED] doctor placed [REDACTED] in Hospice.

[REDACTED] suffers from [REDACTED]  
[REDACTED]

**I would like for Molina to reconsider the decision** given the fact of [REDACTED] illness, in addition to valuing our loyalty of **7 years** despite the offers we get to switch plans.

I understand every company restructures, but every case is different. My [REDACTED] needs around-the-clock attention; we have nights covered, but I need help as follows:

Personal care 7 days per week-

- 1) Morning: 8 am to 12 pm & Afternoon: 3 pm to 7 pm
- 2) Bath Hrs through Molina as well.

*Id.* at 4.

8. On May 17, 2023, Petitioner requested a plan appeal regarding the homemaker services and personal care services. *Id.* at 4-5, 8, 105, 112. On June 5, 2023, Respondent issued Notice of Plan Appeal Resolutions (“NPARs”) upholding the reduction of homemaker services and personal care services. *Id.* at 105-107, 112-114. The NPARs contained identical rationale and explained the basis of the reductions as follows:

We made our decision based on the Florida Agency for Health Care Administration’s Long-Term Care (LTC) Program Policy (Rule 59G-4.192) and the Molina Clinical Policy for Medically Necessary Services(332). It shows rules that you have to meet to show medical necessity (need). Part of the rules is having an evaluation (test) to find out what you need. These tests are done the first time a member needs a test. They are also done annually (every year), and when there is a significant (big) change in the member’s care. A significant (big) change may involve a change in the member’s state of health or the person taking care of them. Your recent test does not show a significant (big) change in your care. Your doctor has not told us of a significant (big) change in your care to show that you need a change to your plan of care. You are already receiving services that should meet your needs. For this reason, the request for the extra 7 hours a week of Homemaker Services and the extra 16 hours a week of Personal Care Services is not approved. Please talk to your doctor and/or Case Manager about your options.

While we are denying the extra 7 hours a week of Homemaker Services and the extra 16 hours a week of Personal Care Services, you are already receiving services that should meet your needs. You will still receive 9 hours a week of Homemaker Services, 24 hours a week of Personal Care Services, and 7 hours a week of Adult Companion Care.

*Id.*

9. Valerie Hart-Quezada, M.D. (“Dr. Hart-Quezada”), at VITAS Healthcare, wrote a letter dated July 9, 2023, in support of Petitioner’s need for assistance with ADLs. The letter states as follows:

This letter is in order to inform that [Petitioner] has been under the care of VITAS Healthcare due to [REDACTED].

[Petitioner] has been in hospice since 8/30/2022 after [redacted] was referred to hospice due [redacted] of [redacted]. [Petitioner] is currently [redacted] and in need of 24/7 care. Due to [redacted] condition, [Petitioner] is unable to do [redacted] Daily living activities (ADLs) by [redacted], requiring assistance every single time. That assistance includes not only help with [redacted] ADL, also with any appointments and signed any documents.

VITAS make effort to assist patients and families during this time of crisis. Any assistance you can provide to our patient and family would be greatly appreciated.

See PCE 1 at 4.

10. By letter dated September 21, 2023, Yuniet Moya, M.D. ("Dr. Moya"), at Leon Medical Centers, wrote a letter regarding Petitioner's medical diagnoses. The letter states as follows:

The above referenced individual is currently a patient in my care. The patient suffers from the following medical diagnoses:

[redacted]  
[redacted]

As you can notice the patient suffers from a [redacted] which makes [redacted] incapable of making decisions. Patient's [redacted] [redacted] is [redacted] legal guardian and makes decisions on the patient's behalf.

See PCE 1 at 3.

11. On August 21, 2023, [redacted] requested a Fair Hearing on behalf of Petitioner to challenge the reduction of homemaker services in AHCA Case Number 23-FH2112 and the reduction of personal care services in AHCA Case Number 23-FH2113. On September 26, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 18, 2023, at 10:00 a.m. EST.

12. [redacted] testified at the Fair Hearing as follows:

- a. [redacted] asserts that in May 2023, Petitioner's case manager completed the 701B, the LTC supplemental assessment, and the Functional Level Service Review Tool

during an in-person visit with Petitioner and telephonically with Petitioner's caregiver, [REDACTED]. *Id.* at 15-32, 34-48, 49-50. Molina uses these tools to calculate the amount of services a member needs. Molina's case management team used the 701B and the LTC Supplemental Assessment to assess Petitioner's functional needs. Based upon review of the responses, Molina's medical directors recommended a reduction of personal care services from forty (40) hours per week to twenty-four (24) hours per week, a reduction of homemaker services from sixteen (16) hours per week to nine (9) hours per week, and an addition of seven (7) hours per week of adult companion care. *Id.* at 56.

- b. [REDACTED] argues that, in their decision, Molina took into consideration recipient is [REDACTED] ([REDACTED]) [REDACTED] with multiple medical conditions and who lives with [REDACTED] [REDACTED]. *See* ¶ 2.
- c. Petitioner receives hospice care and nursing services three times each week by [REDACTED] primary medical insurance, Medicare.
- d. The 701B shows Petitioner needs total assistance with all ADLs. *Id.* at 19. The Functional Level Service Review Tool shows ADLs can be completed with 24 hours of personal care services per week. *Id.* at 34-48.
- e. The 701B shows Petitioner needs total assistance with IADLs. *Id.* at 20. The Functional Level Service Review Tool shows IADLs can be completed with 8.5 hours of homemaker services per week. *Id.* at 34-48.
- f. The 701B shows that due to Petitioner's [REDACTED] [REDACTED], Petitioner requires constant supervision. *Id.* at 23-24. The Functional Level Service Review

Tool allows for 7 hours of companion care services per week. The LTC Supplemental Assessment shows Petitioner's [REDACTED] provides daily companion care. *Id.* at 50.

13. Dr. Madiwale testified at the Fair Hearing as follows:

- a. Upon review of the 701B, the LTC Supplemental Assessment, and the Functional Level Service Review Tool, Petitioner's needs were properly assessed and coincided with the medical necessity letter received from Petitioner's physician.
- b. The decision of Molina's medical directors to reduce personal care services and homemaker services was based on the medical necessity criteria. *See* ¶ 16.

14. [REDACTED] testified at the Fair Hearing as follows:

- a. [REDACTED] argued that the letters by Petitioner's physicians demonstrate a medical necessity for Petitioner's services. *See* ¶ 9, 10.
- b. [REDACTED] contends that Petitioner also suffers from [REDACTED]. *See* ¶ 7. [REDACTED] asserts that Petitioner was diagnosed with [REDACTED] by VITAS Healthcare doctors on an unknown date, and Petitioner was prescribed medication for it beginning [REDACTED]. Petitioner's [REDACTED] have gradually reduced since then.
- c. Petitioner's home health aide comes from 8-12 p.m. The aide's shift is as follows: [REDACTED] completes a diaper change, does bedding, prepares breakfast, and feeds Petitioner by 9 a.m. [REDACTED] argues that feeding takes a while due to Petitioner's [REDACTED]. Around 10 a.m. Petitioner is transferred to [REDACTED] wheelchair to go outside. The aide later repositions Petitioner into bed, prepares lunch, feeds

Petitioner by 12 p.m., does a diaper change, and repositions Petitioner for a nap. At 3 p.m. an aide does a diaper change, repositions Petitioner, prepares a snack, repositions Petitioner, then prepares dinner for a 6:30 p.m. feeding. The aide prepares Petitioner for bed around 7 p.m. Petitioner's aide provides hands-on care as well as homemaker services.

- d. [REDACTED] requests the additional hours in order to have the same routine on the weekend as during the week. Currently, Petitioner's needs are being met on the weekend by the help of [REDACTED], [REDACTED], or a friend.
- e. A VITAS Healthcare nurse comes three times each week for wound care.
- f. [REDACTED] argues that [REDACTED] and Petitioner's [REDACTED], [REDACTED], is not Petitioner's 24-hour companion. [REDACTED] suffers from [REDACTED] and other medical conditions. *Id.* at 60. [REDACTED] argued that [REDACTED] attends activities in the morning and comes home in afternoon between 12-1 p.m. [REDACTED] had a past [REDACTED] and is unable to do [REDACTED]. *Id.* at 47, 50. [REDACTED] asserts that as Petitioner's companion [REDACTED] can call 911 in case of emergency.
- g. [REDACTED] travels for work as a freelance sports producer and documentary photographer. Miami is [REDACTED]'s primary residence but shares time with husband who lives in Ohio. [REDACTED] is currently in Miami but asserts [REDACTED] is not able to stay here.

#### **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 section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

17. Because Respondent is reducing previously approved services, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to Respondent. 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.)

18. The Florida Medicaid Statewide Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. *Id. at* 79-100. The Florida Medicaid LTC Policy provides the following, in pertinent part:

**1.0 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 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.

**1.3.1 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

### **1.3.5 701-B Comprehensive Assessment**

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

### **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
- 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)

### **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 [redacted] or her choice.

### **1.3.16 Natural Supports**

Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

## **4.0 Coverage Information**

### **4.1 General Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

### **4.2 Specific Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care
- Intended to enable the enrollee to reside in the most appropriate and least restrictive setting

...

#### **4.2.1 Home and Community-Based Supportive Services**

The LTC program benefit includes coverage of the following home and community-based supportive 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 Mixed Services**

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

##### **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 81-87.

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:

**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 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. (Emphasis added).

20. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“PC Policy”) has been incorporated, by reference, into Rule 59G-4.215, F.A.C. The PC Policy provides as follows:

**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.

...

**4.0 Coverage Information**

**4.1 General Criteria**

Florida Medicaid reimburses for services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

**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

...

**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
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- 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 when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
  - Hospitals
  - Intermediate care facility 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
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

## 7.0 Authorization

### 7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid’s General Policies on authorization requirements.

...

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 a 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

PC Policy at pages 3 – 8, and 10.

### **Homemaker Services AHCA Case Number 23-FH2112**

21. In the NABD dated May 10, 2023, Respondent reduced Petitioner’s homemaker services from sixteen (16) hours per week to nine (9) hours per week. See ¶ 5. However, Respondent did not specify which prong of medical necessity it used to make its decision. See ¶ 5, 8. Respondent

has the burden of proof to show by a preponderance of evidence that the Respondent's determination was correct. See ¶ 17.

22. The LTC Policy states that Florida Medicaid LTC plans cover services that meet all of the following: (1) are determined medically necessary; (2) do not duplicate another service; and (3) meet the criteria specified in the policy. See ¶ 18. According to Section 4.2.1.9 of the LTC Policy, homemaker services are used to provide 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 ¶ 18.

23. Here, the record shows Petitioner requires full assistance with IADLs due to [REDACTED] medical conditions. See ¶ 2, 4. Petitioner is [REDACTED]. See ¶ 2. According to [REDACTED] and Dr. Madiwale's testimonies, Respondent took into consideration Petitioner's needs for IADLs, as part of their decision to reduce Petitioner's homemaker services. See ¶ 12-13. The Functional Level Service Review Tool shows IADLs can be completed with 8.5 hours per week. See ¶ 12. Respondent determined that nine (9) hours per week of homemaker services should be sufficient hours to meet [REDACTED] needs. See ¶ 12-13. The record reflects that Petitioner resides in the community with [REDACTED] adult [REDACTED], [REDACTED]. See ¶ 2. [REDACTED] provided testimony and evidence of [REDACTED]'s medical conditions and [REDACTED] limited availability to provide care for Petitioner. See ¶ 14. [REDACTED] testified that [REDACTED] attends activities in the morning and comes home in afternoon between 12-1 p.m. See ¶ 14. [REDACTED] had a past [REDACTED] and is unable to do [REDACTED]. See ¶ 14. Although [REDACTED] testified at Fair Hearing that [REDACTED] was currently in Miami, the record shows [REDACTED] works full-time outside of the home and lives three weeks each month in Ohio. See ¶

3, 14. The record regarding [REDACTED]'s and [REDACTED]'s availabilities, at best, points to a possible diminished capacity to assist mainly with Petitioner's ADLs. See ¶ 3, 14. Petitioner did not introduce any evidence to demonstrate any unmet needs with any IADLs due to the reduction of homemaker service hours. See ¶ 14. Petitioner resides in the home with [REDACTED] [REDACTED] who ordinarily would share in the household responsibilities. See ¶ 2. Absent adequate evidence to the contrary, the record does not appear to support any unmet needs with general household activities (such as meal preparation) and routine household care (including laundry and pest control) at this time. As such, the undersigned finds that Respondent presented unrefuted evidence that the reduction of homemaker services was "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment." See ¶ 12-13.

24. In light of both parties' testimony and evidence, the LTC Policy, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that the previously approved level of homemaker services does not meet medical necessity criteria. Accordingly, the undersigned concludes that Respondent's reduction of homemaker services was correct.

#### **Personal Care Services AHCA Case Number 23-FH2113**

25. In the instant case, in the NABD dated May 10, 2023, Respondent reduced Petitioner's personal care services from forty (40) hours per week to twenty-four (24) hours per week. See ¶ 6. However, Respondent did not specify which prong of medical necessity it used to make its decision. See ¶ 6, 8. Respondent has the burden of proof to show by a preponderance of evidence that the Respondent's determination was correct. See ¶ 17.

26. 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 ¶ 18. The Definitions Policy requires that the requested personal care 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 ¶ 19. Under Florida Medicaid, the purpose of personal care services is “[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 ¶ 18.

27. Petitioner is currently authorized to receive twenty-four (24) hours per week of personal care services, nine (9) hours per week of homemaker services, and seven (7) hours per week of adult companion care services. See ¶ 12. Petitioner has multiple medical conditions, including

[REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]  
[REDACTED]  
[REDACTED] See ¶ 2.

Specifically, regarding ADLs, Petitioner needs total assistance (cannot do at all) with all ADLs. See ¶ 4. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with all IADLs. See ¶ 4.

28. The evidence presented in this case does not support the finding that Respondent’s reduction of personal care services was incorrect. At Fair Hearing, [REDACTED] and Dr. Madiwale both explained that Respondent used the 701B and the LTC Supplemental Assessment to assess Petitioner’s functional needs. See ¶ 12-13. Petitioner resides in [REDACTED] home with [REDACTED], [REDACTED]. See ¶ 2. Respondent determined that twenty-four (24) hours per week of personal care services

should be sufficient hours to meet Petitioner's needs. See ¶ 12-13. [REDACTED] works full time outside the home. See ¶ 2.

29. At Fair Hearing, [REDACTED] contended that Petitioner also suffers from [REDACTED]. See ¶ 14. Neither Dr. Moya nor Dr. Hart-Quezada specifically point to either medical condition in their recent letters outlining Petitioner's new diagnoses. See ¶ 9, 10.

30. Although the PC Policy provides general guidance for general allowances for ADLs, *supra* ¶ 18, Petitioner did not introduce evidence to demonstrate any unmet needs due to the reduction of personal care services. In [REDACTED] testimony, [REDACTED] explained that the requests for the additional hours were to have the same routine on the weekend as during the week. See ¶ 14. [REDACTED] outlined the home health aide's typical daily schedule as the person who provides hands-on care as well as homemaker services for Petitioner. See ¶ 3, 14. At the time of Fair Hearing, Petitioner's needs are being met on the weekend by the help of [REDACTED], [REDACTED], or a friend. See ¶ 14. Moreover, [REDACTED]'s letter requesting a plan appeal dated May 16, 2023, states "[m]y [REDACTED] needs around-the-clock attention; we have nights covered." See ¶ 7. The record reflects that Petitioner resides in the community with [REDACTED] adult [REDACTED], [REDACTED]. See ¶ 2. [REDACTED] provided testimony and evidence of [REDACTED]'s medical conditions and [REDACTED] limited availability to provide care for Petitioner. See ¶ 14. [REDACTED] testified that [REDACTED] attends activities in the morning and comes home in afternoon between 12-1 p.m. See ¶ 14. [REDACTED] had a past [REDACTED] and is unable to do [REDACTED]. See ¶ 14. It appears that the challenge of Respondent's reduction lies disproportionately in favor of a convenience to Petitioner and/or Petitioner's caregiver, specifically to maintain a consistent weekly care schedule. See ¶ 3, 14. The medical necessity criteria require for personal care services to be

furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. *See* ¶ 18-19. Absent clear documentation of what unmet needs are present due to the reduction of services, the justification for the personal care services cannot be clearly determined.

31. Petitioner's primary care physician, Dr. Moya, wrote a letter dated September 21, 2023, following the reduction, regarding Petitioner's medical diagnoses. *See* ¶ 10. In addition, Petitioner's hospice physician, Dr. Hart-Quezada, wrote a letter dated July 9, 2023, in support of Petitioner's need for assistance with ADLs. *See* ¶ 9. [REDACTED] pointed to these two letters to demonstrate Petitioner's medical necessity for the additional service hours. *See* ¶ 14. However, 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. *See* ¶ 19. Therefore, the letters from Dr. Moya and Dr. Hart-Quezada do not, in themselves, make the additional services medically necessary. *See* ¶ 19. Moreover, as [REDACTED] testified, the information in the 701B and supplemental assessments are reflected in the medical records and the letter from Petitioner's primary care physician regarding Petitioner's medical conditions. *See* ¶ 9. Accordingly, Respondent provided sufficient evidence to demonstrate that the reduction of personal care services was "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment."

32. In light of both parties' testimony and evidence, the LTC Policy, the PC Policy, and the Definitions Policy, the undersigned finds that Respondent proved by a preponderance of the evidence that the previously approved level of personal care services do not meet medical


necessity criteria. Accordingly, the undersigned concludes that Respondent's reduction of personal care services was correct.

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

Respondent's reduction of homemaker services in AHCA case number 23-FH2112 is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of homemaker services is **DENIED**.

Respondent's reduction of personal care services in AHCA case number 23-FH2113 is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of personal care services is **DENIED**.

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

 Laura Gallagher  
for Kimberly Roche 23-  
FH2112 23-FH2113  
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**KIMBERLY ROCHE, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop #11**  
**Tallahassee, FL 32308-5407**

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