



FILED

Dec 15, 2023, 9:19 am
OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2158

Plan ID No.: [REDACTED]

vs.

HUMANA MEDICAL PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on October 5, 2023, at 10:04 a.m. and October 20, 2023, at 1:01 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Joshua Mitchell

Grievance and Appeals Fair Hearing Specialist

Humana Medical Plan, Inc.

STATEMENT OF ISSUE

The issue is whether [REDACTED] Petitioner proved by a preponderance of the evidence that Respondent’s denial of additional personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative, appeared for Fair Hearing to provide testimony

on behalf of Petitioner. Petitioner appeared for the Fair Hearing as [REDACTED] own witness. [REDACTED] [REDACTED] (“[REDACTED]”), Petitioner’s friend and approved direct service worker (“DSW”), appeared for the Fair Hearing convened on October 20, 2023, as a witness for Petitioner. Judella Haddad-Lacle, M.D. (“Dr. Haddad-Lacle”), Petitioner’s primary care physician, appeared for the Fair Hearing convened on October 20, 2023, as a witness for Petitioner.

Joshua Mitchell (“Mr. Mitchell”), Grievance and Appeals Fair Hearing Specialist for Humana Medical Plan, Inc. (“Humana”), appeared for Fair Hearing as representative for Respondent. Avra Bowers, M.D. (“Dr. Bowers”), Medical Director for Humana, appeared for the Fair Hearing convened on October 5, 2023, as a witness for Respondent. Avra Bowers, M.D. (“Dr. Bowers”), appeared for the Fair Hearing convened on October 20, 2023.

Sandra Durden, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing convened on October 5, 2023, as an observer. Marielisa Amador, Medical Health Care Program Analyst for AHCA, appeared for the Fair Hearing convened on October 20, 2023, as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-eight (278)-page evidence packet and a one (1)-page document. The evidence packet appears in the Office document management system as the file title “Evidence Packet 23-FH2158.pdf.” The authorization document appears in the Office document management system as the file title “Authorization Document 23-FH2158.pdf.” Absent an objection from the Petitioner, the two hundred and seventy-eight (278)-page packet was admitted into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the one (1)-page document as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

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

2. Petitioner is [REDACTED] ([REDACTED]) [REDACTED] *Id.* at 1, 25. According to Petitioner’s Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”), dated August 4, 2023, Petitioner has the following health conditions: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 31-33. Petitioner uses [REDACTED] as needed. *Id.* at 32. Petitioner uses an [REDACTED]. *Id.* at 29.

3. As provided in the 701B, Petitioner needs total assistance (cannot do at all) with the following Activities of Daily Living (“ADLs”): [REDACTED]

[REDACTED]. *Id.* at 29. Petitioner needs assistance (but not total help) for [REDACTED]. *Id.* Petitioner uses an assistive device for [REDACTED]

[REDACTED]. *Id.* Petitioner needs no assistance with [REDACTED]. *Id.*

Petitioner’s Fall Risk Assessment dated May 9, 2023, states that Petitioner needs no assistance with [REDACTED] and there is no/low apparent risk from current living conditions. *Id.* at 83-

84. With regard to Instrumental Activities of Daily Living (“IADLs”), Petitioner needs total assistance (cannot do at all) with [REDACTED]. *Id.* at 30. Petitioner needs assistance (but not total help) for [REDACTED]. *Id.* Petitioner needs no assistance with [REDACTED]. *Id.*

4. Petitioner initially requested an additional twenty-eight (28) hours per week of personal care services. In the Notice of Adverse Determination (“NABD”), dated May 17, 2023, Petitioner’s request was approved for fourteen (14) hours per week of personal care services and denied for the remaining fourteen (14) hours per week. *Id.* at 9-13. The NABD explained the basis of the denial as follows, in pertinent part:

- ✓ We determined that your requested services are **not medically necessary** because the services do not meet either [REDACTED] 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.
- ...
- ✓ 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 have requested an additional 28 hours of direct service worker (DSW) personal care service each week.

You have [REDACTED]. You do not have [REDACTED]. You do not have [REDACTED]. You do not [REDACTED]. You have a [REDACTED].

You have not had any recent changes in your health. You have not recently been in the hospital.

You live with your [REDACTED]. Your [REDACTED] helps care for you, but currently is not available due to [REDACTED] own medical problems. You use an [REDACTED] to [REDACTED]. You use a [REDACTED]. You need help [REDACTED]. You need help [REDACTED]. You need some help with [REDACTED].

You are being approved for the next 60 days for an additional 14 hours of direct service worker (DSW) personal care service each week.

These hours should be enough to meet your medical needs and can be divided into shifts to better meet your medical needs.

Id. at 9-10.

5. On June 19, 2023, Petitioner requested a plan appeal. *Id.* at 20-24. On July 17, 2023, Respondent issued a Notice of Plan Appeal Resolution ("NPAR") denying Petitioner's request for additional personal care services. *Id.* at 21-23. The NPAR states the following, in pertinent part:

You have [REDACTED]. You do not have [REDACTED]. You do not have [REDACTED]. You live with your caregiver. You use [REDACTED]. You need [REDACTED]. You need help [REDACTED]. You need help with [REDACTED].

The denial of 14 additional hours of personal care service each week is being upheld. The hours you are currently receiving should be enough to meet your medical needs and can be divided into shifts to better meet your 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 21.

6. On August 29, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. *Id.* at 1. On October 6, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions (“Scheduling Order”), setting the hearing for October 5, 2023, at 10:00 a.m. EST. At Petitioner’s request, the undersigned issued an Order Granting Continuance and Second Scheduling Order, setting the hearing for October 20, 2023, at 1:00 p.m. EST.

7. Accordingly, as of the date of the Fair Hearing, Humana approved Petitioner to receive twenty-eight (28) hours per week of personal care services, twelve (12) hours per week of homemaker services, and a [REDACTED]. *Id.* at 71.

8. [REDACTED] testified at Fair Hearing as follows:

a. As of this past Sunday prior to the Fair Hearing, Petitioner’s [REDACTED] passed away who was [REDACTED] caregiver.

b. Petitioner cannot [REDACTED]. Regarding [REDACTED], Petitioner requires full assist involving [REDACTED]. Petitioner uses a [REDACTED] which requires [REDACTED] about two to three times per day. Petitioner got [REDACTED] and has to use a [REDACTED].

9. [REDACTED] is Petitioner’s caregiver. [REDACTED] testified at Fair Hearing as follows:

- a. Petitioner is totally dependent on another [REDACTED] person for everything. [REDACTED] contends that it takes [REDACTED] [REDACTED].
- b. [REDACTED] argued that Petitioner's [REDACTED] requires extra time for support.
- c. [REDACTED] currently resides in Georgia. [REDACTED] is Petitioner's caregiver when [REDACTED] is able to visit.

10. Dr. Haddad-Lacle is Petitioner's primary care physician. Dr. Haddad-Lacle testified at Fair Hearing as follows:

- a. Petitioner is in [REDACTED] and has had a [REDACTED] since birth. Dr. Haddad-Lacle contends that due to Petitioner's disease, all of [REDACTED] ADLs are compromised, and Petitioner cannot be left alone. Petitioner requires full caregiver assistance with the [REDACTED]. Petitioner is a [REDACTED]. Due to Petitioner's [REDACTED], [REDACTED] suffers from [REDACTED].
- b. Due to Petitioner's [REDACTED], Petitioner has an increased risk of [REDACTED]. For [REDACTED], Petitioner uses and needs assistance with [REDACTED] [REDACTED].

11. Petitioner testified at Fair Hearing as follows:

- a. Petitioner's [REDACTED] lives in the home with Petitioner. [REDACTED] is a student athlete with an [REDACTED].

- b. Petitioner has several DSW caregivers who care for [REDACTED], including [REDACTED] when available locally, and [REDACTED] but [REDACTED] works full-time as a nurse practitioner.

12. Dr. Bowers testified at the Fair Hearing as follows:

- a. At the time of Humana’s decision, Petitioner was living with [REDACTED] [REDACTED], is currently living with [REDACTED] [REDACTED] who is providing some support and shares in the household responsibilities.
- b. Humana was not aware that Petitioner’s caregiver passed away until the Fair Hearing.
- c. Based on [REDACTED] review of Petitioner’s medical history and need for assistance with ADLs and IADLs, Dr. Bowers explained that Petitioner’s authorized hours per week for personal care should be sufficient for [REDACTED] needs. *Id.* at 29-30. Petitioner has no skilled needs although Petitioner uses a [REDACTED]. *Id.* at 32.

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

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

15. 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.).

16. 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. 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 his 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

...

4.2.2 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 90-96.

17. 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).

18. 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
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
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

Grooming and Skin Care	
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
Positioning	
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
Transfers	
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
Toileting and Maintaining Continence	
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
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
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.

19. In the instant case, Petitioner initially requested an additional twenty-eight (28) hours per week of personal care services. *See* ¶ 4. As of the date of the Fair Hearing, Humana authorized an additional fourteen (14) hours per week of personal care services. *See* ¶ 4. Accordingly, a total of fourteen (14) additional hours per week of personal care services are in dispute. As established on the record by the evidence and testimony, Respondent cited the lack of medical necessity but did not specify which prong of medical necessity it used to make its decision. *See* ¶ 4-5. Petitioner has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. *See* ¶ 15.

19. 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* ¶ 16. 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* ¶ 17.

20. Petitioner’s currently authorized personal care services administered under the Florida Medicaid program are “[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, 18. The record is clear that Petitioner has complex medical issues that require significant support to address limitations with [REDACTED] daily activities. *See* ¶ 2, 4-5. Petitioner has multiple medical conditions, including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED],

██████████, and ██████████. See ¶ 2, 8-10. Petitioner uses ██████████ for ██████████. See ¶ 2, 9-10.

21. Petitioner is currently authorized to receive a total of forty (40) hours per week of combined home and community-based services as follows: twenty-eight (28) hours per week of personal care services and twelve (12) hours per week of homemaker services. See ¶ 7.

22. The evidence presented in this case does not justify Petitioner's request for an additional fourteen (14) hours per week of personal care services. Specifically, regarding ADLs, Petitioner needs total assistance (cannot do at all) with ██████████. See ¶ 3. Petitioner needs assistance (but not total help) for ██████████. See ¶ 3. Petitioner uses an assistive device for ██████████. See ¶ 3. Petitioner needs no assistance with ██████████. See ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with ██████████. See ¶ 3. Petitioner needs assistance (but not total help) for ██████████. See ¶ 3. Petitioner needs no assistance with ██████████. See ¶ 3.

23. Petitioner resides in the home with ██████████ who ordinarily would share in the household responsibilities. See ¶ 11, 12. Of Petitioner's other approved caregivers, ██████████ resides in Georgia assisting occasionally when ██████████ visits, and ██████████ works full-time. See ¶ 9, 11. The availability of Petitioner's other approved DSW are not clear on the record.

24. Petitioner, ██████████, ██████████, and Dr. Haddad-Lacle all testified to Petitioner's need for total assistance with ██████████ ADLs. See ¶ 8-11. Dr. Haddad-Lacle testified that Petitioner has an increased risk of ██████████. See ¶ 10. Additionally, Dr. Haddad-Lacle

explained that Petitioner uses and needs assistance with a [REDACTED]
[REDACTED].

See ¶ 10. Although the PC Policy provides general guidance for general allowances for ADLs, see ¶ 18, Petitioner provided no specific time estimates for each ADL to explain the amount of time Petitioner required. Further, Petitioner provided no evidence (e.g., a daily schedule, a schedule of ADLs and IADLs, the amount of time needed for each ADL and IADL) to justify the approval of an additional fourteen (14) hours of personal care services per week. [REDACTED], one of Petitioner's caregivers, and Dr. Haddad-Lacle both testified that due to Petitioner's [REDACTED] [REDACTED] disease, all of [REDACTED] ADLs are compromised requiring full caregiver assistance. See ¶ 9, 10. It appears evident that the need for assistance with Petitioner's personal care more than likely has been affected with the absence of [REDACTED] primary caregiver; however, Petitioner failed to explain how the requested additional hours of personal care services will be utilized to meet Petitioner's needs if approved in this matter. See ¶ 8-11. Petitioner has several DSW caregivers who care for [REDACTED]. See ¶ 11.

25. As Dr. Bowers contended, Respondent was not aware of the recent change in Petitioner's caregiver status until the Fair Hearing, so the approved service hours were based on the information available at the time of the determination. See ¶ 12.


26. Considering the totality of Petitioner's circumstances, at this time it appears that, the record does not demonstrate that the requested fourteen (14) personal care hours per week are not "in excess of [REDACTED] needs" in light of the availability of Petitioner's several other caregivers. See ¶ 16.

27. In light of both parties' testimony and evidence, the LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet [REDACTED] burden of proving that an additional fourteen (14) hours per week of personal care services are medically necessary. Accordingly, the undersigned Hearing Officer concludes that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and ORDERED this 15th day of December, 2023 in Tallahassee, Leon County, Florida.

 Kimberly Roche
23-FH2158
2023.12.15
08:01:44 -05'00'

KIMBERLY ROCHE, 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**

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Tallahassee, FL 32308
Voice: (850) 412-3661
TTY: (800) 955-8771



Spanish ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-(888) 419-3456 (TTY: 1-800-955-8771).

French Creole Atansyon: Si w pale Kreyòl Ayisyen, gen sèvis èd pou lang ki disponib gratis pou ou. Rele 1-(888) 419-3456 (TTY: 1-800-955-8771).

Vietnamese CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-(888) 419-3456 (TTY: 1-800-955-8771).

Portuguese ATENÇÃO: Se fala português, encontram-se disponíveis serviços linguísticos, grátis. Ligue para 1-(888) 419-3456 (TTY: 1-800-955-8771).

Chinese 注意 : 如果您使用繁體中文, 您可以免費獲得語言援助服務。請致電 1-(888) 419-3456 (TTY: 1-800-955-8771)

French ATTENTION: Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-(888) 419-3456 (ATS: 1-800-955-8771).

Tagalog PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-(888) 419-3456 (TTY: 1-800-955-8771).

Russian ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-(888) 419-3456 (телетайп: 1-800-955-8771).

Arabic

ملحوظة: إذا كنت تتحدث العربية، فإن خدمات المساعدة اللغوية متاحة لك بالمجان. اتصل برقم 1-(888) 419-3456 (التحويلة: 1-800-955-8771)

Italian ATTENZIONE: In caso la lingua parlata sia l'italiano, sono disponibili servizi di assistenza linguistica gratuiti. Chiamare il numero 1-(888) 419-3456 (TTY: 1-800-955-8771).

German ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-(888) 419-3456 (TTY: 1-800-955-8771).

Korean 주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-(888) 419-3456 (TTY: 1-800-955-8771) 번으로 전화해 주십시오.

Polish UWAGA: Jeżeli mówisz po polsku, możesz skorzystać z bezpłatnej pomocy językowej. Zadzwoń pod numer 1-(888) 419-3456 (TTY: 1-800-955-8771).

Gujarati નોંધ: જો તમે ગુજરાતી બોલતા હો, તો નિ:શુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 1-(888) 419-3456 (TTY: 1-800-955-8771).

Thai เรียน: ถ้าคุณ

บริการช่วยเหลือทางภาษาได้ฟรี โทร 1-(888) 419-3456 (TTY: 1-800-955-8771).