



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

FILED

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OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2166

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 5, 2023, at 9:00 a.m. Eastern Standard Time.

APPEARANCES

For the Petitioner: [REDACTED]
Petitioner

For the Respondent: Chantal Pierre
Grievances and Appeals Coordinator
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for additional personal care services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative, [REDACTED]
[REDACTED] (" [REDACTED] "), appeared on Petitioner's behalf.

Chantal Pierre, Grievances and Appeals Coordinator for Sunshine State Health Plan, Inc. (“Sunshine Health” or “Respondent”) appeared on behalf of Respondent. The following persons attended as witnesses for Sunshine Health: Dr. John Carter (“Dr. Carter”), Long-Term Care Medical Director; Kenya Murray, Long-Term Care Coordinator II; Alshenetha Williams-Jamerson, Care Coordinator Supervisor; Katie Maldonado, Utility Manager; Ruth West, Clinical Supervisor; and Kathleen Almonte, Case Manager.

Marielisa Amador, Medical/Health Care Program Analysts for the Agency for Health Care Administration (“Agency” or “AHCA”) appeared as observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and forty-seven (147)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “MFH packet [Petitioner’s name].pdf.” Absent an objection from the Petitioner, the undersigned admitted the one hundred and forty-seven (147)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a two (2)-page evidence packet and a three (3)-page evidence packet. The evidence packets appear in the Office of Fair Hearings’ document management system as file title “23-FH2166 Email Correspondence(2).pdf” and “23-FH2166 Email Correspondence(3).pdf,” respectively. Absent an objection from the Respondent, the undersigned admitted the total five (5)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine Health. See page 2 of RCE 1. Sunshine Health is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] ([REDACTED])-[REDACTED]. *Id.* at 51. Petitioner lives with [REDACTED]. *Id.* at 15, 52. Both Petitioner and [REDACTED] have [REDACTED]. *Id.* at 52. Petitioner's [REDACTED] is unable to assist in [REDACTED] care. *Id.* Petitioner's [REDACTED], [REDACTED] ("[REDACTED]"), is [REDACTED] primary caregiver, and [REDACTED] comes to the home weekly when the home health aide is gone for the day. *Id.* at 16, 52. If needed, Petitioner's other [REDACTED], [REDACTED], could help Petitioner. *Id.* at 65.

3. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 57 - 58. In the past, Petitioner has had [REDACTED] and [REDACTED]. *Id.* Petitioner also has [REDACTED]. *Id.* at 59.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated July 21, 2023, ("701B"), for which [REDACTED] provided the answers to the assessor's questions on behalf of [REDACTED] [REDACTED], *id.* at 52, Petitioner's needs for activities of daily living ("ADLs") are that [REDACTED] needs assistance (but not total help) for [REDACTED], [REDACTED]. *Id.* at 55. Petitioner always has assistance with [REDACTED] ADLs of [REDACTED] and [REDACTED]. *Id.* Petitioner has assistance most of the time with [REDACTED]. *Id.* Petitioner requires

constant supervision: [REDACTED] is becoming [REDACTED].
Id. at 60.

5. As provided in the 701B, Petitioner's needs for instrumental activities of daily living ("IADLs") are as follows: for [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], Petitioner needs assistance (but not total help). *Id.* at 56. Petitioner always has assistance with [REDACTED] IADLs. *Id.*

6. According to the Long Term Care Person Centered Care Plan, effective July 21, 2023, ("POC"), Petitioner is [REDACTED]. *Id.* at 14. Petitioner goes to bed early and gets up early in the morning, and [REDACTED] walks outside with the assistance of an aide. *Id.* at 13. As provided in the POC, [REDACTED], Petitioner's primary caregiver, assists with [REDACTED]'s ADLs and IADLs, and [REDACTED] is also caring for [REDACTED], Petitioner's [REDACTED], who is [REDACTED]. *Id.* at 15. [REDACTED] has physical limitations [REDACTED], and [REDACTED] has [REDACTED]. *Id.* Petitioner currently receives one (1) monthly LTC oversight services for case management; forty-five (45) hours of weekly personal care services; five (5) hours of weekly homemaker services; one (1) case of pull-ups a month; two (2) boxes of gloves a month; one (1) pack of wipes a month; and five (5) frozen meals delivered to the home each week. *Id.* at 19. [REDACTED] manages and administers Petitioner's medications. *Id.* at 25.

7. Petitioner requested an additional forty (40) hours each week of personal care services.

Petitioner's requests were denied¹ in the Notice of Adverse Benefit Determination ("NABD"), dated July 21, 2023. The NABD explained the basis of the denial as follows:

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

...

- 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 [REDACTED] of the illness or injury under treatment, and not in excess of the patient's needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
 3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

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

...

The facts that we used to make our decision are: The request for an extra 40 hours per week of Personal Care Services is partially approved. The member's present care plan includes 45 hours per week of Personal Care Services and 5 hours per week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will approve the temporary addition of an extra 6 hours per week of Personal Care

¹ Petitioner's request for additional personal care services were partially approved, temporarily, for six (6) extra hours a week for four (4) weeks while Petitioner recovered from Covid. *Id.* at 5. After the four (4) week period starting from July 21, 2023 through August 18, 2023, the additional six (6) hours a week were to be discontinued. *Id.* at 5, 19.

Services for 4 weeks as the member recovers from Covid and will deny the ongoing addition of an extra 40 hours per week of Personal Care Services.

The updated care plan approved by Sunshine Health will include:

- 51 hours per week of Personal Care Services for 4 weeks then resuming
- 45 hours per week of Personal Care Services
- 5 hours per week of Homemaker Services

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

Pages 4 - 5 of RCE 1.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated August 21, 2023, upholding the denial of additional personal care services. *Id.*

at 94 - 97. The NPAR explained, as follows:

The reason for our decision was based on the assessment of the members care needs and household and caregiver status. The denial of an ongoing extra 40 hours/week of Personal Care Services is upheld. The member is presently in the hospital, with no known discharge. Upon discharge from the hospital to the home, the member's case manager can arrange an updated assessment to review the possible need for additional home services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

...

Page 94 of RCE 1.

9. On August 28, 2023, Petitioner requested Fair Hearings to challenge the denial of personal care services. On September 19, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 5, 2023. at 9:00 a.m. EST.

10. On September 25, 2023, Petitioner’s provider, Dr. Zoila Elizabeth Jorro, D.O., wrote, in pertinent part, the following letter regarding Petitioner’s health condition:

This letter serves to certify that patient [Petitioner] is currently under my professional care. The patient has a [REDACTED] [REDACTED] [REDACTED] for

which I have treated for [redacted] for at least 10 years. [Petitioner] has needed full assistance with [redacted] care and activities of daily living (ADLs), as [redacted] has been and continues to be [redacted] [redacted] house without assistance. Even though [Petitioner] is able to walk on [redacted] own, [redacted] is [redacted], as [redacted], and many time [redacted] [stet] gets [redacted] [Petitioner] has had this necessity for a while now, not only because of [redacted] but because of [redacted] [redacted] and [redacted] of [redacted] overall health. The need for assistance is not expected to improve and only worsen as [redacted] progresses.

Page 3 of PCE-1.

11. [redacted] testified that Petitioner's [redacted] condition is worsening and [redacted] needs additional assistance. [redacted] explained that [redacted] sister, [redacted], is Petitioner's primary caregiver, but [redacted] is on disability. [redacted] further explained that [redacted] is the only family member who checks on their [redacted] at home, and because [redacted] must drive there, [redacted] has [redacted]. [redacted] testified that Petitioner does not know what [redacted] is doing. For instance, [redacted] can eat by himself but sometimes forgets how to use a fork or knife. [redacted] testified that Petitioner cannot walk by himself, and [redacted] needs constant assistance to [redacted]. [redacted] testified that [redacted], Petitioner's [redacted], is [redacted] with [redacted], and [redacted] cannot chase after Petitioner to assist and supervise [redacted]. [redacted] contends that [redacted] [redacted] needs more assistance, as determined by [redacted] primary care physician, Dr. Jorro. [redacted] concedes that it was [redacted] who answered the questions on the 701B Assessment, but [redacted] speaks mostly Spanish and [redacted] may have mistakenly misrepresented how much assistance Petitioner needs with [redacted] ADLs. For instance, [redacted] indicated that [redacted] [redacted] does not need total assistance, but [redacted] does. [redacted] testified that they want to keep their [redacted]

at home and not in a nursing facility, and for this to happen, Petitioner needs the extra personal care services.

12. Dr. Carter is a Long-Term Care Medical Director for Sunshine Health. Dr. Carter's testimony established the following facts: Petitioner is a member of the Sunshine Health LTC (Long Term Care) Ancillary Service Criteria Polity and Procedure, FL.LT.UM.09.00 ("Sunshine Health Policy"). Under the Sunshine Health Policy, personal care services are ancillary services that are meant to supplement a member's household or family member support. As described under the Sunshine Health Policy, the goal is to provide ancillary services is to address a member's cognitive and functional deficits. Other elements to be considered are member's level of functioning, living situation considerations, informal supports, and family in area or nearby. Dr. Carter explained that the decision to uphold the denial of additional personal care services was based on Petitioner's health condition, and the 701B assessment. Dr. Carter testified that, according to the 701B assessment, Petitioner requires assistance but not total care for ■ ADLs. Dr. Carter acknowledged that Petitioner needs total assistance for ■ IADLs. Dr. Carter contends that the forty (40) hours of personal care services each week, together with five (5) hours of homemaker services and five (5) home delivered meals each week, and including Petitioner's natural supports, are adequate to meet Petitioner's medical needs and to keep Petitioner in a safe environment in ■ own home.

13. In making its decision in this case, Respondent relied upon the Sunshine Health LTC (Long Term Care) Ancillary Service Criteria Polity and Procedure, FL.LT.UM.09.00, Rev. 10/1/2021, which states, in pertinent part, as follows:

DESCRIPTION OF BENEFITS:

LTC ancillary services are non-skilled services covered under the LTC program. Services include:

- Adult Companion Care
- Adult Day Care Services
- Home Accessibility Adaptation Services
- Home Delivered Meals
- Homemaker Services
 - Pest Control Services
 - Chore Services
- Personal Care Services
- Personal Emergency Response Services (PERS)
- Respite Care Services

...

C. Criteria for Type of Service:

Criteria for each of the benefits noted in the Policy section will be used when reviewing the medical necessity of any ancillary services. In addition, the Medical Necessity Review policy FL.UM.02.01 is considered when determining medical necessity of ancillary services. The AHCA SMMC Contract and the Florida Coverage Policies and Limitations Handbooks are used to determine benefits, any benefit limitations, and additional criteria.

The ancillary services of this policy are intended to augment and support the existing informal care and community services being provided to allow the member to remain safely in their home.

D. Determinants for Services:

When considering the level of support the member requires and which of the ancillary services may support the member’s cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member’s support needed due to ADL deficits, living situation, and supervision needs.

a) Level of functioning with Activities of Daily Living (ADL’s)/Instrumental Activities of Daily Living (IADL’s)

- Independent where member is able to provide the task without support, with or without assistive devices
- Minimal functional impairment where the ADL’s require one of the following:
 - Supervision
 - At least minimum assistance
 - Member ambulates with assistance of a person or a device
 - Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply
 - Member has ADLs requiring at least minimal assistance

- o Member ambulates with assistance of a person or device
- o Member transfers require at least minimum assistance

• Maximum and persistent functional impairment without available caregiver support where all of the following exist:

- o Member has ADLs requiring total assistance
- o Member is non-ambulatory
- o Member transfers require one (1) to two (2) person assist
- o Member's treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone.
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
- Lives with non-family (with consideration of the number of days and hours that non-family members are not available to assist the member).

c) Informal Supports

- None
- New friends/family in the area
- Family nearby

d) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to call for help, even with assistance of a personal emergency response unit.

e) Available Supports

- No assistance needed or always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

e) Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

...

The criteria for each ancillary service is described below:

E. Service Descriptions

5. Homemaker Services

Homemaker 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. These services are provided to members who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Chore services, including heavy chore services and pest control may be included in this service. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Covered Homemaker service may include:

- a) Light housekeeping includes mopping floors, vacuuming, dusting, cleaning counters and sinks, cleaning the stove and refrigerator, washing dishes, taking out the trash, changing and making the bed, and cleaning the tub/shower and toilet.

Criteria to consider for Housekeeping may include but are not limited to:

- Includes cleaning tasks necessary to attain and maintain sanitary living conditions for the member and is incidental to care being provided to the member.
- For members living alone, housekeeping may apply to the entire residence but is limited to areas the member uses, including bedroom, bathroom, kitchen, and sitting area. The entire size of the home may be considered if cleaning of specific areas not used by the member is needed to maintain sanitary living conditions.
- For members sharing a residence, housekeeping applies only to the areas used by the member. This area includes the member's bedroom and one bathroom.

b) Shopping for the recipient's food and essential household items, picking up prescriptions and needed medical supplies

- Criteria to consider for Shopping may include but are not limited to:
- Member's ability to obtain groceries, household goods, and medications on their own
- Member's ability to put away groceries, household goods, and medications on their own
- Member lives with family who does the shopping for the member and puts away groceries, household goods and medications

- Member has other supports who do the shopping for the member and puts away groceries, household goods and medications.

c) Meal preparation includes menu planning, storing, preparing, cooking, and serving food (buttering bread and cutting food into bite size pieces, plating). Meal preparation does not include the cost of the food.

- Criteria to consider for Meal Preparation may include but are not limited to:
- Number of meals per days eaten by member or number of meals the member should eat per day Number of daily meals prepared by a caregiver and left in a location that the member can access, heat if necessary, and get to the table to eat.
- Meal preparation tasks member is able to complete independently. Is member able to use the microwave stove or oven?
- Amount of assistance needed in the preparation and cleanup, such as:
 - Meal planning
 - Meal preparation
 - Special diets
 - Special food preparation
 - Assembling food on plates
 - Getting food to the table

d) Laundry includes washing, drying, folding, and putting away the recipient's personal laundry. The recipient pays all Laundromat and/or cleaning fees.

Criteria to consider for Laundry may include but are not limited to:

- Identify the amount of laundry to be done on a weekly basis, including washing, drying, folding and putting away member's clothes, bed linens and towels, including:
- Amount of clothing and other items to be laundered
- Identify if member soils their clothing or bedding due to incontinence, therefore more frequent laundry is needed, which results in more smaller loads
- Preparing clothes and other items to be washed
- Putting the clothes and other items in the washer and dryer
- Hanging clothes and other items to dry
- Other chores could be done while the member's clothes or other items are being washed, dried, folded, and put away.
- If laundry must be done in an apartment laundry room or a community laundry, additional time can be given for waiting for the laundry to be done.
- Routine changing of bed linens is considered part of bedroom housekeeping

...

Homemaker Service Determination Tables [in pertinent part:]

Support needed for housekeeping:

The following guide assists in determining the amount of support needed by the member:

...

- Has informal supports who provide a minimum or moderate amount of the member's housekeeping: 15 - 90 minutes/week
- Member requires maximum support for housekeeping: up to 120 minutes/week

...

Support needed for shopping:

The following guide assists in determining the amount of support needed by the member:

...

- Has informal supports who provide a minimum or moderate amount of member's shopping: 15 - 75 minutes/week
- Member requires maximum support for shopping: up to 90 minutes/week

...

Support needed per meal:

The following guide assists in determining the amount of support needed by the member:

- Breakfast by self –1-15 min/day
- Breakfast with others –1-5 min/day
- Lunch by self –1-20 min/day.
- Lunch with others –1-5 min/day
- Dinner by self –1-30 min/day.
- Dinner with others –1-5 min/day
- Additional Meal –1-10 min per meal.

Support needed for laundry:

The following guide assists in determining the amount of support needed by the member:

...

- Has informal supports who do a minimum or moderate amount of the member's laundry: 15-90 minutes/week.
- Member requires maximum support for laundry: up to 120 minutes.

...

...

6. Personal Care Services

In accordance with Rule 59G-4.215, F.A.C., for member 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 member. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years. A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and

vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member. Personal care services include but may not be limited to the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
 - b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
 - c. Assisting the member in following through with physician orders
- The Personal Care provider cannot administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e., housekeeping chores) essential to the health and welfare of the member
 - e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

The services may be provided in the member's home or other location.

Covered Personal Care services may include:

a) Bathing

Assistance with bathing, including washing, rinsing, and drying the body or body parts.

- Member's ability to transfer in and out of the tub or shower
- Amount of time it takes the member to transfer in and out of the tub or shower
- Ability of member to prepare the shower or run the bath water
- Ability of member to use any assistive devices, such as a grab-bar or shower chair
- Ability of member to use a sponge or wash cloth to clean himself/herself
- How many times per week does the member bathe, consider that:
 - o Incontinence episodes resulting in the need for a bath
 - o Daily bathing of the elderly is not recommended due to damage that occurs to the skin from the water and the soap
 - o Bathing more than once per day is a personal preference and not a necessity.
- Full bath (bathtub, shower, or bed bath) or partial sponge bath (washing of face, underarms, and private areas).
- A bed bath for members who are bed bound and cannot get out of the bed to be bathed in a shower or tub

b) Dressing and Grooming

Dressing assistance includes the laying out, taking off, putting on, and fastening of clothing and footwear, and includes:

- Member's ability to choose their own clothes, put them on, and put on socks and shoes
- Ability to put clothes, socks and shoes on if someone lays out the clothes
- Ability to button, zipper, tie, or buckle clothes or shoes

- Ability to successfully use assistive devices in dressing, such as reachers, sock pullers, or shoehorns
- Ability to dress self in the morning or evening to get ready for bed
- Grooming includes assessment of member's ability to:
 - Comb or brush hair
 - Shave
 - Complete oral hygiene, including brushing teeth, remove dentures/partials, clean dentures/partials, and replace dentures/partials
 - Trim and clean fingernails and toenails

c) Eating and Feeding Considerations

Eating/Feeding is the process of a member getting oral nourishment from a receptacle (dish, plate, cup, glass, bottle, etc.) into their body after it is cooked or prepared for eating. (This does not include tube feeding as that is considered a skilled task.) Includes an assessment of the member's ability to:

- Cut foods into appropriate size pieces
- Move food or drink from the serving receptacle to their mouth Support for eating considers the number of meals per day that the member eats.

Note: Assistance with the preparation of meals is considered as part of Meal Preparation

d) Toileting Considerations

- Taking off and putting on of clothing and/or diapers,
- Post-toilet hygiene
- Use of equipment, such as a urinal or bedpan
- Emptying of urinal or bedpan
- Cleaning of a catheter or ostomy bag
- Reminders or a toileting schedule

e) Transferring Considerations

Transferring is the member's ability to move horizontally and/or vertically between the bed, chair, wheelchair, commode, etc. It includes an assessment of the member's:

- Ability to use any mechanical devices such as a walker, cane, handrails, or wheelchair to assist with transfers
- Ability to safely transfer without the assistance of another person
- Ability to physically participate in the transfer by pivoting, holding on, or bracing themselves to assist the caregiver

f) Mobility Considerations

Mobility is the extent of the member's purposeful movement within their residence. It includes an assessment of the member's:

- Ability to purposely move about his/her residence independently with or without the use of assistive devices, this includes the ability of a member to move around in a wheelchair
- Movements being unsafe without the assistance of another person in ambulating
- Muscle weakness, unstable gait or unstable balance

...

Exclusions and Limitations for Personal Care services include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
 - a. Member requires frequent repositioning due to wounds
 - b. Severe incontinence requiring multiple overnight changes and cleaning
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort Services.

Pages 122 – 140 of RCE 1.

CONCLUSIONS OF LAW

14. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

16. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its

position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

17. In the instant case, Petitioner is requesting new services. As such, 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.)

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

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

...

1.3.5 701-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
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

1.3.16 Natural Supports

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

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:

4.2.1.1 Adult Companion Care

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

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

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.

...

6.0 Documentation

...

6.2 Specific Criteria

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

LTC Policy at pages 1-8.

19. The LTC Policy also addresses medical necessity:

1.3.14 Medically Necessary or Medical Necessity

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

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs

- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

And, one of the following:

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

LTC Policy at pages 2-3.

20. 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.

22. Petitioner requested forty (40) additional hours a week of personal care services. See supra ¶ 7. In the NABD, dated July 21, 2023, Respondent denied Petitioner’s request, as upheld in the NPAR, dated August 21, 2023. See supra ¶ 7, 8. Respondent explained that Petitioner’s request was not medically necessary based on the plan’s review criteria and guidelines but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. See supra ¶ 7. However, as established by the evidence and testimony, Petitioner’s request for additional personal care services were denied as “in excess of” Petitioner’s needs.

23. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 18. As provided in the LTC Policy, personal care is to provide “assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” See supra 18.

24. The evidence presented in this case reflects that additional personal care services are not warranted under the circumstances of this case. Specifically, in regards to [REDACTED] ADLs, Petitioner needs assistance (but not total help) for [REDACTED], [REDACTED] [REDACTED]. See supra ¶ 4. Petitioner always has assistance with [REDACTED], and [REDACTED]; Petitioner has assistance most of the time with [REDACTED]. See supra ¶ 4.

25. Regarding [REDACTED] IADLs, Petitioner needs total assistance (cannot do at all) for [REDACTED] [REDACTED], [REDACTED],

28. The evidence in this case reflects that Petitioner has progressed in [REDACTED] of [REDACTED], becoming more [REDACTED]. See supra

¶ 4. However, the need for constant supervision for Petitioner, identified in the 701B assessment, correlate to adult companion care services, rather than additional personal care services. Adult companion care services are defined as “non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee.” (emphasis added). See supra ¶ 18. Petitioner’s primary care provider reported that [Petitioner] needs full assistance with [REDACTED] care and activities of daily living (ADLs). See supra ¶ 10. However, as provided by the Definitions Policy, “[t]he fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service. See supra ¶ 20.

29. The Definitions Policy requires that 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 supra ¶ 20. Considering the LTC Policy’s definitions for natural supports and personal care services, supra ¶ 18, Petitioner has not demonstrated that Petitioner’s aforementioned needs, supra ¶ 2 – 6, and 10, are insufficiently met by the forty-five (45) hours per week of personal care services. Given that Petitioner has not established that additional personal care services are warranted in this matter, the forty (40) additional hours of personal care services at issue are “in excess of [Petitioner’s] needs.” See supra ¶ 20. Accordingly, Petitioner did not demonstrate that an additional forty (40) hours of personal care services are medically necessary.

30. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of the evidence that Respondent's denial of Petitioner's request for additional personal care services was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

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

DONE and **ORDERED** this 12th day of December, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki
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DEBBIE WINICKI, 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:

[REDACTED]

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