



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

**FILED**

Nov 29, 2023, 10:50 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2173

Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on October 17, 2023, at 1:01 p.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Debra Havey-Levy  
Program Integrity Manager  
UnitedHealthcare Community Plan

**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 an additional ten (10) hours per week of personal care services was incorrect.

**PRELIMINARY STATEMENT**

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

Debra Havey-Levy, Program Integrity Manager for UnitedHealthcare Community Plan, Inc. (“UnitedHealthcare”) appeared on behalf of Respondent. Dr. Albena Baharieva (“Dr. Baharieva”), Long Term Care Medical Director for UnitedHealthcare, attended as a witness for Respondent.

Chrissie Simmons, Medical/Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”) appeared as an observer.

Spanish Translators Marisol Fahnert of TransPerfect, Eric (translator ID number 393273), and Fatima (translator ID number 406726) appeared at the Fair Hearing to provide translation services.

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings and Respondent a two (2)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as “23-FH2173 Evidence.pdf.” Absent an objection from the Respondent, the undersigned admitted the two (2)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and ninety-five (195)-page evidence packet. The evidence appears in the Office of Fair Hearings’ document management system as files titled “Respondent’s Statement of Matters\_Part1 (Pgs. 1 – 30).pdf”, “Respondent’s Statement of Matters\_Part2 (Pgs. 31 – 71).pdf”, and “Respondent’s Statement of Matters\_Part3 (Pgs. 72– 195).pdf”. Absent an objection from Petitioner, the undersigned admitted the one hundred and ninety-five (195)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

## FINDINGS OF FACT

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

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] ([REDACTED]) [REDACTED]. *Id.* at 13.

[REDACTED] lives in a private residence with [REDACTED] adult [REDACTED] and [REDACTED], [REDACTED]. *Id.* at 53.

Petitioner has the following health conditions: [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 58 – 59.

Petitioner also has [REDACTED],

[REDACTED]. *Id.* at 15.

3. Petitioner answered the questions for the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment”), dated May 30, 2023, on [REDACTED] own. *Id.* at 52 -

69. As provided in the 701B Assessment, Petitioner needs the following assistance with [REDACTED]

activities of daily living (“ADLs”): needs assistance (but not total help) with [REDACTED], and

[REDACTED]; uses an [REDACTED]; and needs

no assistance with [REDACTED]. *Id.* at 56. Regarding [REDACTED] ADLs, Petitioner always has assistance with

[REDACTED], [REDACTED], [REDACTED], and needs no

assistance with [REDACTED]. *Id.*

4. Petitioner’s assistance needs for instrumental activities of daily living (“IADLs”) are as follows: needs total assistance (cannot do at all) with [REDACTED], and

[REDACTED]; needs assistance (but not total help) with [REDACTED], and

[REDACTED]; needs supervision or prompting with [REDACTED]; and needs no assistance with [REDACTED]. *Id.* at 57. Regarding [REDACTED] IADLs, Petitioner always has assistance with [REDACTED], [REDACTED], [REDACTED] and [REDACTED]; has assistance most of the time [REDACTED]; and needs no assistance with [REDACTED]. *Id.*

5. The notes and summary of the 701B Assessment observe in pertinent part:

...

[REDACTED]

Assistance with ADL's required, assigned with 7 hrs/week of Personal Care through Mazal Nursing Services. Daily HDM meals provided through Tanias Catering, and Monthly DMS/Incontinence Supplies through Complete Service Care.

Member requires assistance with IADL's, assigned with 3 hrs/week of Homemaker through Mazal Nursing Services.

Member does not need supervision.

Caregiver/[REDACTED] willing to continue taking care of [REDACTED].

...

RCE 1 at 53, 56 – 57, 61

6. According to the 701B, Section L, Caregiver Section, [REDACTED] is listed as Petitioner's caregiver, spends twenty (20) hours per week providing care to Petitioner, and has been caring for Petitioner for two or more years. *See* RCE 1 at 66 – 67.

7. Petitioner requested an additional ten (10) hours per week of personal care services. *Id.* at 5. In the Notice of Adverse Benefit Determination ("NABD"), Respondent denied Petitioner's request as of April 13, 2023. *Id.* at 5 – 12. The NABD explained the basis of the decision as follows:

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

...

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

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

and one of the following:

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

...

The facts that we used to make our decision are:

Your assessment tells us that you need some help with [REDACTED], and [REDACTED].

You have not had a change in this.

You asked for 10 more hours a week of personal care.

You are getting 12 hours a week of personal care to help you.

You are getting 3 hours a week of homemaker services to help you.

You live with family that helps you.

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

...

RCE 1 at 5 – 6.

8. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR"), dated June 19, 2023, upholding the denial of additional personal care services. *Id.* at 99 – 109. The NPAR states, in pertinent part:

On May 22, 2023, we received your timely plan appeal request regarding UnitedHealthcare Community Plan's Notice of Adverse Benefit Determination dated April 13, 2023, [REDACTED], denying the request for Personal Care 10 more hours a week provided to [Petitioner].

On June 16, 2023, after consideration of the information you provided to UnitedHealthcare Community Plan in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal.

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

John Szafranski, MD, specializing in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Administrative Code 59G-1.010(166).

Your appeal was reviewed by a medical director. He is a medical doctor. He is board certified in family medicine. We looked at your records. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. You asked for additional personal care. You would like 10 more hours a week. You want more help with daily activities. We cannot approve this because it is not medically needed. Based on my professional judgment, these extra hours are more than you need. We looked at your home assessment. This helps to show us how much help you need. The health plan is approving 12 hours a week. You can help yourself some. This should meet your personal care needs. Also, you have another paid service for help. This is homemaker service 3 hours a week.

You live with a caregiver who can help some. That is why we cannot approve what you asked for. Please talk about this with your doctor.

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

...

RCE 99 – 100.

9. On September 1, 2023, Petitioner requested a Fair Hearing to challenge the denial of additional personal care services. On September 22, 2023, the Hearing Officer issued an Order

Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 17, 2023, at 1:00 p.m. EST.

10. Petitioner's authorized representative and [REDACTED], [REDACTED], testified as follows:

- a. Petitioner lives with [REDACTED] adult [REDACTED], adult [REDACTED], and [REDACTED]. Petitioner's family is unable to assist [REDACTED] on the weekend because they all work seven (7) days per week outside of the home, getting home around 8:00 p.m. [REDACTED] is a nurse and Petitioner's [REDACTED] works outside the city. Petitioner is alone on the weekends when [REDACTED] has to go to work. [REDACTED] did not clarify when [REDACTED] and Petitioner's [REDACTED] take breaks from work.
- b. Petitioner's primary caregivers are [REDACTED] and [REDACTED].
- c. Petitioner [REDACTED] recently but has not had an operation.
- d. Petitioner is [REDACTED] due to [REDACTED], so the family feeds [REDACTED].
- e. The home health aide comes to Petitioner's house from 7:00 a.m. to 10:00 a.m., Monday to Friday.
- f. Petitioner is home alone from 10:00 a.m. to 8:00 p.m., daily.
- g. Petitioner's home delivered meals are delivered between 12:00 p.m. and 1:00 pm. Petitioner does not eat lunch unless someone comes home and brings in [REDACTED] home delivered meal.

11. [REDACTED] referred to a letter from Petitioner's physician, Luis A. Velazquez, M.D. F.A.C.P, MD, stating:

This letter is to certify that my patient [Petitioner] suffers from many [REDACTED] and needs additional assistance at home for [REDACTED] daily

needs. Among many other serious conditions, [redacted] is at [redacted] and [redacted] due [to] [redacted]. [redacted] medical diagnoses include the following:

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

Due to [redacted] many [redacted] and [redacted] health, it is medically necessary for [Petitioner] to receive additional assistance at home.

...

PCE 1 at 2.

12. Dr. Baharieva is a Medical Director for UnitedHealthcare. Dr. Baharieva testified as follows:

- a. Petitioner’s request was denied based on the available information at the time of the request. The request for an additional ten (10) hours of personal care services was not medically necessary.
- b. Petitioner currently receives twelve (12) hours of personal care services per week, three (3) hours of homemaker services per week, and thirty-one (31) home delivered meals each month.
- c. The 701Bs from January 2023 and May 2023 do not show any change in Petitioner’s functional status. Dr. Baharieva reviewed Petitioner’s ADL and IADL assistance needs.

- d. A letter from Petitioner's physician is not helpful in terms of providing information about Petitioner's status; simply having a list of diagnosis does not tell how functional or not functional a person is. The letter does not contain physical examination findings and there are no details about functional status and Petitioner's ability to perform [REDACTED] ADLs. Without that detailed information, it is impossible to determine whether Petitioner is [REDACTED] [REDACTED], if [REDACTED] is a [REDACTED] [REDACTED], and what [REDACTED] functional status is.
- e. In 2022 Respondent received Petitioner's request for an additional five (5) hours of personal care services to be used in the evenings. This request was approved. However, the hours were added for the morning, not for the evening.
- f. Petitioner's care service hours can be divided so [REDACTED] is checked on multiple times during the day.
- g. Based on the lack of documented significant change in Petitioner's functional status, the lack of detailed information in the doctor's documentation, and the availability of personal care hours that can be spread during the day, Respondent decided that the additional ten (10) hours of personal care services were not medically necessary.

#### **CONCLUSIONS OF LAW**

- 13. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).
- 14. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-

1.100(17)(b).

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


**1.1 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
- 

...

**1.3.9 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene

- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

#### **4.1 General Criteria**

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

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

...

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

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

...

#### **4.2.2.6 Personal Care**

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

...

#### **6.2 Specific Criteria**

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

RCE 1 at 145 – 148, 151 – 152.

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

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

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

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

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

- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

And, one of the following:

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

RCE 1 at 146 – 147.

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

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

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

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care,

goods or services medically necessary or a medical necessity or a covered service.

RCE 1 at 7.

19. The Personal Care Services Coverage Policy (“PCS Policy”), which is incorporated by reference in Rule 59G-4.215, F.A.C., states 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.

...

**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.

...

**1.3.6 Home Health Services**

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

...

**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

RCE 1 at 167 – 171, 174.

20. Petitioner requested an additional ten (10) hours per week of personal care services. *See supra* ¶ 7. The additional personal care services were denied based on medical necessity. *See supra* ¶ 7, 8. Respondent explained that Petitioner’s request was not medically necessary based on the information provided but did not specify which of the five medical necessity criteria Petitioner’s request failed to meet. *Id.*

21. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another

service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 16. Further, in order to receive LTC services, services must be documented on an individual plan of care based upon a comprehensive needs assessment. *Id.* The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment. *Id.*

22. The evidence presented reflects that Respondent’s denial of an additional ten (10) hours per week of personal care services is warranted under the circumstances of this case. As provided in the LTC Policy, personal care is to provide “assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” *See supra* ¶ 16. The record reflects that Petitioner lives in a private residence with adult [REDACTED], adult [REDACTED], and [REDACTED] ([REDACTED]/caregiver/authorized representative). *See supra* ¶ 2, 7 - 8. [REDACTED] has cared for Petitioner for two or more years and Petitioner’s [REDACTED] is willing to continue taking care of Petitioner. *See supra* ¶ 5, 7. With regard to ADLs, Petitioner needs assistance (but not total help) with [REDACTED], and [REDACTED]; uses an [REDACTED]; and needs no assistance with [REDACTED]. *See supra* ¶ 3. The 701B Assessment states that Petitioner always has assistance with [REDACTED], [REDACTED], [REDACTED], and needs no assistance with [REDACTED]. *See supra* ¶ 3, 5. [REDACTED] disagreed with the answers in the 701B regarding Petitioner not needing assistance with [REDACTED], *see supra* ¶ 10, however, [REDACTED] did not object to the 701B when it was included in Respondent’s evidence packet and accepted as Respondent’s Composite Exhibit 1. Further, Petitioner did not appear at the Fair Hearing, provided no testimony or

evidence that contradicted [REDACTED] answers to the 701B, and there is no documentation provided by [REDACTED] stating Petitioner is unable to answer such an assessment on [REDACTED] own. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with [REDACTED], and [REDACTED]; needs assistance (but not total help) with [REDACTED], and [REDACTED]; needs supervision or prompting with [REDACTED]; and needs no assistance with [REDACTED]. See supra ¶ 4, 5. The 701B Assessment states that Petitioner always has assistance with [REDACTED], [REDACTED], [REDACTED] and [REDACTED]; has assistance most of the time [REDACTED]; and needs no assistance with [REDACTED]. See supra ¶ 4. Petitioner currently receives twelve (12) hours of personal care services per week, three (3) hours of homemaker services per week, and thirty-one (31) home delivered means each month. See supra ¶ 7, 8, and 12.

23. Appendix 9.1 of the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PCS Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides general guidance concerning the time allotted for personal care tasks. As Dr. Baharieva testified, there is no documentation that there has been a significant change in Petitioner’s ability functional status or ability to perform [REDACTED] ADLs (or IADLs) as listed in the 701B. See supra ¶ 11. Neither Petitioner nor [REDACTED] provided a schedule of ADLs/IADLs and/or any estimate of the time it takes to complete each ADL/IADL task. Allotting thirty (30) minutes of time for each of Petitioner’s ADLs ([REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]) and taking into account Petitioner’s medical conditions, the current 12) hours of personal care services per week appear to be reasonable. Petitioner also has three (3) hours

of homemaker services per week, which closely align with the documented IADL tasks that Petitioner needs assistance with. Dr. Baharieva provided credible and persuasive testimony that the approved services are adequate to meet Petitioner's needs. Petitioner failed to provide credible evidence or testimony that there is a medical need for additional personal care service hours.


24. [REDACTED] testified that Petitioner's physician recommended additional hours of personal care services, based on a letter provided by the physician. See supra ¶ 11. However, the fact that a provider prescribed, recommended, or approved medical or allied care, goods, or services does not, itself, make such care, goods, or services medically necessary or a medical necessity or a covered service. See supra ¶ 18.

25. Therefore, upon consideration of the testimony provided, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, and the applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of an additional ten (10) hours per week of personal care services was incorrect.

**DECISION**

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

**DONE AND ORDERED** this 29th day of November, 2023 in Tallahassee, Leon County, Florida.

 Kameisha Presley  
23-FH2173  
2023.11.29  
10:06:47 -05'00'

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**KAMEISHA PRESLEY, 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]  
[REDACTED]  
[REDACTED]

**UnitedHealthcare of Florida, Inc.**  
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