



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

FILED

Dec 19, 2023, 1:50 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2181

Plan ID No.: [REDACTED]

vs.

MOLINA HEALTH CARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2192

Plan ID No.: [REDACTED]

vs.

MOLINA HEALTH CARE OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 25, 2023, at 1:00 p.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[REDACTED]
Counsel for Petitioner

For the Respondent:

Melissa R. Hedrick
Counsel for Respondent
Molina Health Care of Florida, Inc.

STATEMENT OF ISSUE

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

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

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED], Counsel for Petitioner ("Petitioner") appeared on behalf of Petitioner. [REDACTED], Petitioner's Authorized Representative ("[REDACTED]"), appeared as a witness for Petitioner.

Melissa R. Hedrick, Counsel for Molina Health Care of Florida, Inc. ("Molina" or "Respondent") appeared on behalf of Respondent. The following persons attended as witnesses for Molina: Dr. Katherine Madiwale ("Dr. Madiwale"), Medical Director; Katia Matos, Utilization Management Supervisor; Marianna Nunez, Lead Appeals and Grievances; Yuneisy Cruz, Director of Long Term Care Department; and Caridad Bello, Grievances and Appeals.

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-eight (138)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file titles "MFH Office Packet_1.pdf," "MFH Office Packet_2.pdf," and "MFH Office Packet_3.pdf." Prior to the hearing, Respondent also sent to the Office of Fair Hearings and Petitioner a thirty-six (36)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file

title "[REDACTED] Additional Evidence packet.pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred and thirty-eight (138)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1"), and the thirty-six (36)-page evidence packet as Respondent's Composite Exhibit 2 ("RCE 2").

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a fifty-four (54)-page evidence packet, a fifteen (15)-page evidence packet, and a video clip. The fifty-four (54) page evidence packet appears in the Office of Fair Hearings' document management system as file title "23-FH2181 and 23-FH2192 Supporting Documents.pdf." The fifteen (15)-page evidence packet appears in the Office of Fair Hearings document management system as file title "23-FH2181 and 23-FH2192 Photo Evidence.pdf." The video clip appears in the Office of Fair Hearings document management system as the file title "23-FH2181 & 23-FH 2192 Email with video evidence.pdf." Absent an objection from the Respondent, the undersigned admitted into evidence the fifty-four (54)-page packet as Petitioner's Composite Exhibit 1 ("PCE 1"), the fifteen (15)-page packet as Petitioner's Composite Exhibit 2 ("PCE 2"), and the video clip as Petitioner's Exhibit 3 ("PE 3").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Molina's Long-term Care program. See pages 30 and 60 of RCE 1. Molina is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED] ([REDACTED])- [REDACTED]. See page 1 of RCE 2. Petitioner lives with [REDACTED], who is also needs assistance [REDACTED]. *Id.* at 29. Petitioner's [REDACTED], [REDACTED], is [REDACTED] primary caregiver, and [REDACTED] works full-time outside of the home. *Id.* at 5.

5. As provided in the 701B, Petitioner's needs total assistance (cannot do at all) for all of [REDACTED] instrumental activities of daily living ("IADLs"), including [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 6. Petitioner always has assistance with [REDACTED] IADLs. *Id.*

6. In the LTC [Long Term Care] Supplemental Assessment, dated October 10, 2023, it is indicated that [REDACTED] works full-time during the week, eight (8) hours a day, and [REDACTED] travels for work. *Id.* at 30. [REDACTED] is able to provide care, assistance, supervision or companionship to Petitioner in the mornings and late evenings for two (2) hours a day Monday through Friday, and five (5) hours each on Saturdays and Sunday. *Id.* [REDACTED] has [REDACTED] [REDACTED]. *Id.* A family member, [REDACTED] [REDACTED], is able to provide care, assistance, supervision or companionship to Petitioner for five (5) hours per day, and will sleep over when necessary, Monday through Friday. *Id.* at 31. [REDACTED] [REDACTED] had back surgery a year ago, and [REDACTED] has [REDACTED] restrictions and physical limitations. *Id.* [REDACTED] has a camera installed to be able to supervise Petitioner during the night when no one is able to spend the night to supervise [REDACTED]. *Id.* at 29. Petitioner has services from a home health aide Monday through Friday, from 7:00 a.m. to 4:00 p.m., and Saturday from 11:00 a.m. to 1:00 p.m. Petitioner has a [REDACTED] who will pass by on Saturdays for two (2) hours. *Id.* Petitioner requires supervision at all times. *Id.* at 33. There is no gap in service needs noted at the time of the LTC Supplemental Assessment. *Id.* at 34.

7. On July 31, 2023, Respondent issued a Notice of Adverse Benefit Determination ("NABD") reducing homemaker services from fourteen (14) hours per week to seven (7) hours per week. The NABD explained the basis of the reduction 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: This decision was based on medical necessity (as defined by Agency for Health Care Administration's Medical Necessity as defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332)

The reason why the request was not approved is: There is a reduction Effective 08/10/2023 of homemaker services from 14 hours to 7 hours per week, by the Medical Director because the additional services are not medically necessary. You are already receiving other services that should meet your needs. You are going to receive 35 hours of Homecare Assistance. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

...

Pages 15 - 16 of RCE 1. Subsequently, Respondent increased Petitioner's homemaker services by an additional hour, for a total of eight (8) hours of homemaker services per week. See infra

¶ 12.

8. On July 31, 2025, Respondent issued a NABD reducing Petitioner’s adult companion care services from nine (9) hours per week to seven (7) hours per week. The NABD explained the basis of the reduction 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: This decision was based on medical necessity (as defined by Agency for Health Care Administration’s Medical Necessity a defined in Rule 59G-4, 192 and reflects the application of Molina Clinical Policy (332)

The reason why the request was not approved is: There is a reduction Effective 08/10/2023 of adult companion services from 9 hours to 7 hours per week, by the Medical Director because the additional services are not medically necessary. You are already receiving other services that should meet your needs. You are going to receive 35 hours of Homecare Assistance. This determination by the Medical Director has been made based on medical necessity (as defined by Florida law) and reflects the application of Molina Healthcare's approved review criteria and guidelines.

...

Pages 23 - 24 of RCE 1.

9. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated August 23, 2023, upholding the reductions. *Id.* at 127 – 129. The NPAR explained, as follows:

We made our decision based on the Florida Agency for Health Care Administration’s Long-Term Care (LTC) Program Policy (Rule 59G-4.192) and the Molina Clinical Policy for Medically Necessary Services (332). It shows rules that you have to meet to show medical necessity (need). Part of the rules is having an evaluation (test) to find out what you need. These tests are done the first time a member needs a test. They are also done annually (every year), and when there is a significant (big) change in the member’s care. A significant (big) change may involve a change in the member’s state of health or the person taking care of them. Your recent test does not show a significant (big) change in your care. Your doctor has not told us of a significant (big) change in your care to show that you need a change to your plan of care. You are already receiving services that should meet your needs. For this reason, the request for the extra 7 hours a week of Homemaker Services and the extra 2 hours a week of Adult Companion Care is not approved. Please talk to your doctor and/or Case Manager about your options.

While we are denying the extra 7 hours a week of Homemaker Services and the extra 2 hours a week of Adult Companion Care, you are already receiving services that should meet your needs. You will still receive 7 hours a week of Homemaker Services and 7 hours a week of Adult Companion Care.

...

Page 127 of RCE 1.

10. On September 1, 2023, Petitioner requested Fair Hearings to challenge the reduction of adult companion care services and homemaker services. On September 12, 2023, the undersigned issued an Order Consolidating and Scheduling Fair Hearings by Telephone and Prehearing Instructions, setting the hearing for September 26, 2023, which hearing was continued at the request of Petitioner. On September 27, 2023, the undersigned issued a Second Order Scheduling Fair Hearings by Telephone and Prehearing Instructions, setting the

consolidated hearing for October 13, 2023, which hearing was also continued at the request of Petitioner. On October 11, 2023, the undersigned issued a Third Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the consolidated hearing for October 25, 2023, at 1:00 p.m. EST.

11. On August 24, 2023, Petitioner, with [redacted] primary caregiver, visited with [redacted] treating physician, Dr. France Occy, D.O., who reported, in part, the following:

[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

Patient [redacted] [redacted]. The patient is [redacted], patient is visited today at [redacted] private home for follow-up of [redacted] as [redacted] [redacted] is accompanied by [redacted] caregiver, AACOXI, able to communicate verbally, the patient is [redacted] with [redacted] [redacted]. The patient is [redacted], [redacted] needs maximum assistance for all ADLs. Patient with continuous use of [redacted] [redacted]. The patient is [redacted] [redacted]. General physical assessment done, patient is continually [redacted] noted. Treatment plan discussed with patient. Education regarding measures with COVID-19 pandemic provided to patient. Education about [redacted] [redacted]. The caregiver verbalized understand.

See page 7 of PCE 1.

12. On August 22, 2023, Dr. Alberto Rando Sous, M.D., with AccentCare Hospice and Palliative Care, wrote, in part, the following:

Please be advised that patient [Petitioner] [REDACTED] and [REDACTED], [REDACTED], [REDACTED], are under our care at AccentCare Hospice. [Petitioner] and [REDACTED] are totally dependent, requiring constant supervision and total assistance with all activities of their daily living. As part of the hospice services, we provide pain and symptom management to both patients during the end-of-life journey. We also provide emotional and spiritual support to the patients and their family. The hospice services do not entail constant supervision nor home making services. Constant care services are only provided if the patients are in distress; and patients are evaluated daily for eligibility.

Page 18 of PCE 1.

13.

14. Ms. Matos is a Utilization Management Supervisor with Molina, and a registered nurse. Ms. Matos is the supervisor for the team that completes member assessments. Ms. Matos testified that Molina determines what services a member will receive by the 701B assessment, which is a comprehensive assessment that indicates at what level of assistance a patient needs to perform [REDACTED] ADLs and IADLs; the supplemental assessment, which documents a member's natural supports and the assistance they provide; and the functional level review tool, which is used to translate the information received from the assessments and to calculate the time needed each day or week for each of the member's ADLs and IADLs. Ms. Matos explained that Petitioner's 701B assessment, taken on July 24, 2023, then superseded by another 701B assessment taken in October of 2023, reflects that Petitioner needs assistance with all of [REDACTED] ADLs and IADLs; that [REDACTED] lives at home with [REDACTED], who is [REDACTED], that [REDACTED] has multiple health issues, and that [REDACTED] needs constant supervision. Ms. Matos testified that the 701B assessment and the supplemental assessment indicate that Petitioners' family support

includes [REDACTED], the [REDACTED], and the [REDACTED]'s [REDACTED]'s [REDACTED] (who stays overnight with Petitioner when needed). Ms. Matos testified that Petitioner's ADL, IADL and supervision needs were taken into consideration from the assessments and the time it would take to perform each task, by using the functional level review tool. Dr. Madiwale is a Long-Term Care Medical Director for Molina. Dr. Madiwale's testimony established that home health services for long term care are determined on the basis of medical necessity, including that the services 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 and furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. Dr. Madiwale explained that existing family supports are taken into consideration when determining the amount of services to be provided. Dr. Madiwale further explained that long term care services are not meant to cure a patient, but to give [REDACTED] the necessary care to maintain [REDACTED] functional level.

15. [REDACTED] testified that [REDACTED] has [REDACTED], and [REDACTED] suffers from [REDACTED] [REDACTED] having to care for both Petitioner and [REDACTED]. [REDACTED] explained that Petitioner is not able to do anything on [REDACTED] own, including [REDACTED] unless it is a [REDACTED] [REDACTED]. [REDACTED] testified that [REDACTED]'s [REDACTED] will help take care of Petitioner by staying overnight, if necessary, and will be with [REDACTED] when the home health aide is not there in the evenings. However, [REDACTED] explained, [REDACTED] had [REDACTED] and [REDACTED] can no longer give that much care to Petitioner. [REDACTED] testified that Petitioner's physicians

have recently said that [REDACTED] needs total care, 24-hour assistance, which [REDACTED] cannot provide.

16. The Molina Managed Long Term Services and Supports (“MLTSS”) Functional Level and Service Review Policy, Policy No. HCS-507, effective June 8, 2021, (“MLTSS Policy”), provides, in part, as follows:

I. PURPOSE

Ensure functional needs are assessed and MLTSS are decided by qualified staff in accordance with Molina’s policies and protocols as well as government regulations, policies and contracts.

II. POLICY

Molina Healthcare uses qualified staff to assess members’ functional needs and make MLTSS decisions in accordance with Molina’s policies and protocols as well as government regulations, policies and contracts. This Policy applies to member’s eligible to receive HCBS and sets forth criteria for measuring a member’s functional level, the minimal threshold for second level review, and the MLTSS Second Level Review process.

III. SCOPE

Applies to Case Managers who ensure members who receive MLTSS have their functional needs assessed and service decisions completed.

...

V. DEFINITIONS

Activities of daily living (ADLs) means basis personal everyday activities including, but not limited to, tasks such as eating, toileting, grooming, dressing, bathing, and transferring.

Attendant Care Services (ACS) is a term for a variety of non-clinical Medicaid benefits that help members perform ADLs and IADLs. They may be known by many other names such as Personal Care Services, Chore Services, and Personal Attendant Care.

Care Manager (CM) means a qualified individual responsible for assisting members gain access to needed medical, social, educational and other services through the process that includes screening, assessing, stratifying risk, person-centered planning, coordination, monitoring, transitioning, and evaluation. This position is also responsible for maintaining and updating the case records and communicating with

the member to assess their needs and ensuring those needs are met. May also be known as Care Coordinator, Service Coordinator, and Case Manager.

Functional Necessity means a service provided to assist a member to perform Activities of Daily Living or Instrumental Activities of Daily Living that are:

- Necessary to enable the member to safely live in the least restrictive setting of choice
 - Individualized, specific and consistent to address the functional limitation of the member and not in excess of the member's needs
 - Consistent with the generally accepted professional standards as determined by the Medicaid program, and not be experimental or investigational
 - Reflective of the level of service that can be furnished safely and for which no equally effective and more conservative or less costly treatment is available statewide
- Home and Community Based Services (HCBS) means supports and services provided in a home or community setting to meet a member's functional needs or support independent living.

Home and Community Based Services (HCBS) means supports and services provided in a home or community setting to meet a member's functional needs or support independent living.

Instrumental activities of daily living (IADLs) means activities related to living independently in the community, including but not limited to, meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone or other media, and traveling around and participating in the community.

Managed Long Term Services and Supports (MLTSS) means services and supports provided to beneficiaries of all ages who have functional limitations and/or chronic illnesses that have the primary purpose of supporting the ability of the beneficiary to live or work in the setting of their choice, which may include the member's home, a worksite, a provider-owned or controlled residential setting, a nursing facility, or other institutional setting.

Natural Supports are personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships; friendships reflecting the diversity of the neighborhood and the community; association with fellow students or employees in regular classrooms and workplaces; and associations developed through participation in clubs, organizations, and other civic activities.

Personal Care Services (PCS) is a non-clinical Medicaid benefit that help members perform ADLs and IADLs.

Second Level Review is the process where an MLTSS peer consultation is conducted to ensure proposed supports and services to meet a member’s functional needs, support the ability to self-perform, ensure effective use of available resources and natural supports, and prevents duplicate services.

Second Level Reviewer means an individual with MLTSS experience in determining a member’s functional needs, impairment level, and appropriate services to meet unmet needs. This person also meets the qualification of a CM, have a professional licensure to include at a minimal Registered Nurse or Licensed Master level Social Worker.

Time Task Protocols are defined as standards that guide the amount of Attendant Care Service (ACS) support a member may need based on functional level to complete ADL and IADLs.

Pages 81 – 83 of RCE 1.

17. The Molina MLTSS Functional Level and Service Review Policy, Policy No. HCS-507.01, effective June 8, 2021, (“MLTSS Policy 507.01”), provides, in part, as follows:

II. PROCEDURE

A. Functional Level Determination

1. The Care Manager (CM) will complete a holistic face to face or virtual assessment for members that may have functional needs. The assessment will be completed upon initial enrollment and scheduled reassessment, when requested by a member or their authorized designee, or upon a member’s significant change in condition. The CM will use Molina’s assessment tools within timeframes governed by the State requirements or program policies and procedures.
2. The CM will determine a member’s ability to self-perform Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) during a face-to-face or virtual visit using Molina Healthcare’s Functional Level and Service Review tool. The ADL/IADL evaluation result is described as the member’s functional level.
3. Using multiple sources such as the member, caregiver, natural supports and observations, the member’s functional level for each ADL and IADL will be documented using the scale below. If a different functional assessment tool or

scale is mandated, a crosswalk will map the following criteria to the state mandated tools.

Episodes over a typical 7-day period are considered. An episode is defined as each time the ADL/IADL occurred.

- a. If all episodes are performed at the same level during that time period, score all episodes of that ADL/IADL at level.
- b. To receive a score of 0 (Independent), 6 (Total dependence), and 8 (Activity did not occur) all the episodes of the ADL/IADL would have to be at the same level.
- c. If only one episode occurs during the 3-day period, the functional level would be based on that one episode.
- d. If any episodes are performed at a level 6 (Total dependence), and others are performed at a less dependent level, score ADL/IADL as a 5 (Maximal assistance).
- e. Otherwise, focus on the three most dependent episodes (or all episodes if performed fewer than 3 times). If most dependent episode is 1 (Independent, setup help only), score the need as 1. If not, score the ADL/IADL as least dependent of those episodes in range 2 (Supervision) through 5 (Maximal assistance).

ADL/IADL functional level is independent of the availability or type of support that provides care.

Pages 84 – 85 of RCE 1.

18. On October 10, 2023, Respondent determined Petitioner’s functional level, as follows:

ADL Task: Bathing full-body bath/shower – Total dependence – Full performance by others during all episodes. Impairment Score 6. Time Protocol: up to 35 minutes per day.

ADL Task: Personal Hygiene – Total dependence – Full performance by others during all episodes. Impairment Score 6. Time Protocol: up to 30 minutes per day.

ADL Task: Dressing Upper Body – Total dependence – Full performance by others during all episodes. Impairment Score 6. Time Protocol: up to 20 minutes per day.

ADL Task: Dressing Lower Body – Total dependence – Full performance by others during all episodes. Impairment Score 6. Time Protocol: up to 20 minutes per day.

ADL Task: Personal Mobility – Total dependence – Full performance by others during all episodes. Impairment Score 6. Time Protocol: up to 60 minutes per day.

IADL Task: Stairs – Activity did not occur-during entire period. Impairment Score 8. Time Protocol: 0 minutes per day.

ADL Task: Exercise – Task Non-occurring. Impairment is not scored for Exercise. Minutes given based on individual's or physician's request. Time Protocol: up to 30 minutes per day.

ADL Task: Transfer Toilet – Activity did not occur-during entire period. Impairment Score 8. Time Protocol: 0 minutes per day.

ADL Task: Toilet Use – Total dependence – Full performance by others during all episodes. Impairment Score 6. Time Protocol: up to 5 minutes per toileting event. Max 8 times per day.

ADL Task: Bed Mobility and Transferring – Total dependence – Full performance by others during all episodes. Impairment Score 6. Time Protocol: up to 5 minutes per transfer. Max 5 round trip transfers per day.

ADL Task: Eating – Total dependence – Full performance by others during all episodes. Impairment Score 6. Time Protocol: up to 15 minutes per meal. Max 4 meals per day.

IADL Task: Meal Preparation – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: up to 20 minutes per meal. Max 4 meals per day.

IADL Task: Ordinary Housework-Cleaning – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: up to 110 minutes per week.

IADL Task: Ordinary Housework-Laundry – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: up to 20 minutes per load. Max 5 loads per week.

IADL Task: Managing Finances – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: n/a.

IADL Task: Medication Management – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: up to 5 minutes per day.

IADL Task: Phone Use – Activity did not occur-during entire period. Impairment Score 8. Time Protocol: n/a.

IADL Task: Shopping – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: up to 90 minutes per week.

IADL Task: Transportation – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: up to 60 minutes per week.

IADL Task: Supervision – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: up to 2 hours per day.

IADL Task: Shopping – Total dependence – Full performance by others during entire period. Impairment Score 6. Time Protocol: up to 90 minutes per week.

Pages 20 – 29 of RCE 2. In the October 10, 2023, functional level determination, the Molina paid hours for Petitioner’s ADLs, IADLs, and supervision per day totalled 38.5 hours per week, plus seven home delivered meals per week. *Id.* at 28.

CONCLUSIONS OF LAW

19. 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).

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

21. 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.

22. In the instant case, Respondent is reducing existing services. As such, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence

standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

23. 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 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.

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a

trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.2 Mixed Services

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

...

4.2.2.6 Personal Care

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

...

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.

24. 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.

25. 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.

Adult Companion Care Services

26. In this case, Respondent reduced Petitioner's adult companion care services from nine (9) hours per week to seven (7) hours per week based on medical necessity. *See supra* ¶ 8, 9. Respondent's NABD and NPAR not specify which of the four medical necessity criteria are no longer met. *See supra* ¶ 8. However, as established by the evidence and testimony, Petitioner's adult companion care services were reduced as "in excess of" Petitioner's needs.

27. 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* ¶ 23. As provided in the LTC Policy, As provided in the LTC policy, adult companion care is 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." *See supra* ¶ 23.

28. The evidence presented in this case reflects that Respondent's reduction of adult companion care services is warranted under the circumstances of this case. Specifically, in regards to [REDACTED] need for supervision, the LTC Supplemental Assessment, dated October 10, 2023, indicates that Petitioner has a strong natural support system. Section 1.3.16 of the SMMC LTC Policy provides that natural supports are "[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports." *See supra* ¶ 23. Petitioner currently lives with [REDACTED], who is also [REDACTED] and [REDACTED] suffers from [REDACTED]

█. See supra ¶ 2. Petitioner's █, █, is █ primary caregiver, and █ works outside the home, full-time. See supra ¶ 2. While █ works full-time during the week, eight (8) hours a day, sometimes travelling for work, █ is able to provide care, assistance, supervision or companionship to Petitioner in the mornings and late evenings for two (2) hours a day Monday through Friday, and five (5) hours each on Saturdays and Sunday. See supra ¶ 2. Additionally, family member █ is able to provide care, assistance, supervision or companionship to Petitioner for five (5) hours per day, and will sleep over when necessary, Monday through Friday. See supra ¶ 2. Also, █ has a camera installed to be able to supervise Petitioner during the night when no one is able to spend the night to supervise █. See supra ¶ 6. Petitioner receives weekly seven (7) hours of adult companion care services, eight (8) hours of homemaker services, and twenty-five (25) hours of personal care services. See supra ¶ 13. Petitioner also receives seven (7) home delivered meals. See supra ¶ 18. Petitioner's has homecare assistance from Monday through Friday, 7:00 a.m. to 4:00 p.m., and Saturday from 11:00 a.m. to 1:00 p.m. See supra ¶ 6. Petitioner also has a █ who will visit on Saturdays for two (2) hours. See supra ¶ 6. While Petitioner requires supervision at all times, there is no gap in service needs noted. See supra ¶ 6. As such, the record reflects that Petitioner has adequate social interaction, nutritional services, and supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

29. As Respondent bears the burden of proof, Respondent must show that the reduction of adult companion care services was correct. Here, the Petitioner receives a total of forty (40) hours per week of combined services: seven (7) hours of adult companion care services per

week, eight (8) hours of homemaker services, twenty-five (25) hours of personal care services, and seven (7) home delivered meals. See supra ¶ 13, 18. Respondent’s witnesses, Ms. Matos and Dr. Madiwale, provided credible and persuasive testimony that the approved level of services are adequate to meet Petitioner’s functional needs as stated in the 701B, which was completed with responses provided by [REDACTED]. See supra ¶ 4, 13, 14, 18.

30. The LTC Policy requires that LTC supportive 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 ¶ 23. The NPAR explains that Petitioner is “already receiving other services that should meet your needs.” See supra ¶ 9. Considering the LTC Policy’s definitions for natural supports and adult companion care services, supra ¶ 23, Respondent demonstrated that Petitioner’s aforementioned needs, supra ¶ 2 – 6, are sufficiently met by the seven (7) hours per week of adult companion care services. Given that Respondent established that the reduction of adult companion care services is warranted in this matter, the two (2) additional hours of adult companion care services at issue are “in excess of [Petitioner’s] needs.” See supra ¶ 24.

31. Further, Petitioner’s providers recommended constant supervision and total assistance with all activities of their daily living. See supra ¶ 11, 12. However, “[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 ¶ 25. Accordingly, the record shows that the additional adult companion care services at issue do not meet medical necessity criteria.

32. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of the evidence that Respondent's reduction of Petitioner's adult companion care services is correct.

Homemaker Services

33. Respondent reduced Petitioner's homemaker services from fourteen (14) hours per week to eight (8) hours per week. *See supra* ¶ 7, 9. 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 four medical necessity criteria Petitioner's request failed to meet. *See supra* ¶ 7, 9. As established on the record by the evidence and testimony, Respondent reduced homemaker services because the previously approved services were "in excess of" Petitioner's needs.

34. Section 4.1 of the SMMC 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* ¶ 23. As provided in the LTC Policy, homemaker services are to provide "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." *See supra* ¶ 23.

35. The evidence presented in this case reflects that Respondent's reduction of homemaker services from fourteen (14) hours per week to eight (8) hours per week is warranted under the circumstances of this case. IADL tasks most closely align to the definition of homemaker

services. See supra ¶ 23. Regarding Petitioner’s IADLs, petitioner needs total assistance for [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. See supra ¶ 5. Petitioner always has assistance with [REDACTED] IADLs. See supra ¶ 5. Respondent determined the functional level of Petitioner in October of 2023, and allocated time for each IADL task in accordance with its policies and protocols as well as government regulations, policies and contracts. See supra ¶ 18. Respondent determined the weekly amount of homemaker care hours for Petitioner to be seven and one-half (7.5) hours per week, which it rounded up to eight (8) hours per week. See supra ¶ 5.

36. Section 1.3.14 of the LTC Policy requires that “LTC supportive 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 ¶ 23. Pertinent to this matter, section 1.3.14 of the LTC Policy provides that natural supports are “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” See supra ¶ 18. With regard to living arrangements, Petitioner resides in the home with [REDACTED]. His [REDACTED], who is [REDACTED] primary caregiver lives nearby; [REDACTED] other family supports include a [REDACTED] who comes by on the weekends, and an [REDACTED] who will spend the night in Petitioner’s home as needed. See supra ¶ 2, 13. Petitioner’s [REDACTED] works outside the home, eight (8) hours a day, but [REDACTED] will visit Petitioner in the mornings and late evenings. See supra ¶ 13. Therefore, Petitioner has natural supports available to assist with [REDACTED] care and homemaker needs. The approved level of services are adequate to meet Petitioner’s functional

needs as stated in the 701B, which was completed with responses provided by [REDACTED].
See supra ¶ 4, 6.

37. Based on the foregoing, the record shows that the previously approved level of homemaker services are not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment,” and are “in excess of the patient’s needs.” Accordingly, the record shows that the additional homemaker services at issue do not meet medical necessity criteria.

38. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of the evidence that Respondent’s reduction of Petitioner’s homemaker services is correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of adult companion care services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s reduction of adult companion care services is **DENIED**.

Respondent’s reduction of homemaker services is **AFFIRMED**. Petitioner’s appeal based on Respondent’s reduction of homemaker services is **DENIED**.

DONE and ORDERED this 19th day of December 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH2181 and 23-FH2192
2023.12.19 08:34:19 -05'00'

DEBBIE WINICKI, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11

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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