



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

**FILED**

Dec 19, 2023, 10:08 am

OFFICE OF FAIR HEARINGS

[REDACTED]

**PETITIONER,**

**AHCA Case No.: 23-FH2201**

**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 10, 2023, at 10:00 a.m. and November 2, 2023, 10:02 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner: [REDACTED].  
Counsel for Petitioner

For the Respondent: Craig Smith, Esq.  
Counsel for Respondent

**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. [REDACTED]. (“[REDACTED]”), appeared for the Fair Hearing as Counsel for Petitioner. Petitioner appeared, but did not testify. The

following attended as witnesses for Petitioner: Petitioner; [REDACTED] (“[REDACTED]”), Petitioner’s spouse; [REDACTED], a friend of Petitioner; and [REDACTED], a friend of Petitioner.

Craig Smith, Esq. (“Mr. Smith”), appeared for the Fair Hearing as Counsel for Sunshine State Health Plan, Inc. (“Sunshine”). The following individuals appeared for Fair Hearing held on November 2, 2023, as witnesses for Respondent: John Carter, M.D. (“Dr. Carter”), Medical Director for Sunshine; Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine; Susana Furness, Long-Term Care (“LTC”) Coordinator for Sunshine; Lauren Greenwald, Utilization Management for Sunshine; Kasi Narine, Utilization Management for Sunshine; and Teresa Bonfante, Supervisor for Case Management for Sunshine. The following individuals appeared for Fair Hearing held on October 10, 2023, as witnesses for Respondent: Dr. Carter, Medical Director for Sunshine; Chantal Pierre, Clinical Appeals Coordinator for Sunshine; Midgje Payoute, LTC Supervisor; Susana Furness, LTC Coordinator for Sunshine; Lauren Greenwald, Utilization Management for Sunshine; Kasi Narine, Utilization Management for Sunshine; and Rehama Alceus, Supervisor for Case Management for Sunshine.

The following individuals appeared for Fair Hearing as observers: Carol Walsh, paralegal for [REDACTED]; and Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration (“Agency” or “AHCA”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a twelve (12)-page evidence packet, a six (6)-page evidence packet, a three (3)-page evidence packet, and a two (2)-page evidence packet. The twelve (12)-page evidence packet appears in the Office of Fair Hearings document management system as the file title “23-FH2201 Evidence.pdf.” The six (6)-page evidence packet appears in the Office of Fair Hearings document

management system as the file title “23-FH2201 Email correspondence.pdf<sup>1</sup>.” The three (3)-page evidence packet appears in the Office of Fair Hearings document management system as the file title “23-FH2201 Email Correspondence.pdf<sup>2</sup>.” The two (2)-page evidence packet appears in the Office of Fair Hearings document management system as the file title “23-FH2201 Letter from [REDACTED] Cardiologist.pdf<sup>3</sup>.” Absent an objection from the Petitioner, the undersigned admitted the twelve (12)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”), the six (6)-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”), the three (3)-page evidence packet into evidence as Respondent’s Composite Exhibit 3 (“RCE 3”), and the two (2)-page evidence packet into evidence as Respondent’s Composite Exhibit 4 (“RCE 4”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred thirty-eight (138)-page evidence packet. The one hundred thirty-eight (138)-page packet appears in the Office of Fair Hearings document management system as the file title “MFH packet [Petitioner].pdf.” Absent an objection from the Petitioner, the undersigned admitted the one hundred thirty-eight (138)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine’s LTC program. See RCE 1 at page 2. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

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<sup>1</sup> This file was received on October 30, 2023, at 12:30:48 PM.

<sup>2</sup> This file was received on October 30, 2023, at 10:30:46 AM.

<sup>3</sup> This file was received on November 2, 2023, upon stipulation by both parties during Fair Hearing.

2. Petitioner is [REDACTED]. *Id.* at 29, 63. Petitioner lives in the community with [REDACTED] spouse, [REDACTED]. *Id.* at 29, 63-64. Petitioner’s medical history includes [REDACTED]  
[REDACTED]  
[REDACTED]. *Id.* at 51-52, 69-71. Petitioner is on [REDACTED]. *Id.* at 52, 70. Petitioner is [REDACTED]. *Id.* at 67. Petitioner was [REDACTED]  
[REDACTED] *Id.*

3. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B”) dated September 7, 2023, which remained unchanged from the 701B dated June 12, 2023, Petitioner needs total assistance (cannot do at all) for all activities of daily living (“ADLs”) except for [REDACTED]. *Id.* at 49, 67. Petitioner needs assistance (but not total help) for [REDACTED]. *Id.* Petitioner uses a [REDACTED]  
[REDACTED]. *Id.* In regard to [REDACTED] instrumental activities of daily living (“IADLs”), Petitioner needs total assistance (cannot do at all) for [REDACTED],  
[REDACTED]. *Id.* at 68. Petitioner needs assistance (but not total help) with [REDACTED]. *Id.*

4. Petitioner requested an additional forty (40) hours per week of personal care services in a letter dated July 13, 2023. Petitioner’s letter states as follows:

I am writing to request an additional 40 hours of service per week, to be added to my current 56 hours per week, for a total of 96 hours per week. I am a [REDACTED]  
[REDACTED] who is [REDACTED] and under the care of your company through Medicaid Waiver.

Due to my condition, I am unable [REDACTED]. I am unable to [REDACTED]. I also suffer from [REDACTED] so it is necessary for [REDACTED].

During [REDACTED]. My caregiver [REDACTED]. In case of an emergency, [REDACTED].

I am [REDACTED]. I need help with [REDACTED]. I also need to be [REDACTED].

My caregiver, [REDACTED], devotes all of [REDACTED] time to meeting my physical needs and maintaining our home. [REDACTED] also manages our [REDACTED].

[REDACTED] is a highly self-educated RN, LPN, and aide with knowledge and skills that surpass those of licensed professionals. However, [REDACTED] is facing [REDACTED] own health challenges and requires time off for medical appointments and therapy. In [REDACTED], [REDACTED] was diagnosed with [REDACTED]. [REDACTED] now requires [REDACTED] but has been unable to [REDACTED].

I respectfully request that you assign an additional 40 hours of service per week to help [REDACTED] attend to [REDACTED] own medical needs. The remaining 56 hours per week will be worked by [REDACTED] for free as part of my household, as [REDACTED] has been doing until now.

Should [REDACTED] pass away due to [REDACTED], I will become the responsibility of the state as I have no family or friends who can step in to help.

Thank you for considering my request.

*Id.* at 84-85.

5. Petitioner’s request was denied in the Notice of Adverse Benefit Determination (“NABD”) dated July 19, 2023. *Id.* at 4-8. 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 the reason(s) checked below: (*See Rule*)

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

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness 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 denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. There have been no changes in ADL or IADLs. There has been no change in caregiver/informal support status. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 4-5.

6. Petitioner requested a plan appeal on July 30, 2023, and received a Notice of Plan Appeal ("NPAR") dated August 26, 2023, upholding the denial of additional personal care services. *Id.* at

93-96. The NPAR explained as follows:

The reason for our decision was based on the assessment of the [member's] care needs and household and caregiver status, the denial of an extra 40 hours/week of Personal Care Services is upheld. The presently approved services are enough to meet the member's care needs. 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.

*Id.* at 93.

7. Petitioner’s [REDACTED] specialist, Alberto Martinez-Arizala, M.D., F.A.A.N (“Dr. Martinez-Arizala”), wrote a letter dated August 28, 2023, in support of an increase in Petitioner’s home health aide services. The letter states as follows:

I treat [Petitioner] for [REDACTED].  
Given [REDACTED], I am recommending that the number of hours for caretaker assistance be increased to 16 [hours] daily.

See PCE 2 at page 6.

8. On August 31, 2023, Petitioner requested a Fair Hearing to challenge the denial of the additional personal care services. On September 13, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions (“Scheduling Order”), setting the hearing for October 10, 2023, at 10:00 a.m. EST. At Petitioner’s request, on October 11, 2023, the undersigned issued an Order Granting Continuance and a second Scheduling Order, setting the hearing for November 2, 2023, at 10:00 a.m. EST.

9. Petitioner’s treating [REDACTED], Yefim Cavalier, D.O., F.A.A.N (“Dr. Cavalier”), wrote a letter dated September 27, 2023, in support of Petitioner’s request for additional home health aide services. The letter states as follows:

This letter is written in support of [Petitioner]'s request for additional home healthcare hours. As you are aware, [Petitioner] is a [REDACTED] with a past medical history of [REDACTED]. [REDACTED]. [Petitioner] is [REDACTED]. [REDACTED] requires [REDACTED]. [REDACTED] resides with [REDACTED] primary caregiver and who is also dealing with [REDACTED]. It is my sincere belief and recommendation that [Petitioner] should be afforded access to 16 hours of daily home health care support. This

recommendation is echoed by [REDACTED] specialist at the University of Miami, Dr. Alberto Martinez-Arizala.

See PCE 2 at page 4-5.

10. [REDACTED]'s cardiologist, Jonathan Vafai, M.D. ("Dr. Vafai"), wrote a letter dated October 19, 2023, regarding [REDACTED]'s health status. The letter states as follows:

[REDACTED] has a history of [REDACTED] and [REDACTED]. [REDACTED] [REDACTED] that are being monitored under care. [REDACTED] is monitoring [REDACTED] carefully to maintain [REDACTED] health.

See PCE 4 at page 2.

11. Dr. Martinez-Arizala wrote a second letter dated October 30, 2023, in support of an increase in Petitioner's home health aide services. The letter states as follows:

I treat [Petitioner] for [REDACTED]. Given [REDACTED], I am recommending that the number of hours for caretaker assistance be increased to 16 hours daily. Due to [Petitioner]'s [REDACTED] [REDACTED] needs complete assistance with [REDACTED] and [REDACTED].

See PCE 3 at page 3.

12. [REDACTED] is Petitioner's spouse and primary caregiver. [REDACTED] testified to the following at Fair Hearing:

a. [REDACTED] has provided care for Petitioner since [REDACTED]. Aside from [REDACTED], Petitioner has no other support except the help of a home health aide on weekends for a total of sixteen (16) hours. *Id.* at 67.

b. [REDACTED] [REDACTED] Petitioner, prepares [REDACTED] [REDACTED]. [REDACTED] asserts that Petitioner

cannot [REDACTED]. [REDACTED] explained difficulty in repositioning Petitioner for [REDACTED].

c. [REDACTED] asserted that Petitioner has [REDACTED]. [REDACTED]. *Id.* at 71-72.

d. [REDACTED] was [REDACTED] approval. *Id.* at 40. [REDACTED] argued that [REDACTED] own medical conditions impacted [REDACTED] ability to care for Petitioner and thus Petitioner does not always have assistance. *Id.* at 67-68, 79. [REDACTED] argued that the 701B assessment dated September 7, 2023, completed after the initial request was incorrectly marked as “no change” where it should have been marked as “changed” following [REDACTED] statements to the interim case manager as reflected in the notes summary. *Id.* at 79.

e. [REDACTED] argued that [REDACTED] needs the additional forty (40) hours during the week as a “second shift”, for a total of 96 hours per week, to juggle other tasks during the day.

13. Dr. Carter is a Medical Director for Sunshine. Dr. Carter testified to the following at Fair Hearing:

a. Sunshine took into consideration the request for the seventy (70) year old recipient with multiple medical conditions. *See* ¶ 2.

b. Sunshine used the LTC Ancillary Service Criteria to review the medical necessity of additional services based on Petitioner’s needs for assistance and primary household support. *See* ¶¶ 2, 14.

- c. According to Sunshine’s LTC Ancillary Service Criteria policy, ancillary services are intended to augment services secondary to the care that primary supports provide in the home. See ¶ 14.
- d. The 701B dated September 7, 2023, indicates that [REDACTED] assisted in answering the questions with both [REDACTED] and Petitioner present during the in-home visit. *Id.* at 64.
- e. The 701B indicates that Petitioner suffers from “[REDACTED]  
[REDACTED]  
[REDACTED]”. *Id.* at 65.
- f. The 701B indicates Petitioner’s caregiver is [REDACTED] [REDACTED] who does not work outside the home and no other support to provide care. *Id.* at 77-78. Moreover, the caregiver reported a lot of difficulty with [REDACTED]  
[REDACTED]. *Id.* Dr. Carter asserted that Sunshine is aware the caregiver reported being in physical crisis and has chronic pain. *Id.* at 78-79. Dr. Carter argued that Sunshine took into account that Petitioner’s caregiver status had changed although the report does not mention a date for [REDACTED]  
[REDACTED]. *Id.* at 79.
- g. Together with the responses from the 701B, Sunshine considered the following determinants for services: for the living situation, Petitioner lives with [REDACTED] caregiver who does not work outside home and is involved with Petitioner’s care; supervision needs are not issues for Petitioner; Petitioner lives with [REDACTED] spouse as an available and natural support; and Petitioner’s current plan of care includes

fifty-six (56) hours of combined services which consists of forty (40) hours per week provided by [REDACTED] through the participant direct option (“PDO”) and sixteen (16) hours on weekends provided by a home health agency, and seven (7) home delivered meals per week in place provided by Sunshine. *Id.* at 29-41, 54, 63-64, 77-79, 98-105.

- h. Dr. Carter reviewed the letter by Dr. Cavalier dated September 27, 2023, and those by Dr. Martinez-Arizala dated August 2023 and October 2023, each suggesting sixteen (16) hours daily of home health care. *See* ¶¶ 7, 9, 11. Dr. Carter contended that because Sunshine approved Petitioner for fifty-six (56) hours per week of combined home health services, these hours should be sufficient to take care of the Petitioner’s needs.
14. The Sunshine Health Long Term Care Ancillary Service Criteria (May 2014) (“FL.LT.UM.09” or “Long Term Care Ancillary Service Criteria”) provides as follows in regard to personal care services:

**PURPOSE:**

To establish clinical criteria on which to review Sunshine Health Long Term Care (LTC) line of business ancillary services for members residing in a home and community based environment. The goal of the ancillary services is to provide these supportive services in the home to address the member’s cognitive and functional deficits, which may be a result of their medical conditions. The services will assist in maintaining the members in their home and community environment, in a safe manner, to avoid the risk for nursing home placement.

...

**C. Criteria for Type of Service:**

...

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.

...

**1. 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
  - Member ambulates with assistance of a person or device
  - Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
  - Member has ADLs requiring total assistance
  - Member is non-ambulatory
  - Member transfers require one (1) to two (2) person assist
  - 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 [c]all 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

[f]) Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

...

## 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 medications 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.

...

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:
  - Incontinence episodes resulting in the need for a bath
  - Daily bathing of the elderly is not recommended due to damage that occurs to the skin from the water and the soap
  - 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/partial, clean dentures/partial, and replace dentures/partial
- 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

...

*Id.* at 113, 116-118, 127-129.

**CONCLUSIONS OF LAW**

15. The Agency’s Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to section 409.285(2), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

17. 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.)

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

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

**1.3.1 Activities of Daily Living (ADLs)**

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)

- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

### **1.3.9 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)

...

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

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

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

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

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

And, one of the following:

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

...

### **1.3.16 Natural Supports**

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

...

#### **4.0 Coverage Information**

##### **4.1 General Criteria**

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

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

...

##### **4.2 Specific Criteria**

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

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

...

###### **4.2.1.15 Respite Care**

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee's natural supports on a planned or an emergency basis.

...

###### **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.

...

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

**2.83 Medically Necessary or Medical Necessity**

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

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

**The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.**

Definitions Policy at page 7. (Emphasis added).

20. The Agency’s Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs personal care services available under Florida Medicaid. The PC Policy provides the following with respect to 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

...

## **5.2 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

## **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.

...

<b>Personal Care Task</b>	<b>General Time Allowances</b>
<b>Bathing</b>	
<b>Full-body Bath:</b> Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient's needs
<b>Partial Bath:</b> A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
<b>Dressing</b>	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
<b>Grooming and Skin Care</b>	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
<b>Positioning</b>	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
<b>Transfers</b>	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
<b>Toileting and Maintaining Continence</b>	

Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
<b>Eating</b>	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
<b>Delegated Medical Monitoring and Activities</b>	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy at pages 5-7, and 10

21. Petitioner requested an additional forty (40) hours per week of personal care services. See ¶ 4. In the NABD, dated July 19, 2023, Respondent denied Petitioner’s request. See ¶ 5. Respondent cited the lack of medical necessity as the basis for its decision; however, Respondent did not specify which prong of medical necessity it used to make its decision. See ¶ 5. Petitioner has burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. See ¶ 17.

22. The LTC Policy states that Florida Medicaid LTC plans cover services that meet all of the following: (1) are determined medically necessary; (2) do not duplicate another service; and (3) meet the criteria specified in the policy. See ¶ 18. The Definitions Policy requires that in order to determine if the requested personal care services are medically necessary, they must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or

injury under treatment,” not “in excess of the patient’s needs,” and not “primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” See ¶ 19. Respondent’s FL.LT.UM.09 mirrors the LTC Policy in that personal care services are to provide medically necessary assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are essential to the health and welfare of the enrollee. See ¶¶ 14, 18.

23. The record is clear that Petitioner suffers from multiple medical conditions and requires support with these problems. See ¶¶ 2, 3-4, 7, 9, 11-12. Regarding [REDACTED] ADLs as provided by the 701B dated September 7, 2023, Petitioner needs total assistance (cannot do at all) for all ADLs, except [REDACTED] which remain unchanged from the 701B dated June 12, 2023. See ¶¶ 3, 4. In regard to [REDACTED] IADLs, the 701B indicates that Petitioner needs total assistance (cannot do at all) for [REDACTED], [REDACTED]. See ¶ 3. Petitioner needs assistance (but not total help) with [REDACTED]. See ¶ 3. Petitioner lives with [REDACTED] spouse at home who is also [REDACTED] primary caregiver. See ¶¶ 2, 4, 12, 13. Petitioner is on [REDACTED]. See ¶ 3. Petitioner uses a [REDACTED]. See ¶ 3. Aside from [REDACTED], Petitioner has no other support except the help of a home health aide on weekends. See ¶ 3.

24. According to [REDACTED]’s testimony, Petitioner has [REDACTED]. See ¶ 12. [REDACTED] explained difficulty with repositioning Petitioner due to [REDACTED]. See ¶ 12. [REDACTED] Petitioner, prepares [REDACTED]. See ¶ 12. [REDACTED] contended

that these reasons along with [redacted] own medical conditions have impacted [redacted] ability to care for Petitioner and thus Petitioner does not always have assistance. See ¶ 12. Where the PC Policy provides some guidance for general allowances for ADLs, see ¶ 20, Petitioner did not introduce supporting evidence specific to demonstrate how the currently approved hours do not already satisfy the concerns presented. Petitioner introduced two letters from [redacted] treating [redacted] specialist Dr. Martinez-Arizala stating that “[g]iven [redacted] [redacted], I am recommending that the number of hours for caretaker assistance be increased to 16 hours daily. Due to [Petitioner]’s [redacted] [redacted] needs complete assistance with [redacted] and [redacted].” See ¶¶ 7, 11. Petitioner also introduced a letter dated September 27, 2023, from [redacted] [redacted], Dr. Cavalier, who also recommended home health hours be increased to 16 hours daily explaining that “[Petitioner] is chronically [redacted] due to [redacted] and [redacted] [redacted]. [redacted] requires [redacted] [redacted]. [redacted] resides with [redacted] [redacted] primary caregiver and who is also dealing with [redacted]” See ¶ 9. The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service. See ¶ 19. Therefore, a letter from either provider does not, in itself, make the requested additional services medically necessary. Nonetheless, neither letter provides the justification for an increased level of assistance that is not already captured in the currently authorized fifty-six (56) hours of combined service hours. Absent detailed

documentation, it is difficult to determine how the requested forty (40) personal care hours are “not in excess of [Petitioner]’s needs.”

25. To the extent that the record is unclear regarding Petitioner’s [REDACTED] and whether or not [REDACTED] needs total assistance with [REDACTED], Petitioner has not presented evidence to justify an additional forty (40) hours per week of personal care services based on these matters alone or collectively. See ¶¶ 12, 13.

26. In accordance with Petitioner’s needs with ADLs and IADLs, Respondent authorized Petitioner to receive fifty-six (56) hours per week of combined services comprised of forty (40) hours provided by [REDACTED] and sixteen (16) hours provided by a home health aide on the weekends. See ¶ 13. According to Sunshine’s LTC Ancillary Service Criteria policy, ancillary services are intended to augment services secondary to the care that primary supports provide in the home. See ¶ 14. Dr. Carter established that together with the responses from the 701B and Respondent’s Long Term Care Ancillary Service Criteria, Respondent determined that Petitioner’s current plan of care should be sufficient for [REDACTED] needs in consideration of [REDACTED] spouse-caregiver in the home plus another home health aide who assists in Petitioner’s care. See ¶ 14. Further, Dr. Carter opined that in making their determination Sunshine took into account that Petitioner’s caregiver status had changed as provided by the information in the 701B. See ¶ 14.

27. In view of the record, the crux of Petitioner’s argument appears predominantly predicated on additional hours for [REDACTED] to continue providing care for Petitioner. Petitioner’s appeal letter and [REDACTED]’s testimony give the impression that the requested personal care services is primarily intended for the convenience of the recipient’s caregiver. See ¶¶ 4, 12. Petitioner introduced a letter from [REDACTED]’s cardiologist, Dr. Vafai, which identifies [REDACTED] health

conditions, specifically with a “history of [REDACTED] and [REDACTED].” See ¶ 10. This letter does not substantiate [REDACTED]’s argument that [REDACTED] has limited capabilities in providing adequate care for Petitioner. See ¶¶ 10, 12. To the contrary, according to [REDACTED]’s testimony, the requested hours were to cover a “second shift to juggle other tasks during the day.” See ¶ 12. The record appears to present contradictory evidence of the purpose of the requested additional personal care services. See ¶¶ 4, 9, 11, 12. Here, it appears from the record Petitioner’s request more closely aligns with providing opportunity for [REDACTED] to tend to personal needs, rather than for Petitioner’s continual, hands-on support with unmet ADL and IADL needs. See ¶ 4, 12. While the undersigned finds highly plausible that [REDACTED] needs time to tend to [REDACTED] own health conditions, the record does not reflect this to be criteria to warrant additional personal care services. Section 1.3.4 of the LTC Policy and the Definitions Policy both maintain that medically necessary services should not be primarily intended for the convenience of the recipient or the recipient’s caretaker. See ¶ 18, 19. The undersigned concludes that appropriate relief for a caretaker or coverage for momentary duty breaks may be better addressed under different services. Accordingly, Petitioner has not demonstrated that the additional personal care services were not “primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.”


28. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that the Petitioner did not provide persuasive evidence to demonstrate the medical necessity of the additional forty (40) hours per week of personal care services. Accordingly, the undersigned concludes that Petitioner failed to prove by a

preponderance of the evidence that Respondent's denial of the requested additional personal care services was incorrect.

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

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

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

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

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**COPIES FURNISHED TO:**



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