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

FILED
Dec 06, 2023, 12:20 pm
OFFICE OF FAIR HEARINGS

[redacted]

PETITIONER,

vs.

AHCA Case No.: 23-FH2224
Plan ID No.: [redacted]

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on October 31, 2023, at 10:02 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

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

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Durable Medical Equipment ("DME"), and more specifically electric wheelchair arm supports and installation accessories was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the Fair Hearing telephonically. The Petitioner and the Petitioner's Authorized Representative, [redacted] [redacted] appeared and testified at the Fair Hearing.

Ms. Chantal Pierre, Clinical Appeals Coordinator ("Ms. Pierre") for Sunshine State Health Plans, Inc. ("Sunshine") appeared at the Fair Hearing as a representative for Respondent. Dr. John Carter, Medical Director ("Dr. Carter") testified on behalf of the Respondent. The following persons attended the Fair Hearing on behalf of Sunshine but did not testify: Marianna Thomas, Case Management Supervisor; Jamara Frazier, Case Manager; Alshanetha Williams-Jamerson, Case Management Supervisor; Samira Jean-Louis, Therapy Advisor; and Nicholas Crosby, Therapy Advisor.

Ms. Sandra Durden, Medical Healthcare Program Analyst & Fair Hearing Liaison appeared on behalf of AHCA for observation purposes only.

Prior to the Fair Hearing, the Petitioner sent to the Office of Fair Hearings and the Respondent a three (3) page evidence package that includes [redacted] letter requesting a Fair Hearing that was admitted into evidence without objection, is identified as "Petitioner's Exhibit 1", and is maintained in the Office of Fair Hearings document management system as "MFH request [Petitioner].pdf".

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty (80)-page evidence package and a twenty-one (21)-page evidence packet that were both admitted into evidence without objection. The eighty page (80)-page evidence package is identified as "Respondent's Composite Exhibit 1" and is maintained in the in the Office of Fair Hearings document management system as "MFH Package [Petitioner].pdf". The twenty-one page (21)-page evidence package is identified as "Respondent's Composite Exhibit 2" and is maintained in the Office of Fair Hearings document management system as "MFH Package [Petitioner]-Addendum.pdf".

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. *See* Respondent's Composite Exhibit 1, page 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner a [redacted] that resides in a private home with [redacted] *See* Respondent's Composite Exhibit 1, page 16, Exhibit 1, page 16 and *testimony of the Petitioner.* The Petitioner's primary medical diagnosis is [redacted]. *See* Respondent's Composite Exhibit 1, page 29. The Petitioner is unable to [redacted] and is dependent on [redacted] for the activities of daily living tasks. *Id.*

3. On May 15, 2023, the Petitioner submitted a prior authorization request for Kinova 0110 arm supports (Billing Code E1399) and related installation accessories to be mounted on [redacted] power wheelchair. *See* Respondent's Composite Exhibit 1, page 4. On May 22, 2023, Sunshine issued a Notice of Adverse Benefit Determination ("NABD") denying Petitioner's request for Kinova arm supports and related installation accessories to be mounted on [redacted] power wheelchair. *Id*. at pages 4-12. The NABD explained the denial of Petitioner's requested Kinova arm supports and related installation accessories to be mounted on [redacted] power wheelchair as follows, in pertinent part:

> We made our decision because:
> (Check all boxes that apply)
> ☒ 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 criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR

☒ 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 requested service is not a covered benefit.

☐ Other authority

The facts that we used to make our decision are:

Sunshine Health Policy Long Term Care Durable Medical Equipment, Supplies, Orthotics and Prosthetics, LT.UM.10 LTC (Long Term Care).

Rationale: The request for the equipment (billing code: E1399) Kinova O110 arm supports, and accessories is denied as not medically needed. There is not enough clinical information describing what physical improvements (to make better) can be anticipated (expected), and what physical deterioration (to make worse) may be prevented with the type of custom (specially made for a person) wheelchair (a device that lets a person move around) accessory that is being requested. There is not enough clinical information to confirm that the requested item will significantly improve your independence (without assistance of another person) when performing mobility related activity of daily living (basic self-care that requires you to move around). There was no detailed description of what specific functional tasks or mobility related activity of daily living you can complete independently during the trial of the requested device.

Id.

4. On June 27, 2023, the Petitioner requested a plan appeal. *Id*. at 42. On July 25, 2023, Sunshine issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial of Petitioner's request for Kinova 0110 arm supports (Billing Code E1399) and related installation accessories to be mounted on [redacted] power wheelchair. *See* Respondent's Composite Exhibit 1, at 49-52. The NPAR states the following explanation, in pertinent part:

> The reason for our decision was on appeal the request for the equipment (billing code: E1399) Kinova O110 arm supports, and accessories is denied as not medically needed. There is not enough clinical information describing what physical improvements (to make better) can be anticipated (expected), and what physical deterioration (to make worse) may be prevented with the type of custom (specially made for a person) wheelchair (a device that lets a person move around) accessory that is being requested. There is not enough clinical information to confirm that the requested item will significantly improve your independence (without assistance of another person) when performing mobility related activity of daily living (basic self-care that requires you to move around). There was no detailed description of what specific functional tasks or mobility related activity of daily living you can complete independently during the trial of the requested device. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

Id.

5. Sunshine's LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria, Policy LT.UM.10, was cited and relied upon in the NABD and the NPAR and states in-part as follows:

> **PURPOSE:**
> To establish clinical criteria on which to review requests for Durable Medical Equipment (DME), consumable supplies, Orthotics and Prosthetics (O&P) for Sunshine Health's Long Term Care (LTC) line of business. This applies for members residing in a home and community based environment. The goal of the DME, Supplies, or O&P services is to provide these services in the home to address the member's functional deficits, which may be a result of their medical conditions.

The services will assist in maintaining the member in their home and community environment, in a safe manner, to avoid the risk for nursing home placement.

. . .

Medical Equipment and Supplies Referred to in this policy as DME – Medical equipment and supplies specified in the member's plan of are, include: a) devices, controls, or appliances that enable the member to increase the ability to perform activities of daily living; b) devices, controls or appliances that enable the member to perceive, control or communicate the environment in which he or she lives; c) items necessary for life support or to address physical conditions along with ancillary supplies and equipment necessary to the proper functioning of such items; d) such other durable and non-durable medical equipment that is necessary to address member functional limitations; e) necessary medical supplies not available under the State Plan f) consumable medical supplies listed on the Florida Medicaid Fee Schedule such as adult disposable diapers and pull-ups. This service included the durable medical equipment under the state plan service as well as expanded medical equipment and supplies coverage under the ACHA contract and applicable waiver. All items shall meet applicable standards of manufacture, design and installation. The service also includes repair of such items as well as replacement parts.

. . .

B. Medical Necessity Determination

. . .

1. Durable Medical Equipment (DME), Supplies, Orthotics and Prosthetics
Sunshine Health's Utilization Management Department will use the Interqual© criteria or other criteria in the DME and O&P Criteria policy CP.MP.107 If the DME/Supplies or O&P item requested is not covered by criteria in that policy, the following criteria will be used:

- Medical Necessity Review and Continuity of Care policy FL.UM.02.01
- Agency for Healthcare Administration, Durable Medical Equipment and Medical Supplies Coverage and Limitations Handbook
- Current AHCA Medicaid contract

See Respondent's Composite Exhibit 1, pages 71, 73 and 74.

6. Sunshine's LTC (Long Term Care) Ancillary Services Criteria, Policy LT.UM.09, was cited and relied upon in the Respondent's NPAR and states in-part as follows:

B. Medical Necessity Determination

To assist in determining the medical necessity of any ancillary services, the clinical criteria established in this policy will be applied. Any decision to deny, reduce, suspend, or terminate services must be made by a Sunshine Health Medical Director as outlined in the policy Medical Necessity Review FL.UM.02.01 and Use of Clinical Criteria FL.UM.02.

Medical Director review is not required for any member/POA requested reductions, terminations, or suspensions.
Sunshine Health will respond to requests within the timelines as outlined in the policy Timeliness of UM Decisions FL UM 05.

C. Criteria for Type of Service:
Criteria for each of the benefits noted in the Policy section will be used when reviewing the medical necessity of any ancillary services. In addition, the Medical Necessity Review policy FL.UM.02.01 is considered when determining medical necessity of ancillary services. The AHCA SMMC Contract and the Florida Coverage Policies and Limitations Handbooks are used to determine benefits, any benefit limitations, and additional criteria.
The ancillary services of this policy are intended to augment and support the existing informal care and community services being provided to allow the member to remain safely in their home.

See Respondent's Composite Exhibit 2, page 5.

7. On September 1, 2023, Petitioner requested a Fair Hearing regarding the denial of the Kinova 0110 arm supports (Billing Code E1399) and related installation accessories to be mounted on [redacted] power wheelchair. On September 19, 2023, the undersigned Hearing Officer issued a notice to all parties of record scheduling the Fair Hearing to be conducted by telephone on October 31, 2023, at 10:00 a.m. EST.

8. The Petitioner testified at the Fair Hearing that the requested arm supports would increase [redacted] comfort, independence, [redacted] flexibility, and keep [redacted] physical ability from [redacted]. The Petitioner further testified that [redacted] has used the requested arm support in trial sessions and that they allowed [redacted] more independence in using [redacted] computer to study for a career in [redacted], participate in card, board, and computer games, and to make it easier

for driving [redacted] power wheelchair using the [redacted] joystick. The Petitioner testified that [redacted] current armrests are supported by rubber bands and are not as effective as the requested Kinova 0110 arm supports. Finally, the Petitioner testified that the requested Kinova 0110 arm supports for [redacted] power wheelchair will increase [redacted] quality of life. *See also* Petitioner's Exhibit 1.

9. The Petitioner's Authorized Representative, who is also [redacted] and [redacted] would help the Petitioner with the mobility in [redacted] shoulders because they promote movement in [redacted] upper extremities and help alleviate [redacted].

10. Dr. Carter testified for the Respondent that the Petitioner's request for the Kinova 0110 arm supports does not meet the following three criteria of medical necessity:

> 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.

See also Respondent's Composite Exhibit 1, page 5. Dr. Carter testified the Petitioner's [redacted] makes it difficult for [redacted] to perform tasks, which is why the Petitioner has been approved for forty (40) hours per week of Participant Direction Option ("PDO") home health service hours, including thirty-four (34) hours per week of PDO personal care services, and six (6) hours per week of PDO homemaker services. Dr. Carter acknowledged that the Petitioner has used a Kinova 0110 arm support in trials, but testified the trials and use of the Kinova arm supports does not allow the Petitioner to become independent in the performance of [redacted] Activities of Daily Living ("ADLs"), or change [redacted] need for requiring assistance for the performance of ADLs or IADLs. Dr. Carter acknowledged that the Petitioner is more able to perform leisure

activities, and the Kinova 0110 arm supports may improve [redacted] quality of life, but there are no unmet ADL needs identified in this matter and the arm supports are not medically necessary.

11. [redacted] has provided a [redacted], Letter of Medical Necessity in this matter, recommending the Petitioner obtain the Kinova 0110 Arm Supports for [redacted] power wheelchair. *See* Respondent's Composite Exhibit 1, pages 19-37. [redacted] stating that the Petitioner is unable to move [redacted] arms to overcome gravity, but with the arm supports [redacted] is able to have more use of [redacted] hands and fingers. *Id.* [redacted] further states that the Petitioner has trialed the Kinova 0110 Arm supports and through their use has been able to achieve "modified independence" which makes tasks for which is currently fully dependent to be done with minimal to moderate assistance versus independently. *Id.*

CONCLUSIONS OF LAW

12. 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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

14. 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.

15. Because Petitioner is requesting new DME, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

16. Petitioner's requests for DME are governed by the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010) ("DME Handbook"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.070. The DME Handbook provides the following, in pertinent part:

> **Purpose**
> The purpose of the DME and Medical Supply Services Program is to promote, maintain, or restore health and minimize the effects of illness, disability, or a disabling condition.
>
> **Durable Medical Equipment (DME)**
> Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).
> . . .
> **Service Criteria**
> All DME, medical supplies, and orthotics and prosthetic devices must be:
> - **Medically necessary**, and
> - Functionally appropriate for the individual recipient, and
> - Adequate for the intended medical purpose, and
> - For conventional use, and
> - For the exclusive use of the recipient.
>
> DME items requested or supplied must not duplicate or perform the same function as other DME equipment or medical supplies currently in the recipient's possession
> . . .
> **Medical Necessity**
> Medicaid reimburses for services that do not duplicate another provider's service and are determined to be medically necessary. Per 59G-1.010, F.A.C., to be medically necessary, services must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe 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; and
- 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.

. . .

DME Handbook pages 1-1, 1-2, 2-5, and 2-9.

17. Petitioner's request for a DME (custom power wheelchair) and how the Kinova 0110 arm supports impact the Petitioner's performance of [redacted] ADLs and IADLs is also governed by the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.192. The LTC Policy provides the following, in pertinent part:

1.0 Description and Program Goal

Under the Statewide Medicaid Managed Care Long-term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

. . .

1.3 Definitions

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

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

1.3.14 Medically Necessary or Medical Necessity

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

a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
b) All other LTC supportive services must meet all of the following:

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

- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

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

. . .

4.0 Coverage Information

4.1 General Criteria

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

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

4.2 Specific Criteria

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

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

. . .

4.2.2 Mixed Services

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

4.2.2.5 Medical Equipment and Supplies

In accordance with Rule 59G-4.070, F.A.C. This service includes the provision of medical equipment and supplies specified in the plan of care, including: devices, controls, or appliances that enable the enrollee to increase the ability to perform activities of daily living; devices, controls, or appliances that enable the enrollee to perceive, control, or communicate with the environment in which he or she lives; items necessary for life support or to address an enrollee's physical conditions, along with ancillary supplies and equipment necessary to the proper functioning of such items; such other durable and non-durable medical equipment not available under the State Plan that is necessary to address enrollee needs, including consumable medical supplies, such as adult diapers; and repair of such items or replacement parts.

LTC Policy pages 1-7.

18. The Florida Medicaid Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule. The Florida Medicaid Definitions Policy defines "Medically Necessary" or "Medical Necessity" as follows:

> The medical or allied care, goods, or services furnished or ordered must meet the following conditions:
>
> - Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
> - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
> - Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
> - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
> - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider
>
> The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

(Emphasis added).

19. Petitioner requested Kinova 0110 arm supports for [redacted] electric wheelchair and submitted a letter of medical necessity from [redacted] *See* supra ¶ ¶ 3 and 11. In the NABD and in the NPAR, Respondent denied Petitioner's request for the Kinova 0110 arm support and related installation accessories upon review of the Petitioner's submitted documentation. *See* supra ¶¶ 3, 4, and 11. The Respondent explained that Petitioner's request was not medically

necessary due to the absence of unmet ADL and IADL needs, and because the requested wheelchair arm supports will not provide the Petitioner with independence in the performance of any ADLs and IADLs. *See* supra ¶ 11. Specifically, Respondent determined Petitioner's request was not "individualized, specific, consistent with symptoms or diagnosis of illness or injury", was "in excess of the patient's needs", and was "primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider". *Id*. This medical necessity requirement is referenced in the Florida Medicaid DME Handbook, Florida Medicaid LTC Policy, and the Florida Medicaid Definitions Policy. *See* supra ¶ ¶ 16-18.

20. As Petitioner bears the burden of proof, Petitioner must show that Respondent's decision was incorrect. *See* supra ¶ ¶ 14-15. Thus, Petitioner must show that the Kinova 0110 arm supports and related installation accessories are medically necessary.

19. The Petitioner testified that the requested Kinova 0110 arm supports would increase [redacted] comfort, independence, [redacted] flexibility, and keep [redacted] physical ability from [redacted]. *See* supra ¶ 8. The Petitioner further testified that the Kinova 0110 arm supports will increase [redacted] quality of life and afforded [redacted] more independence in using [redacted] computer to study for a career in graphic design, participate in card, board, and computer games, and make it easier for driving [redacted] power wheelchair using the [redacted] joystick. *Id*. In [redacted] letter of medical necessity, [redacted] stated that the trial use of the Kinova 0110 arm supports allows the Petitioner to achieve "modified independence" with minimal to moderate assistance. *See* supra ¶ 11. Finally, the Petitioner's [redacted] testified would help the Petitioner with the mobility in [redacted] shoulders because they promote movement in [redacted] upper extremities and help alleviate [redacted]. *See* supra ¶ 9. However, the Petitioner, [redacted] [redacted] or [redacted] did not provide any testimony or

evidence that the requested Kinova 0110 arm supports will allow the Petitioner to independently perform [redacted] ADLs and IADLs. While it will be easier for the Petitioner to achieve "minimal" to "moderate" independence in performing [redacted] ADLs, or IADLs, [redacted] will still require the personal care and homemaker assistance services to do so. As such, the Petitioner has not proved by a preponderance of the evidence that the Kinova 0110 arm supports are not in excess of [redacted] needs, or intended to regain the functional capacity to perform ADLs and/or IADLs.

20. Moreover, the Medicaid DME Handbook, the Definitions Policy, and the LTC Policy all require that the requested Kinova 0110 arm supports allow the Petitioner to become more independent in the performance of [redacted] ADLs and IADLs, and mandate the requested DME not be for the convenience of the Petitioner or [redacted] caregiver, and that there is no equally effective and more conservative or less costly treatment is available statewide. *See* supra ¶ ¶ 16, 17, and 18. The Petitioner testified and [redacted] reported that the trial use of the Kinova 0110 arm supports afforded [redacted] more independence in [redacted] study and leisure activities, but those activities are unrelated to the performance of ADLs and IADLs, and are intended for the convenience of the Petitioner or [redacted] caregiver. *See* supra ¶ ¶ 8 and 11. In addition, the Petitioner or [redacted] Authorized Representative have provided no testimony or evidence of another electric wheelchair arm support system that is less conservative or costly as compared to the Kinova 0110 arm supports.

21. Upon consideration of the testimony provided by both parties at the Fair Hearing, documentary evidence submitted, and applicable policies, the undersigned Hearing Officer concludes that Petitioner did not prove by a preponderance of the evidence that the Kinova 0110 arm supports and associated installation accessories are medically necessary. Accordingly, the

undersigned Hearing Officer finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of the Kinova 0110 and associated installation accessories was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of DME (custom power wheelchair) is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 6th day of December, 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer
23-FH2224
2023.12.06 08:48:59
-05'00'

ALAN LEIFER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:

[redacted]

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SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com.