



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

**FILED**

Dec 28, 2023, 9:36 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2243

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH2247

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 24, 2023, at 9:00 a.m. Eastern Standard Time.

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner' Authorized Representative

For the Respondent:

Chantal Pierre  
Grievances and Appeals Coordinator  
Sunshine State Health Plan, Inc.

### **STATEMENT OF ISSUE**

The first 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.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for home accessibility adaptation service was incorrect.

### **PRELIMINARY STATEMENT**

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

Chantal Pierre, Grievances and Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine Health" or "Respondent") appeared on behalf of Respondent. The following persons attended as witnesses for Sunshine Health: Dr. John Carter ("Dr. Carter"), Long-Term Care Medical Director; Casey Narine, Utilization Management Care Coordinator; and Deborah Oellrich, Long-Term Care Supervisor.

Sandra Durden, Medical/Health Care Program Analysts for the Agency for Health Care Administration ("Agency" or "AHCA") appeared as observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a five (5)-page evidence packet, and a six (6)-page evidence packet, that appear in the Office of Fair Hearings' document management system as file titles "23-FH2243 DAR and Evidence.pdf," and "23-FH2247 Evidence.pdf," respectively. Absent an objection from the Respondent, the

undersigned admitted the five (5)-page packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”), and the six (6)-page packet as Petitioner’s Composite Exhibit 2.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty-three (163)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as file title “MFH packet [Petitioner’s name].pdf.” Absent an objection from the Petitioner, the undersigned admitted the one hundred and sixty-three (163)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

**FINDINGS OF FACT**

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

2. Petitioner is [REDACTED] [REDACTED] as of the time of this hearing. *Id.* at 39. Petitioner lives with [REDACTED] [REDACTED], [REDACTED] (“[REDACTED]”), who is [REDACTED] primary caregiver. *Id.* at 39, 49. [REDACTED] works outside the home, with various hours of work. *Id.* at 41.

3. Petitioner is diagnosed with the following: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. *Id.* at 79 – 80. In the past, Petitioner has had [REDACTED]; [REDACTED]; [REDACTED]. *Id.* at 80.

4. As provided in the Florida Department of Elder Affairs: 701B Comprehensive Assessment, dated August 3, 2023, (“701B”), which was completed with responses provided by Petitioner and [REDACTED], Petitioner’s needs for activities of daily living (“ADLs”) are as follows:

for [REDACTED], [REDACTED], [REDACTED], and [REDACTED], Petitioner needs assistance (but not total help); for [REDACTED], [REDACTED], [REDACTED] and [REDACTED], Petitioner also [REDACTED] and [REDACTED], petitioner needs no assistance. *Id.* at 77. Member requires limited assistance with [REDACTED] as [REDACTED], and [REDACTED] also [REDACTED] when [REDACTED]”. *Id.* Petitioner has assistance most of the time with [REDACTED], [REDACTED], [REDACTED] and [REDACTED]; and [REDACTED] always has assistance with [REDACTED]. *Id.* Petitioner needs supervision due to [REDACTED], [REDACTED], and requiring assistance with ADLs and IADLs. *Id.* at 77. There is no unmet need for [REDACTED] for Petitioner. *Id.*

5. As provided in the 701B, Petitioner’s needs for instrumental activities of daily living (“IADLs”) are as follows: for [REDACTED], [REDACTED], and [REDACTED], Petitioner needs total assistance (cannot do at all); for [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Petitioner needs assistance (but not total help). *Id.* at 60. Petitioner always has assistance with [REDACTED] IADLs. *Id.* at 78.

6. According to the Long Term Care Person Centered Care Plan, effective August 1, 2023, (“POC”), Petitioner is [REDACTED] [REDACTED] *Id.* at 40. Petitioner is able to [REDACTED] [REDACTED]. *Id.* As provided in the POC, Petitioner needs thirty (30) minutes of daily exercise as a goal to help with [REDACTED] symptoms, for quality of life. *Id.* at 43. Petitioner receives monthly [REDACTED] (“[REDACTED]”) services, because [REDACTED] is [REDACTED]. *Id.* at 45.

7. Petitioner requested forty (40) hours of personal care services, Petitioner's request was partially approved for seven (7) hours, but denied the remaining thirty-three (33) hours, in the Notice of Adverse Benefit Determination ("NABD"), dated August 9, 2023. The NABD explained the basis of the denial as follows:

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

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed 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 the addition of 40 hours per week of Personal Care Services is partially approved. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will approve the addition of 7 hours per week of Personal Care Services and will deny the remaining requested 33 hours per week of Personal Care Services. The updated care plan approved by Sunshine Health will include 7 hours per week of Personal Care Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

8. Petitioner requested home accessibility adaptation services, namely, a front entry wheelchair ramp. *Id.* at 14. In the Notice of Adverse Benefit Determination (“NABD”), dated August 9, 2023, Petitioner’s request was denied on the basis that the ramp was not medically necessary, in. The NABD explained the basis of the denial as follows:

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

...

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

- 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; and
- 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 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 a front entry ramp is denied as not medically needed. Home modifications must be furnished in a manner not primarily intended for the convenience of the recipient, caretaker, or provider. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria and Sunshine Health Policy Sunshine Health Policy LT.UM.12 LTC (Long Term Care) Home Accessibility Adaption Service Criteria.

Pages 13 - 14 of RCE 1.

9. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”), dated August 24, 2023, approving an additional seven (7) hours (for a total of

fourteen (14) hours) per week of personal care services, but upholding the denial of the remaining twenty-six (26) hours per week of personal care services. *Id.* at 91 – 93. The NPAR explained, as follows:

The reason for our decision was the request for 33 hours per week of Personal Care Services is partially approved. Sunshine Health will approve 7 hours per week of Personal Care Services and deny 26 hours per week of Personal Care Services as not medically needed. The updated care plan approved by Sunshine Health will include 14 hours per week of Personal Care Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Medical Director Board Certified in Internal Medicine.

Page 91 of RCE 1.

10. Petitioner also requested a plan appeal for the denial of home accessibility adaptation services for a front entry wheelchair ramp and received a Notice of Plan Appeal Resolution (“NPAR”), dated August 23, 2023, upholding the denial of the home accessibility adaptation services. *Id.* at 95 - 97. The NPAR explained, as follows:

The reason for our decision was based on medical necessity. The appeal to overturn the denial of a front entry ramp is denied for lack of medical necessity. Home modifications must be furnished in a manner not primarily intended for the convenience of the recipient, caretaker, or provider. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria and Sunshine Health Policy LT.UM.12 LTC (Long Term Care) Home Accessibility Adaption Service Criteria. This decision was made by a Medical Director who is Board Certified Physician in Internal Medicine.

Page 95 of RCE 1.

11. On September 8, 2023, Petitioner requested Fair Hearings to challenge the denial of personal care services and home accessibility adaptation services. On October 3, 2023, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearings by



had a [REDACTED] which [REDACTED]  
[REDACTED] with [REDACTED].

[REDACTED] is a [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] The patient participates in [REDACTED]  
[REDACTED]  
[REDACTED] After looking at the patient's functional ability  
today and observing how [REDACTED] movement quality and motor control worsened  
even within the period of the hour-long appointment as [REDACTED]  
[REDACTED] I do believe that the patient would be a good candidate for ramp installation  
in [REDACTED] home to improve safety and independence at home at all times [REDACTED]  
[REDACTED] being a factor in safety, or [REDACTED] risking  
[REDACTED].

...

See pages 4 and 5 of PCE 1. Subsequently, on September 27, 2023, Dr. Nonnemaker ordered  
Petitioner an at home mobility ramp and installation. See page 2 of PCE 2.

13. [REDACTED] testified that [REDACTED] [REDACTED] has [REDACTED], [REDACTED],  
including a [REDACTED]. [REDACTED] testified that [REDACTED] works  
outside the home and [REDACTED] needs Petitioner to be safe at home if [REDACTED] is to continue to work. [REDACTED]  
[REDACTED] explained that [REDACTED] is a skilled nurse, working two jobs currently, but [REDACTED] can only work  
when Petitioner's home health aide is with Petitioner, usually for four (4) hours twice a week,  
on Tuesdays and Wednesdays, from 10 a.m. until 2 p.m. [REDACTED] testified that [REDACTED] has had to  
ask their neighbors to check on Petitioner if [REDACTED] is working while no one else was with  
Petitioner, but [REDACTED] feels that such favors are wearing thin. [REDACTED] further testified that it is  
necessary for [REDACTED] to assist Petitioner with [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. As

for the wheelchair ramp requested, [REDACTED] explained that Petitioner walks [REDACTED]. [REDACTED] will only [REDACTED]. The entry into their [REDACTED] is seventeen (17") inches, with two (2) high steps leading to the house. [REDACTED] needs someone to assist [REDACTED] to navigate the steps with [REDACTED]. [REDACTED] testified that [REDACTED] already has done some home adaptations for Petitioner's safety, including [REDACTED]; [REDACTED] got Petitioner a [REDACTED]; and [REDACTED] has elevated [REDACTED].

14. Dr. Carter is a Long-Term Care Medical Director for Sunshine Health. Dr. Carter's testimony established the following facts: Petitioner is a member of the Sunshine Health LTC (Long Term Care) Ancillary Service Criteria Policy and Procedure, FL.LT.UM.09.00 ("LTC Ancillary Service Criteria Policy"). Under the Sunshine Health Policy, personal care and homemaker services are ancillary services that are meant to supplement a member's household or family member support. As described under the LTC Ancillary Service Criteria Policy, the goal is to provide ancillary services is to address a member's [REDACTED] and functional deficits. Other elements to be considered are member's level of functioning, living situation considerations, informal supports, and family in area or nearby. Dr. Carter explained that the decision to uphold the denial of additional personal care services was based on Petitioner's health condition, and the 701B assessment. Dr. Carter testified that, according to the 701B assessment, Petitioner requires partial assistance for [REDACTED] ADLs, except [REDACTED], for which [REDACTED].

needs no assistance. Dr. Carter acknowledged that Petitioner needs total assistance for [REDACTED] IADLs of [REDACTED], [REDACTED], and [REDACTED], and some assistance [REDACTED] and [REDACTED]. Dr. Carter contends that the fourteen (14) hours of personal care that Petitioner currently receives are adequate to meet Petitioner's medical needs and to keep Petitioner in a safe environment in [REDACTED] own home, to avoid nursing home placement, under the LTC Ancillary Service Criteria Policy. Dr. Carter also testified about the issue home accessibility adaptation services for Petitioner, namely, whether a wheelchair ramp installed at the entry way of Petitioner's home was medically necessary. Dr. Carter explained that based on the 701B assessment taken on August 3, 2023, with Petitioner and [REDACTED] [REDACTED] present and answering questions, it is indicated that Petitioner is able to climb three (3) or four (4) steps with the assistance of a [REDACTED], and that the house was free and clear of obstacles that would make it unsafe for Petitioner. Dr. Carter further explained that since the Petitioner is able to navigate the steps leading to the home with a [REDACTED], at this time a wheelchair ramp would be considered a convenience, under the criteria of the LTC Ancillary Service Criteria Policy.

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

**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 [REDACTED] 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.

...

**DESCRIPTION OF BENEFITS:**

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

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

...

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

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

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

**1. Determinants for Services:**

When considering the level of support the member requires and which of the ancillary services may support the member's [REDACTED], 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
  - o Member has ADLs requiring at least minimal assistance
  - o Member ambulates with assistance of a person or device
  - o Member transfers require at least minimum assistance
  
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
  - o Member has ADLs requiring total assistance
  - o Member is non-ambulatory
  - o Member transfers require one (1) to two (2) person assist
  - o Member's treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

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

c) Informal Supports

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

d) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a [REDACTED] 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 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

e) Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

...

The criteria for each ancillary service is described below:

...

#### **4. Home Accessibility Adaptation Services:**

The provision of physical adaptations to the home to ensure the health, safety, and welfare of the member, or to enable the member to function with greater independence in the home, without which a member would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems to accommodate the medical equipment and supplies necessary for the welfare of the member. All adaptations must be compliant with applicable state and local building codes.

Covered Home Accessibility Adaptions could include, but are not limited to the following for accommodation of medical equipment and supplies, which are only necessary for the welfare of the member:

- The installation of ramps and/or grab bars
- Widening doorways
- Modification of bathroom facilities
- Installation of specialized equipment and/or plumbing systems

#### **Approval Criteria**

Physical adaptations to the home must be based on each of the three (3) below criteria:

- Adaptations to the home must be necessary to ensure the health, welfare and safety of the member
- Adaptation to the home will enable the member to function with greater independence in the home
- Without the adaptation, the member would be institutionalized.

...

#### **5. Homemaker Services**

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

Covered Homemaker service may include:

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

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

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

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

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

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

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

- Getting food to the table

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

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

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

...

## **6. Personal Care Services**

In accordance with Rule 59G-4.215, F.A.C., for member under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the member. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years. A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member. Personal care services include but may not be limited to the following:

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

e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

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

Covered Personal Care services may include:

a) Bathing

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

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

b) Dressing and Grooming

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

- Member's ability to choose their own clothes, put them on, and put on socks and shoes
- Ability to put clothes, socks and shoes on if someone lays out the clothes
- Ability to button, zipper, tie, or buckle clothes or shoes
- Ability to successfully use assistive devices in dressing, such as reachers, sock pullers, or shoehorns
- Ability to dress self in the morning or evening to get ready for bed
- Grooming includes assessment of member's ability to:
  - Comb or brush hair
  - Shave
  - Complete oral hygiene, including brushing teeth, remove dentures/partials, clean dentures/partials, and replace dentures/partials
  - Trim and clean fingernails and toenails

c) Eating and Feeding Considerations

Eating/Feeding is the process of a member getting oral nourishment from a receptacle (dish, plate, cup, glass, bottle, etc.) into their body after it is cooked or prepared for

eating. (This does not include tube feeding as that is considered a skilled task.) Includes an assessment of the member's ability to:

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

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

#### d) Toileting Considerations

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

#### e) Transferring Considerations

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

- Ability to use any mechanical devices such as a [REDACTED], 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

...

Criteria for Consideration for Personal Care services include but are not limited to:

1. Location of service delivery e.g., home vs. facility
2. Services provided overnight when the following conditions apply:
  - a. Member requires frequent repositioning due to wounds
  - b. Severe incontinence requiring multiple overnight changes and cleaning
3. The service unnecessarily duplicates another provider's service

Pages 128 – 135 of RCE 1. The Personal Care Service Determination Tables set forth the amount of support time needed for activities of daily living. *Id.* at 144 to 146. The time is calculated in minutes, in part, as follows:

Bathing: minimal supervision up to 15 minutes per day; moderate support up to 30 minutes per day

Dressing and Grooming: minimum supervision up to 10 minutes per task; moderate supervision up to 15 minutes per task

Eating and feeding: needs no assistance 0 minutes per meal

Toileting: minimum standby assistance/supervision up to 5 minutes per task

Transferring: minimum supervision/standby up to 10 minutes per task; moderate assistance up to 15 minutes per task

Mobility: minimum supervision/standby up to 10 minutes per task; moderate assistance up to 15 minutes per task.

*Id.* In the Service Authorization Summary, dated August 9, 2023, Respondent wrote, in part, that “[based on the assessment member needs limited hands on assist with ADLs and has access to informal supports daily as member resides with primary caregiver...[a]s per LT.UM.09, Recommended PC hours = 7.13 based on member’s functional assessment alone. *Id.* at 102.

16. In making its decision for the wheelchair ramp in this case, Respondent also relied upon the Sunshine Health LTC (Long Term Care) Home Accessibility Adaptation Service Criteria, FL.LT.UM.12.00, last Reviewed/Revised Date 3/2021, (“LTC Home Accessibility Adaptation Service Criteria Policy”), which states, in pertinent part, as follows:

**F. Criteria for Structural Alterations**

...

**Ramps**

**Approval Criteria**

- a. Member is non-ambulatory and dependent on wheel chair (manual or power)
- b. Dependent on use of [REDACTED] and unable to use step

Page 160 of RCE 1.

### **CONCLUSIONS OF LAW**

17. 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).

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

19. 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.

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

21. 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

...

### **4.2.1.7 Home Accessibility Adaptation**

The provision of physical adaptations to the home to ensure the health, safety, and welfare of the enrollee, or to enable the enrollee to function with greater independence in the home, without which an enrollee would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electric and plumbing systems to accommodate the medical equipment and supplies necessary for the welfare of the enrollee. All adaptations must be compliant with applicable state and local building codes.

...

### **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.

...

### **4.2.2.6 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.

22. 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.

23. The Florida Medicaid 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.

### **A. Personal Care Services**

24. In this case, Petitioner requested forty (40) hours each week of personal care services. See supra ¶ 7. Respondent approved fourteen (14) of the forty (40) requested hours per week. See supra ¶ 9. At issue is the denial of the remaining twenty-six (26) hours per week of personal care services, which denial is based on medical necessity. See supra ¶ 7, 9. Respondent's NABD and NPAR did not specify which of the five medical necessity criteria are not met. See supra ¶ 7, 9. However, as established by the evidence and testimony, Petitioner's request for additional personal services were denied as "in excess of" Petitioner's needs.

25. 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* ¶ 21. As provided in the LTC Policy, personal care is to provide “assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” *See supra* ¶ 21.

26. The evidence presented in this case reflects that Respondent’s denial of personal care services is warranted under the circumstances of this case. Specifically, in regards to ■ ADLs, for ■, ■, ■, and ■, Petitioner needs assistance (but not total help), and for these ■ also ■ petitioner requires limited assistance with ■ as ■, and ■ also ■ when ■ feels more sturdy; ■, Petitioner needs no assistance. *See supra* ¶ 4. Petitioner has assistance most of the time with ■, ■, ■ and ■; and ■ always has assistance with ■. *See supra* ¶ 4.

27. Regarding ■ IADLs, Petitioner’s needs total assistance for ■, ■, ■, and ■; Petitioner needs assistance, but not total help for ■, ■, ■, ■, and ■: Petitioner always has assistance with ■ IADLs. *See supra* ¶ 5.

28. 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* ¶ 21. With regard to living arrangements, Petitioner resides in the home with ■, who is ■ primary caregiver. *See supra* ¶ 2, 13. Petitioner’s ■ works

part-time during the week as a skilled nurse caregiver, when Petitioner's home health aide is with Petitioner (usually from 10:00 a.m. to 2:00 p.m. on Tuesdays and Thursdays). See supra ¶ 6.

6. Petitioner needs supervision due to [REDACTED] [REDACTED] from [REDACTED]. See supra ¶ 4.

29. As Petitioner bears the burden of proof, Petitioner must show that the Respondent's denial of personal care services was incorrect. Here, the Petitioner receives a total of fourteen (14) hours per week of personal care services, and [REDACTED] monthly services services. See supra ¶ 6, 9. Petitioner did not present testimony or documentary evidence on the amount of time it takes for Petitioner to complete [REDACTED] ADLs and IADLs, but Respondent presented evidence on the amount of time it should take for Petitioner to complete [REDACTED] tasks based on [REDACTED] functional assessment, and [REDACTED] access to informal supports (i.e., the family [REDACTED] lives with). See supra ¶ 15. Dr. Carter also provided credible and persuasive testimony that the approved level of services is adequate to meet Petitioner's functional needs as stated in the 701B, *supra* 14, which was completed with responses provided by Petitioner and [REDACTED]. See supra ¶ 4.

30. The Definitions Policy requires that personal care services must . . . [b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." See supra ¶ 23. The NPAR explains that the addition of twenty-six (26) personal care services per week are "not medically needed." See supra ¶ 9. Considering the LTC Policy's definitions for natural supports and personal care services, supra ¶ 18, Petitioner has not shown that [REDACTED] aforementioned needs, supra ¶ 2 – 4, and 9, are unmet by the fourteen (14) hours per week of personal care services. Given that Petitioner has not established that the additional personal care services are warranted in this

matter, the twenty-six (26) additional hours per week of personal care services at issue are “in excess of [Petitioner’s] needs.” See supra ¶ 23.

31. Further, although Petitioner’s provider recommended a total of thirty (30) hours of home care services for Petitioner, *supra* ¶ 12, the provider did not specify which type of LTC service, or mix of LTC services, were recommended. “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 supra ¶ 23.

32. Based on the foregoing, the record does not show that additional personal care services, are “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. Accordingly, the record shows that the personal care services at issue are not medically necessary.

33. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proven by a preponderance of the evidence that Respondent’s denial of Petitioners’ personal care services is incorrect.

#### **B. Home Accessibility Adaptation**

34. Petitioner requested that a wheelchair ramp at the front entry way to ■ home be provided as a home accessibility adaptation service. See supra ¶ 8. In the NPAR, dated August 23, 2023, Respondent denied Petitioner’s request on the basis that it was not medically necessary because “[h]ome modifications must be furnished in a manner not primarily

intended for the convenience of the recipient, the recipient's caretaker, or the provider. See supra ¶ 10.

35. As provided in the LTC Policy, and LTC Ancillary Service Criteria Policy, home accessibility adaptation services is the "provision of physical adaptations to the home to ensure the health, safety, and welfare of the member, or to enable the member to function with greater independence in the home, without which a member would require institutionalization." See supra ¶ 15, 21. Petitioner request for a wheelchair ramp is related to the ADL of mobility. Pursuant to LTC Ancillary Service Criteria Policy, 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; and muscle weakness, unstable gait or unstable balance. See supra ¶ 15. In regards to Petitioner's ADL of [REDACTED], Petitioner uses [REDACTED], and there is no unmet need for [REDACTED] for Petitioner. See supra ¶ 4.

36. Petitioner bears the burden of proof to show that it is medically necessary for Petitioner to receive the wheelchair ramp as a home accessibility adaptation service. At the Fair Hearing, Dr. Carter provided credible and persuasive testimony that based on the 701B and the LTC Ancillary Service Criteria Policy, a wheelchair ramp installation at Petitioner's home front entry does not meet the medical necessity criteria. See supra ¶ 14. In this case, Petitioner lives with [REDACTED], and [REDACTED] and [REDACTED] uses [REDACTED] for [REDACTED]. See supra ¶ 2, 4. Here, evidence was shown that Petitioner is still able [REDACTED], and sometimes a [REDACTED]

█. See supra 4, 13, 14. Further, the approval criteria for a ramp includes that a member be non-ambulatory and dependent on a wheel chair (manual or power); or that a member is dependent on use of walker and unable to use step. See supra ¶ 16. In this case, evidence was shown and testimony was given that Petitioner is still ambulatory and not dependent on a wheelchair, and █ still █ and is able to use the steps leading to the front entry of █ home. See supra 4, 13, 14.

37. Further, Petitioner's provider also ordered a wheelchair ramp to be installed at Petitioner's home. See supra ¶ 12. However, "[t]█ fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service." See supra ¶ 20.

38. Based on the foregoing, the record does not show that home accessibility adaptation services requested, namely, a wheelchair ramp at Petitioner's home entry, are "furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." See supra ¶ 23. Accordingly, the record shows that the home accessibility adaptation services at issue, namely, a wheelchair ramp, is not medically necessary.

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

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

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

Respondent's denial of home accessibility adaptation services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of home accessibility adaptation services is **DENIED**.

**DONE** and **ORDERED** this 28th day of December, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki  
23-FH2243  
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**DEBBIE WINICKI, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**Copies Furnished To:**

[REDACTED]

**Sunshine State Health Plan, Inc.**  
**SunshineHealth\_MFH@centene.com**

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