



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

**FILED**

Jul 03, 2024, 1:15 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0749

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 26, 2024, at 10:04 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantal Pierre  
Clinical Appeals Coordinator  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's home health services (personal care) was correct.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. [REDACTED] (" [REDACTED]"), Petitioner's Authorized Representative and Manager for [REDACTED], appeared for Fair Hearing to provide

testimony on behalf of Petitioner. [REDACTED] (“[REDACTED]”), Petitioner’s [REDACTED], appeared for Fair Hearing as a witness for Petitioner. [REDACTED], Supervisor of Authorization Department, appeared for Fair Hearing as a witness for Petitioner, but did not testify.

Chantal Pierre ("Ms. Pierre"), Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared for Fair Hearing on behalf of Respondent. Andrew Metinko, M.D. ("Dr. Metinko"), Medical Director for Sunshine, appeared for Fair Hearing as a witness for Respondent. Laura Menendez, Case Manager for Sunshine, appeared for Fair Hearing as a witness for Respondent. Nadine Macko, Nurse Supervisor for Sunshine, appeared for Fair Hearing as a witness for Respondent.

The following individuals appeared for Fair Hearing as observers: Elyssa Luke, Counsel for Florida Department of Health; Aldria White-Futrell, Compliance Officer for Florida Department of Health; and Lee Ann Williams, Medical Health Care Program Analyst and Fair Hearing Liaison 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 one hundred and fifty-six (156)-page evidence packet. The one hundred and fifty-six (156)-page evidence packet appears in the Office of Fair Hearings' document management system as file titles "24-FH0749Receid Mail DAR,Supporting Document 1.pdf<sup>1</sup>" and "24-FH0749 Received Mail DAR, Supporting Documents 2.pdf<sup>2</sup>." Absent an objection from the Respondent, the undersigned admitted the one hundred and fifty-six (156)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

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<sup>1</sup> This file contains pages 1-75 of PCE 1.

<sup>2</sup> This file contains pages 76-156 of PCE 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-four (124)-page evidence packet. The one hundred and twenty-four (124)-page packet appears in the Office of Fair Hearings' document management system as file titles "MFH packet [Petitioner].pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred and twenty-four (124)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Children's Medical Services ("CMS") Managed Medical Assistance ("MMA") program. See RCE 1 at page 2. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

2. Petitioner [REDACTED]. *Id.* at 14, 19. [REDACTED]  
[REDACTED] *Id.* at 10, 31. Petitioner's medical history includes [REDACTED]  
[REDACTED]  
[REDACTED] *Id.* at 18-19. Petitioner's functional limitations include [REDACTED], [REDACTED], and [REDACTED]. *Id.* Petitioner requires constant supervision/constant assistance as a safety measure. *Id.* Petitioner receives applied behavior analysis ("ABA") therapy, occupational therapy ("OT") twice per week and speech therapy ("ST") three times per week. *Id.* at 36-73.

3. Petitioner is prescribed [REDACTED]. *Id.* at 19, 78. Petitioner requires a [REDACTED]  
[REDACTED]. *Id.* According to the Physician Visit Documentation Form dated December 5, 2023 ("Physician Visit Form"), Petitioner's physician [REDACTED] [REDACTED]

[REDACTED]) stated “[p]atient needs assistance with [REDACTED]  
[REDACTED] *Id.* at 22.

4. As provided in the Behavior Analysis Assessment (“Behavior Analysis Assessment”) submitted by Behavior and Therapy Consultant Inc., dated April 1, 2023, the board certified behavior analyst (“BCBA”) reported the following:

COMMUNICATION / ACADEMIC SKILLS

[Petitioner] is [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

...

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

See RCE 1 at page 50 and PCE 1 at page 87[sic].

5. As provided in the OT re-evaluation dated September 19, 2023, the occupational therapist reported the following:

[Petitioner] is an [REDACTED]  
[REDACTED]  
[REDACTED].

[Redacted text block]

[Redacted text block]

See RCE 1 at 36-37.

6. Petitioner requested recertification of personal care services specifically for 8 hours per day, 5 days per week. *Id.* at 18-21. In a Notice of Adverse Determination (“NABD”), dated January 15, 2024, Respondent terminated Petitioner’s services. *Id.* at 4-8. The NABD explained the basis for the termination 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 59G-1.010)
- ...
- ✓ Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient’s needs.

The facts that we used to make our decision are: Sunshine Health Policy and Procedure on Review for Personal Care Services Requests, FL.UM.25.00 and Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was also made with regards to (EPSDT) Early and Periodic Screening, Diagnostic and Treatment Services.

Rationale: The request to approve a home health aide for your child is denied. This is a trained health care worker to assist a person in the home. Denied due to lack of medical need. The notes sent with this request do not show the medical need for a home health aide. We did not get any reason as to why the parent/guardian is unable to give care. We did not receive a parent/guardian work schedule. This form is required by Florida Medicaid.

*Id.* at 4-5.

7. [REDACTED]'s Parent or Legal Guardian Medical Limitations ("Parent Medical Limitations") dated [REDACTED], states the following:

Patient [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

See PCE 1 at page 145.

8. On February 7, 2024, Petitioner requested a plan appeal for the termination of personal care services. See RCE 1 at 10-15. In a Notice of Plan Appeal Resolution ("NPAR") dated February 7, 2024, Respondent upheld their decision. *Id.* at 96-98. The NPAR explained as follows:

The facts that we used to make our decision are: the previous denial to authorize a home health aide for your child is upheld. Your child appears to need adult supervision/childcare/babysitting services. Adult supervision does not require a home health aide. Please note that previous authorizations for home health aide services were approved without medical necessity review. Your child is not incontinent. There is no note that they are non-verbal. We did not receive any explanation as to why both parents are unable to provide care. We did not receive a parent/guardian work/school form and/or medical limitations form for both parents. This paperwork is required by Florida Medicaid. The reasons for this decision are based on a set of standards. This included SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Requests FL.UM.25; Personal Care



- b. Dr. Julie Shamma, a medical director for Sunshine, initially reviewed Petitioner’s recertification request for medical necessity but found no justification for home care services due to Petitioner’s functional limitations and no parent work schedules were provided. *See ¶ 6.*
- c. On appeal, Dr. Maria Samerson, a medical director for Sunshine, upheld the termination finding that no work schedule was provided by Petitioner’s [REDACTED], no documentation was provided that Petitioner resides in a single parent household, no documentation indicated that the home aide must attend school with Petitioner, and Petitioner was not nonverbal or incontinent. *See ¶ 8.*
- d. The ST re-evaluation dated September 6, 2023, indicates Petitioner’s strengths include [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] *See RCE 1 at 44-47.*
- e. The OT re-evaluation dated September 19, 2023, indicates Petitioner lives with both parents. *See ¶ 5.*
- f. Reviews for personal care services require a work schedule provided from each parent who lives in the home. *See ¶ 14.*
- g. In Dr. Metinko’s medical opinion, Petitioner appears to have [REDACTED]  
[REDACTED] based on [REDACTED] functionality described in [REDACTED] therapists’ notes, and is not [REDACTED]. Dr. Metinko argued that

Petitioner's functional limitations do not rise to the level of requiring home care services.

12. [REDACTED] is the Manager at [REDACTED]. [REDACTED] testified to the following:

a. [REDACTED] submitted a medical necessity prescription for Petitioner to receive home health services. See ¶ 3.

b. [REDACTED] argued that Petitioner needs [REDACTED]  
[REDACTED]  
[REDACTED] See ¶ 2-3.

c. [REDACTED] asserted that Petitioner is not yet potty-trained. See RCE 1 at 13.

d. [REDACTED] argued that Petitioner's [REDACTED] works but has to make changes to [REDACTED] schedule or request less hours to assist with Petitioner's care.

e. [REDACTED] argued that [REDACTED] completes periodic reviews of Petitioner's needs and hours provided, but has no record that Petitioner's [REDACTED] was ever present in Petitioner's life or in the home.

13. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following:

a. Petitioner is homeschooled. *Id.* at 35.

b. [REDACTED] argued that during the day Petitioner [REDACTED]  
[REDACTED]  
[REDACTED]. *Id.* at 13.

c. [REDACTED] asserted that [REDACTED] works part time.

- d. [REDACTED] argued that Petitioner's [REDACTED] does not reside in the home, and that [REDACTED] and Petitioner's [REDACTED] are in the [REDACTED] [REDACTED].
- e. [REDACTED] argued that at the time Petitioner's [REDACTED] resided in the home, [REDACTED] worked from 9 a.m. to 7 or 8 p.m. and did not help with Petitioner's care.

14. The Sunshine's Review for Personal Care Services Requests (June 2015) ("FL.UM.25.00") provides as follows in regards personal care services:

**PURPOSE:**

To establish clinical criteria on which to review requests for Personal Care Services to provide medically necessary assistance with activities of daily living (ADL) and age-appropriate instrumental activities of daily living (IADL) that enable a member to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability. This service will assist in maintaining the member in their home and community environment, in a safe manner.

...

**DEFINITIONS:**

**Personal Care Services** are services that assist a member with ADLs or IADLs. These services can be provided to members up to the age of 21. Personal care service assistance can be in the form of hands-on assistance (actually performing the task for the member) or cuing along, with supervision, to ensure the member performs the personal care task properly. The personal care services must be prescribed by a treating physician, provided by a home health aide or independent personal care provider, and supervised by a registered nurse if provided through a home health agency, or supervised by the parent or legal guardian if provided by a non-home health agency, or supervised by the member, if the services are provided by a non-home health agency and the member is a legal adult between the ages of 18 up to 21 with no legal guardian.

...

**PROCEDURE:**

**Personal Care Services Criteria:**

Personal care services are covered for members who are under the age of 21. In order to be considered for approval, the member's treating physician must order the service. The member must meet all of the following criteria:

- Member must have one of the functional impairments noted in the "Level of Functional Impairment" section below.
- Member has a documented medical condition or disability that substantially limits the member's ability to perform their Activities of Daily

Living (ADL) and Instrumental Activities of Daily Living (IADL) or has a documented cognitive impairment such as Autism which prevents him/her from knowing when or how to carry out the personal care task.

- Member has a documented functional limitation and evidence is documented
- Member requires more individual and continuous care than can be provided through a home health aide visit
- Member does not have a parent or legal guardian able to provide ADL or IADL care
- Member would normally perform the age-appropriate personal care task without the medical condition or disability, and his/her parent or legal guardian is not able to provide ADL or IADL care

**Limitations and Exclusions:**

...

- Personal care services can be covered outside the member's residence if the services are unavailable through other public or private resources, including schools (with documentation of such) and the services are medically necessary while the member is outside his/her home.
- Personal care services can be provided to a member whose parent or legal guardian is not able to provide ADL or IADL care. Supporting documentation must be provided to substantiate a parent or legal guardian's inability to participate in the care of the member.
- Personal care services can be authorized to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Where needed, the home health service provider must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient. The home health services provider must document the methods used to train a parent or legal guardian in the medical record.
- Personal care services do not include:
  - Social services
  - Transportation services (except when necessary to protect the health and safety of the recipient and no other transportation service is available or when provided as an IADL for recipients under the age of 21 years)
  - Escort services
  - Care, grooming, or feeding of pets and animals
  - Yard work, gardening, or home maintenance work
  - Day care or after school care
  - Assistance with homework
  - Companion sitting or leisure activities
  - Housekeeping (except light housekeeping), homemaker, and chore services, including any shopping except grocery shopping when provided as an IADL for recipients under the age of 21 years
  - Respite care

- Services which can be effectively and efficiently obtained outside the recipient's place of residence without any medical contraindications
- Baby-sitting

**Level of Functional Impairment:**

The information below must be provided by the treating provider to determine the level of functional impairment:

- Minimal functional impairment as evidenced by one (1) of the following indicators:
  - ADLs requiring at least minimum assistance
  - Ambulates with assist of person/device
  - Transfers requiring at least minimum assistance
- Moderate functional impairment as evidenced by two (2) the following indicators:
  - ADLs requiring at least minimum assistance
  - Ambulates with assist of person/device
  - Transfers requiring at least minimum assistance
- Maximum functional impairment as evidenced by all of the following indicators:
  - ADLs requiring total assistance
  - Non-ambulatory
  - Transfers requiring one (1) to two (2) persons assist
- Maximum and persistent functional impairment without available parent or legal guardian support as evidenced by all of the following indicators:
  - ADLs requiring total assistance
  - Non-ambulatory
  - Transfers requiring one (1) to two (2) persons assist
  - Treating physician certified that all the above impairments are present

...

**Information Required for Review**

The treating provider must submit to Sunshine Health's utilization management department the following information when initially requesting personal care services:

Plan of Care

- Plan of Care (POC) and/or MD order.

Medical condition, disability, cognitive, or functional limitation

- Documentation of the member's current medical condition, disability, cognitive limitation or functional limitation and how this is substantially limiting the member's ability to perform specific Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs)
  - ADLs include: eating (oral feedings and fluid intake), bathing, dressing, toileting, transferring, and maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product while the member is unable to control his/her bowel or bladder).

- IADLs include: personal hygiene, light housekeeping, laundry, meal preparation, transportation, grocery shopping, using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments), medication management, and money management.
- Service Need
  - Documented need for services that cannot be provided by a home health aide, including information on the reason that the member requires more individual and continuous care than can be provided through a home health aide visit.

#### Support for ADLs and IADLs

- Description of parent or legal guardian ability to support member's ADLs and IADLs, including:
  - Information on the level of ADL and IADL support that the parent or legal guardian is able to safely provide.
  - If training needs are needed to enable the parent or legal guardian to safely provide ADL or IADL support, description of the level of training needed.

#### Living situation consideration for members age 18 up to 21

- Provide information on the member's housing situation:
  - 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).

#### Age-appropriate personal care tasks

- Provide information related to the age appropriateness of the member being able to perform the specific ADL or IADL task, such as grocery shopping, preparing meals, money management medication administration, laundry, or light housekeeping.

The length of the initial authorization can be for up to 180 days.

#### **Redetermination**

Prior to the expiration of the initial authorization period, the requesting provider must submit to Sunshine Health's utilization management department information on the member's current status in order for Sunshine Health to complete a review for a subsequent approval.

The treating physician must submit documentation that includes an assessment of all changes in the recipient's condition including performance of activities of daily living and instrumental activities of daily living since the initial or last utilization review.

See RCE 1 at 119-122.

## 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 (“Fla. Admin. Code R.”).

17. Because Respondent terminated a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

18. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“Personal Care Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.215, provides guidance concerning the personal care services available under Florida Medicaid. The Personal Care Policy provides the following with respect to personal care services:

### **1.1 Description**

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

### **1.1.2 Statewide Medicaid Managed Care Plans**

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

## **4.0 Coverage Information**

### **4.1 General Criteria**

Florida Medicaid reimburses for services that meet all of the following:

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

### **4.2 Specific Criteria**

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

### **5.1 General Non-Covered Criteria**

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

### **5.2 Specific Non-Covered Criteria**

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel

- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
  - Hospitals
  - Intermediate care facility for individuals with intellectual disabilities
  - Nursing facilities
  - Prescribed pediatric extended care centers
  - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

**7.0 Authorization**

**7.1 General Criteria**

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid’s General Policies on authorization requirements.

...

Personal Care Task	General Time Allowances
<b>Bathing</b>	
<b>Full-body Bath:</b> Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
<b>Partial Bath:</b> A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath

<b>Dressing</b>	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
<b>Grooming and Skin Care</b>	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
<b>Positioning</b>	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
<b>Transfers</b>	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
<b>Toileting and Maintaining Continence</b>	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
<b>Eating</b>	

Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
<b>Delegated Medical Monitoring and Activities</b>	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy at pages 3 – 8, and 10.

19. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. *See* 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

20. Petitioner is under age 21, and therefore EPSDT applies to this request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

21. 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.

*See* RCE 1 at 186.

22. In the instant case, Petitioner requested recertification of personal care services. *See* ¶ 3, 6. In the NABD, dated January 15, 2024, Respondent terminated Petitioner’s services. *See* ¶ 6. Respondent cited the lack of medical necessity as the basis for their decision, specifically that the services must be “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.” *See* ¶ 6, 21. In the NPAR dated February 7, 2024, Respondent upheld its decision. *See* ¶ 8. Respondent has the burden of

proof to show by a preponderance of evidence that the Respondent’s determination was correct. See ¶ 17.

23. The record indicates that personal care services are for hands-on support with ADLs. See ¶ 14, 18. Sunshine’s FL.UM.25.00 further provides that personal care services “can be in the form of hands-on assistance (actually performing the task for the member) or cuing along, with supervision, to ensure the member performs the personal care task properly.” See ¶ 14. The Definitions Policy requires that the 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 ¶ 21.

24. As demonstrated in the record, Petitioner’s medical history includes [REDACTED]

[REDACTED] See ¶ 2. Petitioner’s functional limitations include [REDACTED]  
[REDACTED], and [REDACTED]. See ¶ 2.

According to Dr. Metinko’s testimony, the termination of services resulted from a lack of documentation of the scope of Petitioner’s functional limitations and the availability of [REDACTED] parent(s) to provide [REDACTED] ADL and IADL care. See ¶ 11. Petitioner receives ABA therapy, OT twice per week, and ST three times per week. See ¶ 2. The ST re-evaluation dated September 6, 2023, did not indicate that Petitioner is non-verbal. See ¶ 11. During the re-evaluation, [REDACTED]’s concerns included Petitioner’s reading comprehension skills, ability to write complex sentences and paragraphs, and occasional use of incorrect grammar. See ¶ 11. The OT re-evaluation dated September 19, 2023, indicated that Petitioner was independent with at least half of the observed ADLs and requires verbal cues or reminders for IADLs. See ¶ 5. [REDACTED] argued that Petitioner

needs [REDACTED]  
[REDACTED] See ¶ 12. The record shows Petitioner requires constant supervision/constant assistance as a safety measure. See ¶ 2-2. Dr. Metinko contended that Petitioner’s functional limitations do not rise to the level of requiring home care services based on [REDACTED] functionality described in [REDACTED] therapists’ notes, and is not [REDACTED]. See ¶ 11. Although personal care services can be in the form of cuing along with supervision, the evidence does not suggest a substantial limitation of Petitioner’s ability to perform specific ADLs and IADLs. See ¶ 2-5, 14, 18. The evidence shows varying degrees of Petitioner’s functional limitations with ADLs and IADLs; nonetheless, the greater weight of the evidence does not demonstrate that the member requires more individual and continuous care than can be provided through a home health aide visit. See ¶ 2-5, 12-14.

25. Respondent’s FL.UM.25.00 maintains that “[p]ersonal care services can be provided to a member whose parent or legal guardian is not able to provide ADL or IADL care. Supporting documentation must be provided to substantiate a parent or legal guardian’s inability to participate in the care of the member.” See ¶ 14. [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]. See ¶ 7. There is no work schedule form for [REDACTED] in the record, however, Petitioner’s provider described [REDACTED] as self-employed and works Monday through Friday 2:30 p.m. to 9:30 p.m. See ¶ 9. According to [REDACTED]’s and [REDACTED]’s testimonies, [REDACTED] has had to make changes to [REDACTED] work schedule or request less hours to assist with Petitioner’s care such as [REDACTED]

[REDACTED]. See ¶ 12-13. The evidence of [REDACTED] [REDACTED]'s employment is largely ambiguous and unsubstantiated by any other records. See ¶ 9, 13. [REDACTED] [REDACTED]. See ¶ 13. [REDACTED] and [REDACTED] both testified that Petitioner's [REDACTED] was not involved in any of Petitioner's care. See ¶ 12-13. The Behavior Analysis Assessment dated April 1, 2023, indicates Petitioner lives with both parents in the home but mentions that they were in the process of divorce one month prior to the assessment. See RCE 1 at 48-49. The OT re-evaluation dated September 19, 2023, indicates Petitioner lives with both parents. See ¶ 5. The evidence strongly suggests that Petitioner's [REDACTED] resided in the home during some or all of the prior authorization period. See ¶ 9. No work schedule form by the [REDACTED] is available in the record and that testified by [REDACTED] is unsubstantiated by any other records. See ¶ 9. All in all, the record does not contain evidence that both parents are not willing and capable of providing the care to meet Petitioner's needs. See ¶ 7, 9. Because supporting documentation to substantiate a parent or legal guardian's inability to participate in the member's care is required upon review for personal care services, continuation of Petitioner's services fails for lack of this documentation. See ¶ 14, 18.


26. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent proved by a preponderance of the evidence that the continuation of home health (personal care) services does not meet the medical necessity criteria. Looking at all the evidence relevant to the particular needs of this Petitioner, the Respondent demonstrated that the continuation of home health (personal care) services is not necessary to correct or ameliorate a defect or a physical and mental illness or condition.

Accordingly, the undersigned finds that Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's home health (personal care) services was correct.

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

Respondent's termination of home health services (personal care) is **AFFIRMED**.  
Petitioner's appeal based on Respondent's termination of home health services (personal care) is **DENIED**.

**DONE AND ORDERED** this 3rd day of July, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche  
24-FH0749  
2024.07.03 09:22:14  
-04'00'

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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**

**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:**



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**CMSPlanContract@flhealth.gov**

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