



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

FILED

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OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0840

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 May 7, 2024, at 10:10 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette
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 [REDACTED], appeared for Fair Hearing to provide testimony on behalf

of Petitioner. [REDACTED] (“[REDACTED]”), friend of [REDACTED], appeared for Fair Hearing as a witness for Petitioner.

Kimberly Bouchette ("Ms. Bouchette"), Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared for Fair Hearing on behalf of Respondent. Julie Shamma, M.D. ("Dr. Shamma"), Medical Director for Sunshine, appeared for Fair Hearing as a witness for Respondent. Dawn Moss-Solomon, Supervisor of Case Management for Sunshine, appeared for Fair Hearing as a witness for Respondent. Raquel Smith, Manager of Case Management for Sunshine, appeared for Fair Hearing as a witness for Respondent. Andrea Aguirre, Case Manager for Sunshine, appeared for Fair Hearing as a witness for Respondent.

The following individuals appeared for Fair Hearing as observers: Dr. Salarri, Medical Director for Sunshine; Elyssa Luke, Counsel for Florida Department of Health; Joann White, Ombudsman for Florida Department of Health; and Marielisa Amador, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA").

Petitioner did not introduce any exhibits at the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and thirty-four (234)-page evidence packet. The two hundred and thirty-four (234)-page packet appears in the Office of Fair Hearings' document management system as file titles "MFH packet [Petitioner].pdf," "MFH Packet Pos Addendum.pdf¹," and "MFH Packet POS Addendum II.pdf²." Absent an objection from the Petitioner, the undersigned admitted the two hundred and thirty-four (234)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

¹ This file was received on May 3, 2024, and contains pages 110-231 of RCE 1.

² This file was received on May 3, 2024, and contains pages 232-234 of RCE 1.

The undersigned Hearing Officer held the record open until May 14, 2024, for Petitioner to submit additional documentation. On May 10, 2024, Petitioner sent to the Office of Fair Hearings a forty-one (41)-page evidence packet, which is hereby admitted into evidence a Petitioner's Composite Exhibit 1 ("PCE 1").

The undersigned Hearing Officer held the record open until May 21, 2024, for Respondent to file any comments or objections to Petitioner's submitted documentation. As of the date of this Final Order, Respondent did not file any comments or objections to Petitioner's Composite Exhibit 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 is [REDACTED]. *Id.* at 20, 111. Petitioner [REDACTED] [REDACTED] *Id.* at 24, 136. Petitioner's medical history includes [REDACTED] [REDACTED]. *Id.* at 23, 136, 228. The record does not indicate any prescribed medications or special diet. *Id.* at 24, 136, 226-228. Petitioner receives applied behavior analysis ("ABA") therapy at home Monday through Friday and speech therapy ("ST") once per week at home. *Id.* at 24, 137, 230.

3. Petitioner requested recertification of personal care services for the period of January 10, 2024, to July 7, 2024, specifically, 12 hours per day, 7 days per week. *Id.* at 23. In a Notice of Adverse Determination ("NABD"), dated January 23, 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 Plan Personal Care Services Policy & Procedure, Review for Personal Care Services Requests, FL.UM.25.00, 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).

Rationale: The request to approve a home health aide for your child is denied. It is denied due to lack of medical need. A home health aide is a trained health care worker who helps people with self-care needs in the home. The medical notes sent with this request do not prove the medical need for a home health aide. The clinical notes that we received do not document any major physical problems. Your child is not incontinent. Incontinent means a person is unable to control their bladder and/or bowel function. Your child does not need major help with [REDACTED] daily self-care needs. There is no note that [REDACTED] is [REDACTED].

Id. at 4-5.

4. On February 28, 2024, Petitioner requested a plan appeal for the termination of personal care services. *Id.* at 10. In a Notice of Plan Appeal Resolution ("NPAR") dated March 8, 2024, Respondent upheld their decision. *Id.* at 15-17. 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 due to lack of medical necessity. The clinical information submitted with this request does not support the medical need for a home health aide. The clinical notes that we received do not document any significant functional limitations. Your child does not wear diapers during the day. Your child does not need significant assistance with their activities of daily living. There is no note that they are [REDACTED]. Your child appears to need adult supervision. Adult supervision does not require a home health aide. Criteria: SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Requests FL.UM.25; Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was made with regards to EPSDT. The reasons for this decision are based on a set of standards. This included SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Requests

Id. at 15-16.

5. On March 13, 2024, Petitioner requested a Fair Hearing to challenge the termination of personal care services. On April 5, 2024, undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions (“Scheduling Order”), setting the hearing for May 7, 2024, at 10:00 a.m. EST.

6. Dr. Shamma is a Medical Director for Sunshine. Dr. Shamma testified to the following:

a. Petitioner previously received personal care services through administrative approval at least since [REDACTED] with no medical necessity review.

b. Upon review of the recertification request, CMS Medical Directors agreed that continuation of personal care services was not medically necessary considering Petitioner is not [REDACTED], there is no documentation of any major physical limitation, there are no notes of Petitioner being completely [REDACTED], Petitioner is doing well academically, and Petitioner has an individualized education plan (“IEP”) with ABA therapy. *Id.* at 24-27, 111-134.

c. Dr. Shamma argued that Petitioner’s functional limitations do not rise to the level of requiring home care services, and therefore [REDACTED]’ work hours does not impact the decision.

7. [REDACTED] is a friend of [REDACTED]. [REDACTED] testified to the following:

a. [REDACTED] has been Petitioner’s registered behavior technician (“RBT”) for ABA therapy for the last [REDACTED] years.

- b. Petitioner also had a diagnosis for [REDACTED] which limits [REDACTED] abilities to perform daily tasks. See PCE 1 at 4.
- c. Due to Petitioner’s diagnoses, Petitioner engages in maladaptive behaviors such as [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] See RCE 1 at 137-138, 195.
- d. [REDACTED] argued that Petitioner might be able to eat on [REDACTED] own, but cannot clean up after [REDACTED]. *Id.* at 137. Petitioner will go days without eating. *Id.* at 195.

8. 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 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.

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 42-45.

CONCLUSIONS OF LAW

9. 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).

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

11. 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.)

12. 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
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs

Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
Dressing	
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
Grooming and Skin Care	
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
Positioning	
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
Transfers	
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
Toileting and Maintaining Continence	

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
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
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.

13. 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.

14. 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.

15. 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 124.

16. In the instant case, Petitioner requested recertification of personal care services. See ¶ 3. In the NABD, dated January 23, 2024, Respondent terminated Petitioner’s services. See ¶ 3. 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 ¶ 3-4. In the NPAR dated March 8, 2024, Respondent upheld its decision. See ¶ 4. Respondent has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was correct. See ¶ 11.

17. The record indicates that personal care services are for hands-on support with ADLs. See ¶ 8, 12. 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 ¶ 8. 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 ¶ 15.

18. As demonstrated in the record, Petitioner’s medical history includes [REDACTED]. See ¶ 2. Petitioner receives ABA therapy at home Monday through Friday and ST at home once per week. See ¶ 2. According to Dr. Shamma’s testimony, the termination of services resulted from a lack of documentation that Petitioner’s functional limitations require at-home health care. See ¶ 6. Dr. Shamma opined that CMS Medical Directors agreed that continuation of personal care services was not medically necessary considering Petitioner is not [REDACTED], there is no documentation of any major physical limitation, there are no notes of Petitioner being completely [REDACTED], Petitioner is doing well academically, and Petitioner has an IEP with [REDACTED] ABA therapy. See ¶ 6. [REDACTED] argued that in addition to Petitioner’s other diagnoses, [REDACTED] also had a diagnosis for [REDACTED] which limits [REDACTED] abilities to perform daily tasks. See ¶ 7. [REDACTED] described Petitioner’s need

for support such as [redacted] ability to eat on [redacted] own, but cannot clean up after [redacted]. See ¶ 7. Moreover, Petitioner engages in maladaptive behaviors such as [redacted], [redacted], as well as undressing [redacted]. See ¶ 7. The record does not indicate any prescribed medications or special diet. See ¶ 2. Petitioner appears to have the appropriate services in place (i.e. ABA therapy with IEP and speech therapy) to address the developmental and behavioral challenges [redacted] faces. See ¶ 2. Petitioner [redacted] [redacted] See ¶ 2. Accordingly, 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 ¶ 2-4, 6-8, 12-14.

19. Regarding personal care services, Respondent's FL.UM.26 maintains that "parents or legal guardians must provide assistance with activities of daily living (ADL) and instrumental activities of daily living (IADL) for the member, to the fullest extent possible." See ¶ 8. Here, the record shows that Petitioner's functional limitations do not rise to the level of requiring home care services. See ¶ 2-3, 6-8. Because Petitioner does not have functional limitations requiring home health assistance due to [redacted] medical conditions as previously discussed, review of the parent's availability to provide assistance with Petitioner's ADLs and IADLs is moot. See ¶ 17-18.


20. 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 recertification 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 recertification 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 10th day of July, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche
24-FH0840
2024.07.10 08:20:46
-04'00'

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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