



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-FH1228

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 June 11, 2024, at 10:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantal Pierre
Clinical Appeals Coordinator
Children's Medical Services

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 (personal care) services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (" [REDACTED]"), Petitioner's Authorized Representative and [REDACTED], appeared for the Fair Hearing on behalf of Petitioner, but did not

testify. [REDACTED] (“[REDACTED]”), Petitioner’s [REDACTED], appeared for the Fair Hearing as a witness for Petitioner.

Chantal Pierre ("Ms. Pierre"), Clinical Appeals Coordinator for Children’s Medical Services (“CMS”), appeared for the Fair Hearing on behalf of Respondent. Andrew Metinko, M.D. (“Dr. Metinko”), Medical Director for CMS, appeared for the Fair Hearing as a witness for Respondent. Jessemyn Giovenco, Case Management Manager for CMS, appeared for the Fair Hearing as a witness for Respondent. Judy Sapps, Care Manager for CMS, appeared for the Fair Hearing as a witness for Respondent.

The following individuals appeared for the Fair Hearing as observers: Elyssa Luke, Counsel for CMS at Florida Department of Health; Anita Melton, Ombudsman for Florida Department of Health; and Sandra Durden, 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 one hundred and forty-four (144)-page evidence packet. The one hundred and forty-four (144)-page packet appears in the Office of Fair Hearings’ document management system as files titled “Segment 001 of MFH Packet [Petitioner].pdf” and “Segment 002 of MFH Packet [Petitioner].pdf.” Absent an objection from the Petitioner, the undersigned admitted the one hundred and forty-four (144)-page packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

At Petitioner’s request, the undersigned Hearing Officer held the record open until June 18, 2024, for Petitioner to submit additional documentation. On June 13, 2024, Petitioner sent

to the Office of Fair Hearings a 3-page evidence packet, which is hereby admitted into evidence a Petitioner’s Composite Exhibit 1 (“PCE 1”). Petitioner’s Composite Exhibit 1 packet appears in the Office of Fair Hearings’ document management system as file title “24-FH1228 Post Hearing Evidence.pdf” and includes an email cover page and two Parent or Legal Guardian Work Schedule forms completed for [REDACTED] and [REDACTED]. The undersigned Hearing Officer held the record open until June 25, 2024, for Respondent to file any comments or objections in response to Petitioner’s submitted documentation. Respondent did not file a response by the deadline.

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 10. Petitioner lives at home in the community with [REDACTED], [REDACTED], and [REDACTED], [REDACTED]. *Id.* at 10. Petitioner’s medical history includes

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

at 10-15, 22, 30, 33-55, 41. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 18, 26. Petitioner receives physical therapy

(“PT”) and speech therapy (“ST”), weekly. *Id.* at 29, 39. Petitioner requires an [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 28.

3. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

at 20, 28, 31.

4. Petitioner requested recertification of personal care services for the period of March 30, 2024, to September 26, 2024, specifically, eight (8) hours per day, seven (7) days per week. *Id.* at 26 - 27. In a Notice of Adverse Determination (“NABD”), dated March 13, 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 on Review for Personal Care Services Requests, FL.UM.25.00. This decision was made with regards to EPSDT (Early and Periodic Screening Diagnostic and Treatment).

Rationale: We got a request for personal care services for your child on March 30, 2024 to September 25, 2024. Personal care services is care done in the home by a trained worker. This was for a [REDACTED]. The request is denied. This is because your child’s notes did not show the need for this service. There was no work schedule sent for [REDACTED] caregiver. The level of care that is being asked for is beyond that of personal care services. [REDACTED] condition can be cared for by

[Petitioner] is a [REDACTED] with the following diagnoses-

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED] continues having [REDACTED] and requires multiple medications along with [REDACTED]. [REDACTED] has already undergone [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Id. at 41-42.

7. Petitioner’s pediatric gastroenterologist, [REDACTED], M.D. (“[REDACTED]”), wrote a letter dated March 29, 2024, which states as follows:

[Petitioner] is currently under my care at the [REDACTED]
[REDACTED]

[Petitioner] has a [REDACTED]
[REDACTED]
[REDACTED] Unfortunately, the closest licensed Prescribed Pediatric Extended Care (PPEC) to [Petitioner] is [REDACTED] miles away from their home according to Agency for Healthcare Administration website. Therefore, PPEC is not an option for this patient.

Id. at 79.

8. Petitioner’s Authorized Representative and [REDACTED], [REDACTED], submitted a reconsideration letter to Sunshine Health dated March 29, 2024. The letter states as follows, in pertinent part:

[Petitioner] is my [REDACTED]
[REDACTED]
[REDACTED] I had to quit my full-time job to provide [REDACTED] the required around-the-clock care. This has been difficult for my family and I, and has especially placed a financial hardship on my family as well. [Petitioner] requires

several medications, [REDACTED] has to be taken to multiple therapies every week, a

[REDACTED]

To be frank, [Petitioner] requires nothing less than 24 hour care. Short of a miracle

[REDACTED]

Id. at 15.

9. On March 30, 2024, Petitioner requested a plan appeal for the termination of personal care services. *Id.* at 80-81. In a Notice of Plan Appeal Resolution (“NPAR”) dated April 1, 2024, Respondent upheld their decision. *Id.* at 85-87. The NPAR explained as follows:

The facts that we used to make our decision are: The previous denial to authorize home health aide services for your child is upheld. We did not receive any explanation as to why both parents/guardians are unable to provide care. We did not receive a parent/guardian work/school form and/or medical limitations form for both parents/guardians. This form is required by Florida Medicaid. We only received a parent work schedule form for [REDACTED]. The reasons for this decision are based on a set of standards. This included 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.

Id. at 85-86.

10. On April 15, 2024, Petitioner requested a Fair Hearing to challenge the termination of home health (personal care services). On May 8, 2024, undersigned issued an Order Scheduling

Fair Hearing and Prehearing Instructions (“Scheduling Order”), setting the hearing for June 11, 2024, at 10:00 a.m. EST.

11. Dr. Metinko is a Medical Director for CMS. Dr. Metinko testified to the following:

- a. CMS Medical Directors conducted a review of services for medical necessity and agreed that Petitioner’s care needs [REDACTED] [REDACTED] are beyond what a home health aide can provide.
- b. CMS reviewers agreed that other services may be more appropriate to assist with Petitioner’s needs.
- c. Dr. Metinko opined that the submitted medical records mostly addressed Petitioner’s [REDACTED], but appears beyond the scope of personal care services.
- d. Under Medicaid guidelines, personal care services are subject to the lack of availability of parents to provide assistance with Petitioner’s care.
- e. During the review and appeal process, CMS did not receive a completed and unverifiable work schedule for one parent and no form for the second parent.
- f. Petitioner’s case manager noted that Petitioner’s [REDACTED] does not work.
- g. [REDACTED].
- h. Dr. Metinko argued that there is indication for skilled nursing due to [REDACTED] [REDACTED] but the facts are unclear if skilled nursing service or a home health is the best approach.

12. [REDACTED] is Petitioner’s [REDACTED]. [REDACTED] testified to the following:

- a. Petitioner has a complex medical history who is [REDACTED]
[REDACTED]. *Id.* at 33.
- b. Petitioner is totally dependent for all ADLs, [REDACTED]
[REDACTED]
- c. [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 40-78.
- d. [REDACTED]
- e. [REDACTED] testified that [REDACTED]
[REDACTED].
- f. [REDACTED]
[REDACTED]
[REDACTED]
- g. PPEC services are not an option due to their rural area in [REDACTED]. *See* ¶ 7.
- h. [REDACTED] works as a project manager Monday through Friday at 8-9 hours per day, plus any overtime and weekend calls. *See* PCE 1 at 2.
- i. [REDACTED] argued that continuation of the personal care services would help [REDACTED]
[REDACTED] return to work.

13. 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

14. 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).

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

16. 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.)

17. 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.

...

3.0 Eligible Provider

3.1 General Criteria

Providers must meet the qualifications specified in this policy in order to be reimbursed for Florida Medicaid personal care services.

3.2 Who Can Provide

Services must be rendered by providers meeting one of the following:

- Home health agencies licensed in accordance with section 408.810 F.S., and Rule Chapter 59A-8, F.A.C.
- Independent personal care providers.

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

See RCE 1 at 132-139.

18. 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.

19. 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.

20. 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:

Definitions.

(166) “Medically necessary” or “medical necessity” means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. 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;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. 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
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(b) “Medically necessary” or “medical necessity” for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(c) 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 144.

21. In the instant case, Petitioner requested continuation of home health (personal care) services for eight (8) hours per day, seven (7) days per week. See ¶ 4. In the NABD, dated March 13, 2024, Respondent terminated Petitioner’s personal care services. See ¶ 4. In the NPAR dated April 1, 2024, Respondent upheld its decision. See ¶ 9. 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 ¶ 4, 9. Respondent has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was correct. See ¶ 16.

22. The record indicates that personal care services are for hands-on support with ADLs and IADLs. See ¶ 13, 17. 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 ¶ 20.

23. According to Dr. Metinko’s testimony, the termination of personal care services resulted from a lack of documentation showing appropriateness of personal care services and the parent or legal guardian’s inability to provide the required care. See ¶ 4, 9, 11, 13. Dr. Metinko explained that Petitioner may benefit from supportive services but the submitted documentation did not clearly identify the availability of [REDACTED] parents as required to receive personal care services. See ¶ 11-13. As demonstrated in the record, Petitioner has significant functional limitations due to [REDACTED] medical history. See ¶ 2-8. Petitioner’s medical conditions include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See ¶ 2, 6-8. Petitioner’s functional limitations

include total dependence for all ADLs; [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See ¶ 3. At Fair Hearing, [REDACTED] testified that [REDACTED]

[REDACTED]. See ¶ 12. Dr. Metinko contended that of Petitioner’s multiple medical issues, the submitted medical records mostly addressed Petitioner’s [REDACTED], but appears beyond the scope of personal care services. See ¶ 11. Petitioner is followed in multiple medical disciplines to include speech pathology, pediatric neurology, and pediatric gastroenterology, who advocate for skilled care beyond what can be rendered by a home health aide. See ¶ 5-7. The record shows that Petitioner requires a skill level other than what is prescribed in the physician order and approved plan of care (POC) and [REDACTED] needs may be better addressed with alternative services. See ¶ 5-8, 11, 13, 17. Accordingly, continuation of the personal care services is not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment.” See ¶ 17-20.

24. Additionally, 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” and “supporting documentation must be provided to substantiate a parent or legal guardian’s inability to participate in the care of the member.” See ¶ 13. During the review and appeal process, CMS did not receive a completed and unverifiable work schedule for one parent and no form for the second parent. See ¶ 4, 9, 11. Petitioner lives at home with [REDACTED] parents, [REDACTED] and [REDACTED]. See ¶ 2. At Fair Hearing, [REDACTED] testified that [REDACTED] typical work shift is 8-9 hours per day, Monday through Friday, and on-call for weekends and overtime. See ¶ 12. Petitioner

introduced the work schedule for [REDACTED] which appears to represent that [REDACTED] is currently employed as Petitioner's HHA under [REDACTED]. ("Allshouse"). See PCE 1 at 3. It indicates that [REDACTED] works Monday through Friday from 9:00 a.m. to 6:00 p.m., and Saturday through Sunday from 7:00 a.m. to 4:00 p.m. See PCE 1 at 3. This documentation is contrary to the testimony presented at Fair Hearing that [REDACTED] left working in order to assist with Petitioner's care and wishes to return into the workforce. See ¶ 8, 11-12. The work schedule was not accompanied by any explanation or documentation that [REDACTED] is qualified or has been approved to render services as Petitioner's HHA as required in the Personal Care Policy. See ¶ 17. The work schedules were not provided prior to the review period and do not appear to be credible representations of the parents' availability. See ¶ 4, 9, 11. 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 ¶ 17. Based on the aforementioned facts, continuation of the personal care services is "in excess of [Petitioner]'s needs." See ¶ 20.


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

DONE AND ORDERED this 30th day of August, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche
24-FH1228
2024.08.30 08:35:45
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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.

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Children's Medical Services

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