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

FILED
Aug 21, 2024, 4:54 pm
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

AHCA Case No.: 24-FH1349
Plan ID No.: [redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on May 22, 2023, at 9:00 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 reduction of Petitioner's home health - personal care services from one hundred and sixty-eight (168) hours per week to sixty-four (64) hours per week was correct.

PRELIMINARY STATEMENT

All parties appeared for the scheduled Fair Hearing telephonically. [redacted] ("[redacted]"), Petitioner's Authorized Representative, appeared for the Fair Hearing to provide testimony on behalf of Petitioner, and did not call any witnesses.

Kimberly Bouchette, Clinical Appeals Coordinator for Sunshine State Health Plan. Inc. ("Sunshine"), appeared for the Fair Hearing as representative for Respondent. Dr. My Fung ("Dr. Fung"), a Medical Director for Sunshine, appeared for the Fair Hearing as a witness for Respondent.

Prior to the Fair Hearing, Petitioner submitted a four (4)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "24-FH1349 Evidence.pdf." Without objection, the evidence packet was admitted into evidence as Petitioner's Composite Exhibit 1.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings ("Office") and Petitioner a one hundred and twenty-one (121)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as: "MFH Packet [redacted].pdf." Without objection, the evidence packet was admitted into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine's Managed Medical Assistance ("MMA") line of business. *See* Respondent's Composite Exhibit 1 at page 1. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner is [redacted] *Id.* at 16. Petitioner is diagnosed with [redacted]. *Id.* at 17 – 18, 25.

3. With regard to the need for assistance with Activities of Daily Living ("ADLs"), Petitioner [redacted] *Id*.

4. Petitioner's legal guardian is [redacted]. *Id*. at 41. [redacted] works full-time outside of the home as an independent contractor. *Id*. at 22. [redacted]' work hours vary daily depending on client necessity. *Id*. [redacted]'s work schedule states that [redacted] works as follows: 12:00 p.m. to 6:00 p.m. on Monday, Tuesday and Wednesday; 12:00 p.m. to 5:00 p.m. on Wednesday; 2:00 p.m. to 7:00 p.m. on Friday; and 1:00 p.m. to 7:00 p.m. on Saturday and Sunday. *Id*. [redacted]' work schedule was not signed by a supervisor because [redacted] is an independent contractor. No work schedule was provided for Petitioner's second legal guardian. Petitioner attends school from on Monday through Friday from 8:30 a.m. to 3:30 p.m. *Id*. at 21.

5. On March 18, 2024, Sunshine issued a Notice of Adverse Benefit Determination ("NABD") reducing Petitioner's home health - personal care services from one hundred and sixty-eight (168) hours per week to sixty-four (64) hours per week. *Id*. at 4 - 8. The NABD explained the basis of the determination as follows, in pertinent part:

> We made our decision because:
> *(Check all boxes that apply)*
>
> ☒ We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010)

☐ Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.
☒ Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.
☐ Must meet accepted medical standards and not be experimental or investigational.
☐ Must be able to be 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.
☐ Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.
. . .

The facts that we used to make our decision are:

Sunshine Health Policy on Personal Care Services Requests, FL.UM.25.00; Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).
Rationale: The request for a home health aide for 24 hours each day 7 days per week is partially approved. A home health aide is a trained person that helps with personal care in the home. We are approving 8 hours per day 5 days per week and 12 hours on Saturday and Sunday (64 hours per week). This is based on the notes and work or school schedules that were sent to us for review. The notes sent with this request do not support the medical need for the extra hours requested.

Id. at 4 – 5.

6. On March 28, 2024, Petitioner requested a plan appeal. *Id*. at 28. On April 4, 2024, Sunshine issued a Notice of Plan Appeal Resolution ("NPAR") upholding the reduction of home health - personal care services. *Id*. at 28 - 30. The NPAR states the following, in pertinent part:

> The reason for the decision was the previous decision to partially approve and partially deny home health aide services for your child is upheld. The clinical information submitted with this request does not support the medical need for a home health aide outside of the parents work schedules. 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. This decision was made by a Medical Director who is Board Certified Physician in Pediatric Medicine.

Id. at 28.

7. On April 23, 2024, [redacted] requested a Fair Hearing on behalf of Petitioner regarding the reduction of home health - personal care services. On May 2, 2024, the undersigned Hearing Officer issued a notice to all parties of record scheduling the Fair Hearing to be convened by telephone on May 22, 2023, at 12:00 p.m. EST.

8. Dr. Fung testified that Sunshine physician, Dr. Laure Ann Wiggin, had a peer-to-peer conference with Petitioner's physician, [redacted], on March 24, 2024, concerning the reduction in services. Notes from the conference indicate that [redacted] agreed with the reduction. *Id*. at 39. Dr. Fung testified that Petitioner lives with two guardians. *Id*. Petitioner has [redacted] *Id*. at 24. Dr. Fung testified that Petitioner originally received administrative approval for 24 hours per day / 7 days per week of care ("24/7" or 168 hours per week) without a medical necessity review. Dr. Fung testified that one hundred and sixty-eight (168) hours per week are not medically necessary and that ten (10) hours per day on Monday through Friday, with twelve (12) hours per day on Saturday and Sunday, are sufficient to meet Petitioner's needs based on the documentation provided. The documentation shows that Petitioner attends school during the school year for seven (7) hours per day on Monday through Friday. Petitioner resides with two guardians but only one guardian's work schedule ([redacted]) was provided. No documentation was provided showing that the guardians are physically unable to care for Petitioner. Dr. Fung asserted that home health – personal care services are intended to supplement the care provided by the parent or guardian. *Id*. at 55. Babysitting and companion

care are not covered. Dr. Fung concluded that, although Petitioner needs a lot of care, [redacted] does not need 24 / 7 care or one hundred and sixty-eight (168) hours per week and sixty-four (64) hours are sufficient to meet Petitioner's needs.

9. [redacted] testified that Petitioner has had one hundred and sixty-eight (168) hours of home health - personal care services for the past [redacted], [redacted] stated that on school days, the home health aide is needed to meet Petitioner at the bus when [redacted] arrives home at 3:45 p.m. due to safety concerns. [redacted]

10. In making its medical necessity determination, Sunshine relied upon the Sunshine Health Policy on Review for Personal Care Services, FL.UM.25.00. *Id*. at 54 - 65. The policy states as follows, in pertinent part:

> **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.
>
> **POLICY**:
> Sunshine Health's Review of Personal Care Services Requests clinical policy supports the utilization management review process for the MMA, Children's

Medical Service (CMS) and Child Welfare benefits described in the Florida Provider's Handbook entitled, Personal Care Services Coverage Policy.

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

- Members, who may benefit from personal care services, include those eligible members who are under the age of 21, only.
- Banking or flex hours of approved personal care service hours is not allowed. Only the number of hours that are approved as medically necessary can be approved. The total number of hours per week, hours per day, and days per week approved must be followed. Any variations would need to be requested and approved in advance by Sunshine Health.
- Personal care services are not covered in the following locations:
    - Hospitals
    - Nursing facilities
    - Intermediate care facilities for individuals with intellectual disabilities
    - Physician offices
    - Clinics
    - Prescribed pediatric extended care centers
- 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

o 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

Review Process

To assist in determining the medical necessity of personal care services, the clinical criteria established in this policy will be applied. A request for medical necessity review is consistent with Sunshine Health medical policies:

- FL.UM.02.01 - Medical Necessity Review and Continuity of Care
- FL.UM.02.00 – Use of Clinical Criteria
- Any decision to deny, reduce, suspend or terminate services must be made by a Sunshine Health Medical Director as outlined in the policy Use of Clinical Criteria FL.UM.02.00 Determinations and provider notifications will be made according to the expediency of the case as described in the Timeliness of UM Decisions and Notification FL.UM.05.00

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:

<u>Plan of Care</u>

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

<u>Medical condition, disability, cognitive, or functional limitation</u>

- 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.

Id. 54-57. (emphasis supplied).

CONCLUSIONS OF LAW

11. 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).

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

13. Because Respondent is reducing existing home health - personal care services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to 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.).

14. The provision of home health – personal care services is governed by the Florida Medicaid Home Health Visit Services Coverage Policy (November 2016) ("Home Health Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.130. The Home Health Policy provides the following, in pertinent part:

> **1.0 INTRODUCTION**
> **1.1 Description**
> Florida Medicaid home health visits provide medically necessary skilled nursing and home health aide services to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.
>
> > **1.1.1 Florida Medicaid Policies**
> > This policy is intended for use by home health providers that render services to eligible Florida Medicaid recipients. It must be used in conjunction with Florida Medicaid's General Policies (as defined in section 1.3) and any applicable service-specific and claim reimbursement policies with which providers must comply.
> >
> > Note: All Florida Medicaid policies are promulgated in Rule Division 59G, Florida Administrative Code (F.A.C.). Coverage policies are available on the

Agency for Health Care Administration's (AHCA) Web site at http://ahca.myflorida.com/Medicaid/review/index.shtml.

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.

. . .

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

1.3.1 Activities of Daily Living (ADLs)
As defined in Rule 59G-1.010, F.A.C.

1.3.2 Babysitting
Custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient.

1.3.7 Home Health Services
Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

1.3.8 Instrumental Activities of Daily Living (IADLs)
As defined in Rule 59G-1.010, F.A.C.

1.3.9 Intermittent Home Health Visits
Medically necessary skilled nursing and home health aide services that are provided at intervals for the length of time necessary to complete the service.

1.3.10 Medically Necessary/Medical Necessity
As defined in Rule 59G-1.010, F.A.C.

. . .

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 four intermittent home health visits, per day, for recipients under the age of 21 years and pregnant recipients age 21 years and older
- Up to three intermittent home health visits, per day, for non-pregnant recipients age 21 years and older

Recipients who meet the following criteria may receive any combination of skilled nursing or home health aide visit services up to the coverage limits specified in this policy:

- Is under the care of a physician and have a physician's order for home health services
- Require services that can be safely provided in their home or in the community

See the Florida Medicaid personal care and private duty nursing services coverage policies if the recipient is under the age of 21 years and requires more care than can be furnished through a home health visit.

4.2.1 Short-term Nursing in an Intermediate Care Facility (ICF)

Florida Medicaid reimburses for short-term skilled nursing visits provided by an RN or LPN in an ICF when the services are medically necessary to avoid transferring the recipient to a nursing facility.

4.2.2 Home Health Aide Visits for Recipients Under the Age of 21 Years

Florida Medicaid reimburses for home health aide visits for recipients under the age of 21 years who have a medical condition or disability that substantially limits their ability to perform ADLs or IADLs.

4.2.2.1 Parental Responsibility

Florida Medicaid reimburses for home health aide visits rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers 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 when needed.

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

. . .

5.0 EXCLUSION

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
- Intermittent home health visits rendered less than an hour apart
- 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

Home Health Policy pages 1-4. (emphasis supplied)

15. 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.

16. Petitioner is under the age of 21 years, and therefore EPSDT applies to [redacted] request for services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Section 409.905(2), Florida Statutes, 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.

17. 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:

> **2.18 Caregiver**
> Person(s) attending to the needs of another person, who is physically or mentally impaired, injured, incapacitated, or a child unable to care for him or herself.
> **2.2 Activities of Daily Living (ADLs)**
> ADLs include:
> - Bathing
> - Dressing
> - Eating (oral feedings and fluid intake)

- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

. . .

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

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

. . .

2.83 Medically Necessary or Medical Necessity

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at pages 1 - 7.

18. Based on the NABD and NPAR, Respondent reduced Petitioner's home health - personal care services by one hundred and four (104) hours per week after a review of Petitioner's services, functional abilities, living condition, and documentation. *See* supra ¶ 5 - 6, 8. Respondent reduced Petitioner's home health - personal care services from one hundred and sixty eight (168) hours per week to sixty-four (64) hours per week. *See* supra ¶ 5-6. Respondent determined that the previously authorized home health - personal care services were not medically necessary because the services are "in excess of" Petitioner's needs. See supra ¶ 5-6, 8.

19. The Florida Medicaid program covers home health - personal care services that are determined to be medically necessary, do not duplicate another service, and meet the criteria as specified in the LTC Policy. *See* supra ¶ 14. Personal care services are intended to provide, "assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." See supra ¶ 14.

20. The record in this case reflects that a reduction in home health - personal care services is warranted. Petitioner is diagnosed with [redacted]. *See* supra ¶ 2.

21. Further, as a basis for Respondent's decision to reduce home health - personal care services, Dr. Fung provided credible and persuasive testimony that guardians or parents are required by Medicaid policy to provide support to the fullest extent possible. *See* supra ¶ 14. In this case, Petitioner lives with two guardians. *See* supra ¶ 8. Only one guardian's work schedule

([redacted]) is available. *See* supra ¶ 8. There is no indication that the guardians are physically unable to care for Petitioner. *See* supra ¶ 8. Further, Petitioner attends school during the school year for seven (7) hours per day on Monday through Friday. *See* supra ¶ 8. Dr. Fung testified that Petitioner originally received administrative approval for 24 hours per day / 7 days per week of care ("24/7" or 168 hours per week) without a medical necessity review. Dr. Fung provided credible testimony that one hundred and sixty-eight (168) hours per week are not medically necessary to meet Petitioner's needs and that ten (10) hours per day on Monday through Friday, with twelve (12) hours per day on Saturday and Sunday, are sufficient to meet Petitioner's needs based on the available documentation and a peer-to-peer conference with Petitioner's physician. *See* supra ¶ 2, 8. As Dr. Fung concluded, although Petitioner continues to need a lot of care, [redacted] does not need 24 / 7 care or one hundred and sixty-eight (168) hours per week, and sixty-four (64) hours of home health – personal care services are sufficient to meet Petitioner's needs.

22. Based on the aforementioned facts, Respondent established that one hundred and sixty-eight (168) hours per week of home health - personal care services are not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment," and are "in excess of the patient's needs." *See* supra ¶ 17. As such, Respondent has shown that the previously authorized level of services is not medically necessary. Looking at all the evidence relevant to the particular needs of this Petitioner, the Respondent demonstrated that the continuation of the home health – personal care services at the previously authorized level is not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent proved by a preponderance of the evidence that Respondent's reduction of home health – personal care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of home health - personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of home health - personal care services is **DENIED**.

DONE and ORDERED this 21st day of August 2024, in Tallahassee, Leon County, Florida.

Digitally signed by
Laura Gallagher
Reason: 24-FH1349
Date: 2024.08.21
08:37:31 -04'00'

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

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

COPIES FURNISHED TO:

[redacted]

Sunshine State Health Plan, Inc.
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com