



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

**FILED**

Aug 30, 2024, 11:54 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH1407

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 25, 2024, 10:08 a.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Nicole Vega  
Regulatory Research Coordinator  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for personal care services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. [REDACTED] (" [REDACTED]"), Petitioner's Authorized Representative and [REDACTED], appeared for the Fair Hearing to provide testimony on behalf of Petitioner.

Nicole Vega (“Ms. Vega”), Regulatory Research Coordinator for Sunshine State Health Plan, Inc. (“Sunshine”), appeared for the Fair Hearing on behalf of Respondent. Andrew Metinko, M.D. (“Dr. Metinko”), Medical Director for Sunshine, appeared for the Fair Hearing as a witness for Respondent. Paola Collao, Supervisor for Sunshine, appeared for the Fair Hearing as a witness for Respondent. Megan Buckner, Manager for Sunshine, appeared for the Fair Hearing as a witness for Respondent. Monique Peele, Director for Sunshine, appeared for the Fair Hearing as a witness for Respondent. Chelsea Behar, Case Manager for Sunshine, appeared for the Fair Hearing as a witness for Respondent.

The following individuals appeared for Fair Hearing as observers: Elyssa Luke, Counsel for Florida Department of Health; Doan Dewitt, Ombudsman for Florida Department of Health; and Sandra Durden, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”).

Ana, interpreter number 338717 of Cyracom, appeared to offer translation services for the Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eight (8)-page evidence packet, a two (2)-page evidence document, and a one (1)-page evidence document. The eight (8)-page evidence packet appears in the Office of Fair Hearings document management system as the file title “24-FH1407 Supporting Documents.pdf<sup>1</sup>.” The two (2)-page document appears in the Office of Fair Hearings document management system as the file title “24-FH1407 Emailed Evidence.pdf<sup>2</sup>.” The one (1)-page document appears in the Office of Fair

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<sup>1</sup> This file was received on June 24, 2024.

<sup>2</sup> This file was received on June 24, 2024.

Hearings document management system as the file title “24-FH1407 Emailed Evidence (2).pdf<sup>3</sup>.”

At Respondent’s request, the undersigned Hearing Officer held the record open until July 2, 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. Accordingly, the undersigned admitted the eight (8)-page evidence packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”), two (2)-page document into evidence as Petitioner’s Composite Exhibit 2 (“PCE 2”), and the one (1)-page document into evidence as Petitioner’s Composite Exhibit 3 (“PCE 3”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a seventy-eight (78)-page evidence packet. The seventy-eight (78)-page packet appears in the Office of Fair Hearings document management system as the file title “MFH packet [Petitioner].pdf.” Absent an objection from the Petitioner, the undersigned admitted the seventy-eight (78)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Children’s Medical Services (“CMS”). 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 12. Petitioner’s medical conditions include [REDACTED] *Id.* at 14. Petitioner’s functional

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<sup>3</sup> This file was received on June 24, 2024.

limitations include [REDACTED]. *Id.* at 14-15. Petitioner attends school from 9:10 a.m. to 3:50 p.m., and receives applied behavioral analysis (“ABA”) therapy. *Id.* at 15, 17.

3. [REDACTED].  
*Id.* at 14. The Physician’s Written Prescription for Home Health Services (“Physician’s Prescription”) dated February 12, 2024, states Petitioner “requires constant supervision at all times. Needs assistance with [activities of daily living] ADLs.” *Id.* at 12. The accompanying Physician Visit Documentation Form (“Physician Visit Form”) dated February 12, 2024, states the reason for services as “[Petitioner] has [REDACTED] requires close supervision at all times [REDACTED] also needs assistance with [REDACTED] ADLs ([REDACTED]) [REDACTED].” *Id.* at 13.

4. Petitioner requested personal care services for six (6) hours per day, six (6) days per week. *Id.* at 5, 12-14. In a Notice of Adverse Determination (“NABD”), dated February 22, 2024, Respondent denied Petitioner’s request. *Id.* at 4-8. The NABD explained the basis of the denial as follows:

- ✓ We determined that your requested services are **not medically necessary** because the services do not meet 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. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: We got a request for home health services (hourly) for your child. This was on 02/19/2024 to 08/16/2024. [REDACTED]. A [REDACTED] is a problem that affects a child’s progress as they grow. This was also for [REDACTED] A [REDACTED] [REDACTED] is a problem with the relationship between the nervous system and the

brain. The request is denied. This is because the notes did not prove the need for this service. There were no notes showing your child's physical limits other than [REDACTED]. There were no notes showing their school schedule. Medicines cannot be given by a doctor who is not specialized in your child's disorders. There were no notes showing your child being completely non-verbal. There were no notes showing your child has problems using the bathroom. There were no notes showing your child has safety concerns. There were no notes showing your child self-harm or harms others. Your child's condition can be managed by talking to your child's doctor.

*Id.* at 4-5.

5. On March 27, 2024, Petitioner requested a plan appeal for the denial of personal care services. *Id.* at 18-19. In a Notice of Plan Appeal Resolution (“NPAR”), dated April 22, 2024, Respondent upheld their denial. *Id.* at 24-26. 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. We were not able to verify the information provided in the parent work schedule form. The business address listed is a residential address. There is no active business in the state of Florida with this name at this address, per sunbiz records. Parents/guardians are expected to provide care to the fullest extent possible. Please note that previous authorizations were administratively approved. 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 24-25.

6. On April 30, 2024, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On May 23, 2024, undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions (“Scheduling Order”), setting the hearing for June 25, 2024, at 10:00 a.m. EST.

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

- a. [REDACTED] argued that [REDACTED]  
[REDACTED] *Id.* at 35.
- b. [REDACTED]  
[REDACTED] See PCE 1 at page 7.
- c. [REDACTED] works for a small agency outside of the home, Monday through Saturday from 4 p.m. to 11 p.m. See PCE 3 at page 1.
- d. Petitioner receives thirty (30) hours per week of ABA therapy.

8. Dr. Metinko is a Medical Director for Sunshine. Dr. Metinko testified to the following:

- a. Three CMS Medical Directors conducted a review for medical necessity and agreed that there was no basis to authorize the services. See RCE 1 at 28-49.
- b. Petitioner is [REDACTED]  
[REDACTED]. *Id.* at 35-37.
- c. CMS's reviewers were unable to verify [REDACTED]'s work schedule as the work address provided was residential, not a business listing. *Id.* at 44-45.

9. 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.

...

**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.

See RCE 1 at 50-52.

**CONCLUSIONS OF LAW**

10. 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).

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

12. Because Petitioner is requesting new services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a

preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

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

**1.1 Description**

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

...

**1.1.2 Statewide Medicaid Managed Care Plans**

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

...

**4.0 Coverage Information**

**4.1 General Criteria**

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

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

**4.2 Specific Criteria**

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

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician’s order for personal care services

- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community
- ...

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

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

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

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

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
  - Hospitals
  - Intermediate care facility for individuals with intellectual disabilities
  - Nursing facilities
  - Prescribed pediatric extended care centers
  - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient's place of residence
- Yard work, gardening, or home maintenance work

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

...

## 7.0 Authorization

### 7.1 General Criteria

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

...

Personal Care Task	General Time Allowances
<b>Bathing</b>	
<b>Full-body Bath:</b> Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
<b>Partial Bath:</b> A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
<b>Dressing</b>	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
<b>Grooming and Skin Care</b>	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes

Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
<b>Positioning</b>	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
<b>Transfers</b>	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
<b>Toileting and Maintaining Continence</b>	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
<b>Eating</b>	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
<b>Delegated Medical Monitoring and Activities</b>	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

PC Policy at pages 3 – 8, and 10.

14. 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.

15. 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.

16. 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.

Definitions Policy at page 7.

17. In the instant case, Petitioner requested personal care services for six (6) hours per day, six (6) days per week. *See* ¶ 3-4. In the NABD, dated February 22, 2024, Respondent denied Petitioner’s request. *See* ¶ 4. In the NPAR dated April 22, 2024, Respondent upheld its decision. *See* ¶ 5. 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* ¶ 4-5. Petitioner has the burden of proof to show by a preponderance of evidence that the Respondent’s determination was incorrect. *See* ¶ 12.

18. The record indicates that personal care services are for hands-on support with ADLs and IADLs. *See* ¶ 9, 13. 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* ¶ 16.

19. The record shows Petitioner’s medical history includes [REDACTED]  
[REDACTED] *See* ¶ 2. [REDACTED]  
[REDACTED]  
[REDACTED] *See* ¶ 7. [REDACTED] introduced [REDACTED] work schedule with a

small agency outside of the home, Monday through Saturday from 4 p.m. to 11 p.m. See ¶ 7. [REDACTED]

[REDACTED] argued that Petitioner requires personal care services to help with ADLs such as [REDACTED]. See ¶ 3, 7.

20. According to Dr. Metinko's testimony, CMS's Medical Directors denied the requested personal care services due to a lack of documentation showing Petitioner has the necessary functional limitations to require at-home health assistance. See ¶ 4-5, 8. The record shows Petitioner is [REDACTED]. See ¶ 8. Petitioner attends school and receives thirty (30) hours per week of ABA therapy. See ¶ 2, 7. Petitioner appears to have the appropriate services in place (i.e. school and ABA therapy) to address the developmental challenges [REDACTED] faces. See ¶ 2, 7. The Physician's Prescription and Physician Visit Form did not describe functional limitations with ADLs or IADLs that a parent is unable to provide. See ¶ 3. Personal care services are used to supplement gaps in care from the parent's work schedule, and preclude conventional alternatives like daycare or a babysitter. See ¶ 9, 13. Dr. Metinko explained that CMS's reviewers were unable to verify [REDACTED]'s work schedule as the work address provided was residential, and not a business listing. See ¶ 8. Petitioner's argument largely advocated for the need for supervision for [REDACTED] safety while [REDACTED] is at work. See ¶ 3, 7. Babysitting, basic monitoring, or supervision are not among the criteria under Rule 59G-4.215, F.A.C. for the purpose of requiring personal care services. See ¶ 9, 13. Based on the aforementioned facts, Petitioner failed to prove by a preponderance of the evidence that the personal care services for six (6) hours per day, six (6) days per week are "individualized, specific, and consistent with


symptoms or confirmed diagnosis of the illness or injury under treatment,” and not “in excess of [Petitioner]’s needs.” See ¶ 9, 13-16.

21. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested personal care services is medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the requested personal care services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of personal care services was incorrect.

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

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

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

 Kimberly Roche  
24-FH1407  
2024.08.30 08:55:14  
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**KIMBERLY ROCHE, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH

THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**COPIES FURNISHED TO:**

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

**Children's Medical Services**  
**[CMSPlanContract@flhealth.gov](mailto:CMSPlanContract@flhealth.gov)**

**AHCA Medicaid Hearing Unit**  
**[MedicaidHearingUnit@ahca.myflorida.com](mailto:MedicaidHearingUnit@ahca.myflorida.com)**