



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

**FILED**

Sep 09, 2024, 4:33 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

vs.

AHCA Case No.: 24-FH1610

Plan ID No.: [REDACTED]

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 15, 2024, at 2:00 p.m. Eastern Standard Time ("EST").

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette,  
Clinical Appeals Coordinator  
Childrens Medical Services Health Plan

**STATEMENT OF ISSUE**

The issue is whether the Petitioner proved by a preponderance of the evidence that Respondent's decision to deny twenty-eight (28) hours per week of home health aide services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED],

[REDACTED] (" [REDACTED] "), appeared on behalf of the Petitioner.

Kimberly Bouchette, Clinical Appeals Coordinator (“Ms. Bouchette”) appeared on behalf of the Respondent Childrens Medical Services Health Plan (“Respondent” or “CMS”). Maria Samerson, M.D. (“Dr. Samerson”), a Medical Director for the Respondent also testified on behalf of the Respondent. Christie Dudek, Supervisor, Heather Soechtig, Manager, and Rachel Rosinski, Case Manager all appeared at the Fair Hearing for CMS as observers. Joan Dewitt, Florida Department of Health Ombudsman and Elisa Luke, Esquire, with Florida Department of Health also appeared at the Fair Hearing for observation purposes. Finally, Lee Ann Willians, Medical/Healthcare Program Analyst with the Agency for Healthcare Administration appeared at the Fair Hearing for observational purposes.

Prior to the hearing, the Petitioner sent the Office of Fair Hearing and the Respondent an eight (8) page proposed composite exhibit that was admitted into evidence without objection. The eight (8)-page composite is identified as the “Ppetitioner’s Composite Exhibit 1” and is maintained in the Office of Fair Hearings document management system as “24-FH1610 Emailed Correspondence.pdf”.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a seventy-two (72)-page proposed evidence packet and a twelve (12)-page package that were both admitted into evidence without objection. The seventy-two (72)-page package is identified as “Respondent’s Composite Exhibit 1” and is maintained in the Office of Fair Hearings document management system as file title “MFH Packet [Ppetitioner] 24-FH1610.pdf”. The twelve (12)-page package is identified as “Respondent’s Exhibit 2” and is maintained in the Office of Fair Hearings document management system as file title “MFH Packet [Ppetitioner] Addendum.pdf”.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of CMS. See Respondent’s Composite Exhibit 1, page 1. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid

recipients in Florida.

2. The Petitioner is an [REDACTED]. See Respondent's Composite Exhibit 1, page 11. The Petitioner's [REDACTED] also testified that the Petitioner has been diagnosed with [REDACTED] but there is nothing in the Record confirming this diagnosis.

3. The request for a home health aide for the Petitioner is to assist with [REDACTED]  
[REDACTED]  
[REDACTED]. See Petitioner's Composite Exhibit 1, pages 6 and 7.

4. [REDACTED] testified [REDACTED] has medical limitations that keep [REDACTED] from working and interfere with [REDACTED] care of the Petitioner. [REDACTED]  
[REDACTED]

5. On January 23, 2024, the Petitioner requested home health aide services for [REDACTED] in the amount of twelve (12) hours per day for seven (7) days per week. In a Notice of Adverse Benefit Determination ("NABD"), dated January 30, 2024, the Respondent approved fifty-six (56) hours per week of home health aide services and denied the remaining twenty-eight (28) hours per week of home health aide services. See Respondent's Composite Exhibit 1, pages 4-9. The NABD explained the basis of the denial as follows:

- We determined that the 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 your child's life, prevent significant illness or disability to your child, or to alleviate your child's severe pain.
- Must be individualized, specific, consistent with symptoms or diagnosis of

illness or injury and not be in excess of your child'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 convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)
- The requested service is not a covered benefit.
- Other authority:

The facts that we used to make our decision are:

Sunshine Health Policy on Review for Personal Care Services Requests, FL.UM.25.00. Florida Medicaid 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 home health aide is partially approved. This is a trained health care worker who helps people with daily care needs. Approval is granted for 8 hours 7 days a week. There has been no change in your child's medical condition. The request is for after school care. The hours requested is excessive. More notes, such as office notes would need to be sent for consideration.

...

*Id.*

6. The Petitioner requested a plan appeal on March 8, 2024, and received a Notice of Plan Appeal Resolution ("NPAR"), dated April 5, 2024, that affirmed the previous denial. See Respondent's Composite Exhibit 1, pages 21-24. The NPAR explained as follows:

The facts that we used to make our decision are: 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 additional services. There has been no significant change in your child's clinical condition. The excessive hours per week are therefore upheld/denied. 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.*

7. On May 14, 2024, the Petitioner requested a Fair Hearing to challenge the denial of a home health aide for twenty-eight (28) hours per week. On June 20, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 15, 2024, at 2:00 p.m. EST.

8. The Sunshine Policy *Id.* FL.UM.25.00, entitled Review for Personal Care Service Requests, June 2015 is applicable for members under the age of 21 and states in-part as follows:

**POLICY STATEMENT:**

Personal care services are covered for members who are under the age of 21. To be considered for approval, the member's treating physician must order the service.

**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 authorized to supplement care provided by parents and legal guardians. **Parents and legal guardians must participate in providing care to the fullest extent possible....**

(Emphasis added.) See Respondent's Composite Exhibit 1, pages 46 and 47.

9. The Petitioner's Authorized Representative and [REDACTED] testified at the Fair Hearing and stated that [REDACTED] received the services of a home health aide in [REDACTED], and doesn't understand why [REDACTED] current request was denied. [REDACTED] testified [REDACTED] is seeking the services of a home health aide from 7:00 p.m. to 7:00 a.m. On cross examination, [REDACTED] confirmed that [REDACTED]

10. Dr. Samerson testified for the Respondent and stated the records in this matter contain conflicting clinical information. Dr. Samerson stated the Petitioner's home health agency and the Petitioner's [REDACTED] all state the Petitioner requires assistance with all [REDACTED] ADLs, while the March 2024 Individual Educational Plan prepared by the [REDACTED] ("IEP") reflects the Petitioner has [REDACTED]

[REDACTED] See Respondent's Exhibit 1, page 6.

Dr. Samerson testified the Respondent relied in-part on the IEP in their decisions in this matter, and pointed out the IEP further states the Petitioner "... understands [REDACTED] needs and can independently care for those needs. See Respondent's Exhibit 2, page 5. Finally, Dr. Samerson testified that the home health services the Petitioner is seeking is "supervision" and "child care", which are specifically excluded as covered benefits under Florida Medicaid.

11. The Petitioner submitted an undated and unsigned Medicaid Physician's Written Prescription for Home Health Services by [REDACTED] requesting twelve (12) hours of home health aide services for seven (7) days per week for the period of **July 28, 2022, through January**

**23, 2023.** (Emphasis added.) See Petitioner’s Composite Exhibit 1, page 7. In addition, the Petitioner submitted a Home Health Plan of Care calling for twelve (12) hours of home health aide services for seven (7) days per week, for the period of **September 26, 2022, through March 24, 2023.** (Emphasis added.) See Petitioner’s Composite Exhibit 1, page 6.

### CONCLUSIONS OF LAW

12. 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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

14. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

15. Because the Petitioner has requested new home health aide services similar to what [REDACTED] had in [REDACTED], Fla. Admin. Code R. 59G- 1.100(17)(g) assigns the burden of proof to Petitioner to demonstrate the decision by the Respondent regarding the partial denial of home health services was incorrect. 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.)

16. The Agency’s Florida Medicaid Personal Care Services Coverage Policy, November 2016 (“Policy”) has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.215, governs Personal Care services available under Florida Medicaid. The 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.

...

**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

...

**4.2.1 Parental Responsibility**

Florida Medicaid reimburses for personal care services 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.

...

#### **4.2.2 Services Provided by Independent Personal Care Providers**

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

...

#### **4.3 Early and Period 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 1095(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.

The Policy further addresses excluded services as follows:

#### **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 recipients place of residence
- Yard work, gardening, or home maintenance work.

See Respondent's Composite Exhibit 1, pages 62-65

17. 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.

18. Petitioner is under age 21, 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). 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.

19. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides the applicable definitions for Florida Statewide Medicaid Managed Care policy. The Definitions Policy provides the following definitions applicable to the instant case:

## **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)**

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- 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.

See Definition Policy, pages 1-7.

20. In the NABD, dated January 23, 2024, Respondent approved fifty-six (56) hours of home health aides for seven (7) days per week (twenty-eight) hours per week. See ¶ 5. The Respondent explained in the NABD there has been no change in your child's medical condition, that the requested hours are excessive, and that more notes, such as office notes would need to be received for consideration of additional home health aide hours. *Id.*

21. The April 5, 2024, NPAR upheld the denial of the twenty-eight (28) additional hours of home health aide services. See ¶ 6. In the NPAR Respondent stated that the clinical information submitted with "this request does not support the medical need for additional services", that "there has been no significant change in your child's clinical condition", and that "the excessive hours per week are therefore upheld/denied".

22. As the Petitioner bears the burden of proof, the Petitioner must show that the requested twenty-eight (28) hours of additional home health aide services are medically necessary for Petitioner. As provided in the Policy, personal care services are to "provide medically necessary assistance . . . with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL)." See ¶ 16. As shown by the record, the Petitioner is diagnosed with [REDACTED]

[REDACTED]. See ¶ 2. Further, there is no evidence that the Petitioner's [REDACTED] works outside the home, is not capable of caring for [REDACTED] beyond the home health aide hours that have been approved, and that the Petitioner is [REDACTED]. The Petitioner did not provide persuasive or credible testimony that an additional twenty-eight hours of home health aide services per week for the Petitioner are medically necessary. See ¶ 9. Further, the Medicaid Physician's Written Prescription and the Home Health Plan of Care submitted into evidence by the Petitioner are from 2022, are not persuasive that the Petitioner requires twelve (12) hours of home health aide services seven (7) days per week in 2024, and are of no effect in this case.

23. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that the Petitioner has not proved by a preponderance of the evidence that the Respondent's decision to deny twenty-eight (28) additional hours of home health aide services was incorrect. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that an additional twenty-eight (28) hours per week of home health aide services is necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the Petitioner has not proved by a preponderance of the evidence that the denial of an additional twenty-eight (28) hours of home health aide services week was incorrect.

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

The Respondent's denial of twenty-eight (28) hours of home health aide services per week is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE and ORDERED** this 9th day of September, 2024, in Tallahassee, Leon County, Florida.

Alan J. Leifer



24-FH1610

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**ALAN LEIFER, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308**

**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:**



**Children's Medical Services**  
**CMSPlanContract@flhealth.gov**

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