



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

**FILED**

Oct 11, 2024, 3:59 pm

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

vs.

AHCA Case No.: 24-FH1936

Plan ID No.: [Redacted]

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 31, 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 Petitioner in this matter requested thirty-one (31) hours per week of Participant Direction Option (“PDO”) home health aide - personal care services (“home health aide services”) for ninety (90) days, and the Respondent approved thirty (30) days of the requested PDO home health services but denied the remaining sixty (60) days of the requested PDO home health aide services. The issue is whether the Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny thirty-one (31) hours of PDO home health aide service per week for sixty (60) days was incorrect.

### PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's [REDACTED] Authorized Representative, [REDACTED], (" [REDACTED]"), appeared and testified on behalf of the Petitioner. In addition, the Petitioner's [REDACTED], [REDACTED] (" [REDACTED]") also testified 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"). Mai Fung, M.D. ("Dr. Fung"), a Medical Director for the Respondent also testified on behalf of the Respondent. Dr. Andrew Metinko M.D., also appeared on behalf of the Respondent for observation purposes. Joanne White, Compliance Officer and Elisa Luke, Esq., both with the Florida Department of Health attended the Fair Hearing for observation purposes. Finally, Diana Hearod, Medical Healthcare Program Analyst/Fair Hearing Liaison with the Florida Agency for Healthcare Administration attended the Fair Hearing for observation purposes.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-eight (138)-page proposed evidence packet that was admitted into evidence without objection, is identified herein as "Respondent's Composite Exhibit 1" and appears in the Office of Fair Hearings document management system as file title "MFH Packet [Petitioner].pdf".

### FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS since [REDACTED]. See Respondent's Composite Exhibit 1, page 2. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. The Petitioner is a [REDACTED]. See Petitioner's [REDACTED].

Composite Exhibit 1, pages 23 and 28. The Record reflects the Petitioner [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Testimony of the [REDACTED]*.

3. On April 8, 2024, the Petitioner requested thirty (31) hours per week of PDO home health aide services per week for ninety (90) days, consisting of after-school hours while [REDACTED] [REDACTED] is at work, including five (5) hours on Monday, four (4) hours on Tuesdays through Thursdays, plus ten (10) hours per day for non-school days. See Respondent’s Composite Exhibit 1, pages 22, 34, 35, and 54. In a Notice of Adverse Benefit Determination (“NABD”), dated April 15, 2024, the Respondent approved thirty (30) days of the requested home health aide services for thirty-one (31) hours per week, and denied the remaining requested sixty (60) days of PDO 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 to authorize home health aide services for your child is partially approved and partially denied. A home health aide is a trained person that helps with personal care in the home. We are approving services for an initial 30-day period. This is a courtesy to allow you time to make other childcare plans. Services after the first 30 days are denied. It is denied due to missing notes. We did not get any notes that state significant functional limitations. These are limitations with the ability to do daily activities. There is no note that your child is incontinent (unable to hold bowel or bladder) or are non-verbal (does not talk). Your child appears to need childcare. This does not require a home health aide. Please note that recent prior authorizations for home health aide services were approved without medical need review.

...

*Id.*

4. The Petitioner requested a plan appeal on May 6, 2024, and received a Notice of Plan Appeal Resolution (“NPAR”), dated May 31, 2024, that affirmed the previous denial of sixty (60) days of home health aide services. See Respondent’s Composite Exhibit 1, pages 44-47. The NPAR explained as follows:

The facts that we used to make our decision are: the previous decision regarding home health aide for your child is upheld. The clinical notes that we received do not document any significant functional limitations. Your child is not incontinent. Your child does not need significant assistance with their activities of daily living. There is no note that they are non-verbal. Criteria: SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Requests FL.UM.25; Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was made with regards to EPSDT. The reasons for this decision are based on a set of standards. This included SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Requests FL.UM.25; Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was made with regards to EPSDT.

...

*Id.*

5. On June 11, 2024, the Petitioner requested a Fair Hearing to challenge the denial of thirty-one (31) hours per week of home health aide for sixty (60) days. On July 9, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 31, 2024, at 2:00 p.m. EST.

6. The Sunshine Policy and Procedure 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....

See Respondent's Composite Exhibit 1, pages 70-80.

7. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Finally, [REDACTED] confirmed the Petitioner regularly attends public school and will soon restart applied behavior analysis therapy services.

8. [REDACTED], the Petitioner's [REDACTED] that is providing [REDACTED] home health services testified [REDACTED] works for a home health agency as an aide and provides services for the Petitioner, [REDACTED]. [REDACTED] also testified the Petitioner's [REDACTED] does not work.

9. Dr. Fung testified for the Petitioner that the Petitioner has been receiving home health aide services since [REDACTED], and that this is the first time a medical necessity review has been performed, wherein it was concluded that the home health services were not medically necessary and that the Petitioner simply requires age appropriate supervision and services any [REDACTED] [REDACTED] would require. Dr. Fung testified the several factors which demonstrate the Petitioner's home health aide services are not medically necessary are that the Petitioner is [REDACTED]. [REDACTED].

Finally, Dr. Fung testified that both "babysitting" and services furnished by relatives or household members are specifically non-covered services by the Florida Medicaid Personal Care Coverage Policy.

10. On [REDACTED], [REDACTED], M.D. provided a prescription to the Petitioner to receive

home health aide services for ninety (90) days. See Respondent's Composite Exhibit 1, page 22.

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

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

13. 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.

14. Because the Petitioner requested new services from the Respondent that were denied, namely the sixty (60) days of home health aide services, Fla. Admin. Code R. 59G- 1.100(17)(g) assigns the burden of proof to Petitioner to demonstrate that the decision to deny the services by the Respondent 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.)

15. 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 63-79

16. 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.

17. 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.

18. The Florida Medicaid Definitions Policy (May 2024) (“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
  - This requirement applies only to recipients age 21 or older.
- 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.

19. On April 8, 2024, the Petitioner requested thirty-one (31) hours of home health aide services for ninety (90) days, along with ten (10) hours of home health aide services on non-school days. See ¶ 3. In the NABD, dated April 15, 2024, the Respondent approved thirty-one (31) hours of home health services for thirty (30) days and denied sixty (60) days of home health aide services. *Id.* The Respondent explained in the NABD that medical necessity for thirty-one (31) hours per week of home health services was not reflected in the file. *Id.*

20. The Respondent's April 15, 2024, NABD denying the Petitioner's request for a home health aide for thirty-one (31) hours per week and stated in-part as follows:

We are approving services for an initial 30-day period. This is a courtesy to allow you time to make other childcare plans. Services after the first 30 days are denied. It is denied due to missing notes. We did not get any notes that state significant functional limitations. These are limitations with the ability to do daily activities. There is no note that your child is incontinent (unable to hold bowel or bladder) or are non-verbal (does not talk). Your child appears to need childcare. This does not require a home health aide.

See ¶ 3. In addition, the Respondent's May 31, 2024, NPAR upheld the denial of thirty-one (31) hours of home health aide services for sixty (60) days and stated in-part as follows:

The clinical notes that we received do not document any significant functional limitations. Your child is not incontinent. Your child does not need significant assistance with their activities of daily living. There is no note that they are non-verbal.

See ¶ 4.

21. As the Petitioner bears the burden of proof, the Petitioner must show that the requested services are medically necessary and that the decision of the Respondent to deny the requested services was incorrect. As provided in the Personal Care 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 ¶ 15.

22. As shown by the record, the Petitioner is diagnosed with [REDACTED]. See ¶ 2. Further, the record the Petitioner is [REDACTED]. See ¶ 4. At the Fair Hearing, the Petitioner’s [REDACTED] and [REDACTED] did not provide credible and persuasive evidence or testimony that the services of a home health aide for the Petitioner are medically necessary. See ¶¶ 7 and 8. Moreover, there is no evidence in the record that demonstrates the Petitioner does in-fact require assistance to perform the activities of daily living that are age appropriate and not beyond that of any young child requiring help with activities of daily living, such as preparing, bathing, dressing, and toileting. As stated by the Respondent, all young children need constant supervision and monitoring, including the Petitioner, which does not require a home health aide. Based on the foregoing, the home health aide services at issue are not “individualized, specific, consistent with symptoms or diagnosis of illness or injury” and are “in excess of the patient’s needs.”

23. The Florida Medicaid Personal Care Services Coverage Policy provides that “babysitting” and services furnished by relatives are expressly non-covered services. See ¶ 15. The evidence and testimony in this matter does not reflect the home health aide services are anything more than after-school babysitting by a relative, and pursuant to the Florida Medicaid Personal Care Services Coverage Policy, are non-covered services.


24. Upon consideration of the testimony provided, evidence submitted, and applicable

policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that the requested home health aide services are medically necessary and/or are not excluded services under Florida Medicaid. Looking at all the evidence relevant to the particular needs of Petitioner, the Petitioner has not demonstrated that thirty-one (31) hours per week per week of home health aide services are 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 home health aide services was incorrect.

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

The Respondent's denial of thirty-one (31) hours of home health aide services for sixty (60) days for the Petitioner is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE and ORDERED** this 11th day of October 2024, in Tallahassee, Leon County, Florida.

 Alan J. Leifer  
24-FH1936  
2024.10.11 08:39:00 -04'00'

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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**