



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

**FILED**

Aug 12, 2020, 10:03 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic fair hearing in the instant consolidated case on July 8, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED].  
[REDACTED]  
Petitioner's Authorized Representative

For the Respondent:

Paige Comparato, Esq.  
Hogan & Lovells US, LLP  
Sunshine State Health Plan, Inc. ("Sunshine")

**PRELIMINARY STATEMENT**

[REDACTED] (" [REDACTED] "), Petitioner's Authorized Representative, appeared on behalf of Petitioner. [REDACTED] (" [REDACTED] ") appeared as a witness for Petitioner.

Paige Comparato, Esq. ("Ms. Comparato"), Hogan & Lovells, Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent. Dr. Michael Silverman ("Dr. Silverman"), Medical Director and Kenny Castanda ("Mr. Castanda"), Case Management Director, appeared

as a witness for Respondent. Louise Jenty, Supervisor for Quality Improvement, Sunshine, Meliba Berroa, Supervisor, Sunshine, Karina Gonzalez, Quality Assurance, Sunshine, and Linda Albe, Supervisor, Sunshine, appeared as observers for Respondent.

Stephanie Lange, Program Analyst, attended as an observer from the Agency for Health Care Administration (“Agency” or “AHCA”).

██████████ introduced an evidence packet, consisting of 322 pages, which was admitted into the record as Petitioner’s Composite Exhibit 1 (“PCE 1”). PCE 1 includes the following: an email from ██████████, dated June 26, 2020; an LTC Person-Centered Care Plan (“Care Plan”), dated ██████████ 9, 2018; a Care Plan, dated February 6, 2019; a Care Plan, dated May 7, 2019; a Care Plan, dated August 5, 2019; a Care Plan, dated ██████████ 2019; an email, dated January 13, 2020; a Facsimile Transmittal Sheet, dated January 9, 2020; a Care Plan, dated January 9, 2020; a Care Plan, dated April 7, 2020; a Care Plan, dated May 7, 2020; an email from ██████████, dated June 26, 2020; a Care Plan, dated May 7, 2020; a Care Plan, dated June 5, 2020; a 701B Comprehensive Assessment (“701B”), dated February 6, 2019; a Sunshine Health questionnaire; a 701B, dated May 7, 2019; a 701B, dated August 5, 2019; a 701B, dated ██████████ 1, 2019; an email from ██████████, dated June 26, 2020; a 701B, dated ██████████ 1, 2019; a 701B, dated ██████████ 2019; a 701B, dated ██████████ 2020; a 701B, dated May 7, 2020; a Final Report from ██████████, dated ██████████ 2019; a Discharge Summary, dated ██████████ 2020; an email from ██████████, dated June 26, 2020; History and Physical Reports, dated ██████████ 2020; Consultation Notes, dated ██████████ 2020; Emergency Documentation, dated ██████████ 2020; History and Physical Reports, dated ██████████ 2020; Consultation Notes, dated ██████████ 2020; Multidisciplinary Progress Notes, dated

██████████ 2020; Nursing Discharge Summary, dated ██████████ 2020; Follow-Up Office Notes, dated ██████████ 2020; Office Visit Notes, dated ██████████ 2020; Progress Notes, dated ██████████ 2019; Progress Notes, dated ██████████ 2019; Progress Notes, dated ██████████ 2020; Progress Notes, dated ██████████ 2020; Progress Notes, dated ██████████ 2020; and medical records from ██████████

██████████ testified that she received a copy of Respondent's evidence packet prior to hearing. Respondent introduced the evidence packet containing 114 pages, which was admitted into evidence as Respondent's Composite Exhibit 1 ("RCE 1"). RCE 1 includes the following: a Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated May 13, 2020; a Notice of Adverse Benefit Determination ("NABD"), dated January 27, 2020; a Care Plan, signed December 19, 2019; a Care Plan, signed May 7, 2020; a 701B, dated ██████████ 2019; a 701B, dated May 7, 2020; email from ██████████, dated March 24, 2020; a Standard Appeal Acknowledgement, dated March 20, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated April 21, 2020; the Sunshine LTC Ancillary Service Criteria, dated May 1, 2014; and Florida Administrative Code Rule ("Fl. Admin. Code R.") 59G-1.010, Florida Administrative Code ("F.A.C.").

#### **STATEMENT OF ISSUE**

The issue is whether Petitioner provide by a preponderance of evidence that Respondent's denial of an additional 12 hours of adult companion care services was incorrect.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. A Discharge Summary, dated [REDACTED] 2020, annotates, in part, that Petitioner has been “...living with her daughter since she was discharged from a skilled nursing facility recently” and “...has become overall less independent requiring a walker to ambulate despite rehabilitation efforts.” See PCE 1, page 318.

3. According to the NABD dated January 27, 2020, Respondent denied Petitioner’s request for an additional 12 hours per week of adult companion care services. See Respondent’s Composite Exhibit 1, pages 4-13. The NABD determined that the requested services were not medically necessary because they did not meet all of the following criteria:

1. 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;
2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider;

and one of the following:

- 1) Enable the enrollee to maintain or regain functional capacity; or
- 2) Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

*Id.* at pages 4-5. The decision was based on the fact that the Petitioner lives with a friend that can provide socialization and supervision, and Petitioner’s daughter is able to provide additional support services when needed such as, socialization and supervision. *Id.* at page 5.

4. On April 21, 2020, Respondent issued an NPAR upholding the denial of adult companion care services. *Id.* at pages 76-82. The decision was based on the assessment of the member’s care needs and household and caregiver status. *Id.* at page 76.

5. On [REDACTED] 2019, a 701B was conducted in Petitioner's home. See RCE 1, pages 30-46. Petitioner has been prescribed the use of a wheelchair. *Id.* at page 34. In [REDACTED] (2019), Petitioner fell.<sup>1</sup> *Id.* On May 7, 2020, a 701B was conducted telephonically with [REDACTED] because of the Covid-19 emergency, which prohibits Respondent from visiting the member in person. See RCE 1, page 50. The 701B provided, in part, the following:

- a. Member is a [REDACTED] female and suffers from Alzheimer's Disease and Congestive Heart Failure. *Id.*
- b. In [REDACTED] 2019, Petitioner slide off her bed and rescue was called to lift her back up.<sup>2</sup> *Id.* Petitioner did not sustain any injuries. *Id.*
- c. In the last year, Petitioner has been admitted to a hospital twice. *Id.* at page 52. Due to pneumonia, member was hospitalized from [REDACTED] 2019. *Id.* at page 53. She was hospitalized again from [REDACTED] 2020, due to feeling weak. *Id.*
- d. Petitioner needs assistance but not total help with bathing, dressing, eating, using the bathroom, transferring, and walking/mobility. *Id.* at page 53. Petitioner will sometimes be placed on the toilet and is able to use the bathroom, but still has frequent incontinence. *Id.* She uses briefs. *Id.*
- e. Member uses a wheelchair for ambulation and is able to take a few steps with assistance. *Id.*

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<sup>1</sup> Petitioner's 701B is unclear how she fell, because it states that she fell by both "getting out of bed" and "walking with her walker." It is not clear whether she fell attempting to transfer from her bed to the walker, or whether she fell attempting to get out bed.

<sup>2</sup> It was not established at hearing if this is the same incident referenced in Petitioner's 701B, dated [REDACTED] 2019.

f. Petitioner needs total assistance with heavy chores, management money, preparing meals, shopping, and using transportation. *Id.* at page 54. Petitioner needs assistance but not total help with light housekeeping and using the telephone. *Id.* Petitioner is able to clean up crumbs after eating. *Id.* Petitioner can speak on the phone when the phone is placed to her ear. *Id.* Petitioner's daughter and friend assist with shopping on a weekly basis and as needed. *Id.* Petitioner's daughter organizes her medication and transports her to medical appointments. *Id.*

g. In response to question number 83, it states that Petitioner requires supervision. *Id.* at page 58.

6. Petitioner's Care Plan, dated May 7, 2020, states that Petitioner can be safely left alone for 2 hours at a time. *Id.* at page 23. Petitioner's Plan of Care, dated February 6, 2019, shows that Petitioner once was able to be safely alone 8 plus hours. *See* PCE 1, page 4. This number was reduced to 4 hours *via* Petitioner's Plan of Care, dated December 6, 2019. *Id.* at page 32. Then further reduced to 2 hours *via* Petitioner's Plan of Care, dated May 7, 2020. *Id.* at page 79. The May 7<sup>th</sup> Care Plan annotates that both [REDACTED] and [REDACTED] provide 60 minutes of companion services daily. *See* RCE 1, at page 23. A friend ([REDACTED]) helps Petitioner in the evening when she arrives home from work. *Id.* The Care Plan also identifies that Petitioner uses a wheelchair and human assistance for fall prevention. *Id.* at page 24. [REDACTED] is the person chosen by the Petitioner to participate in the Plan of Care development and review. *Id.* at page 23. The Care Plan was signed by Petitioner's Case Manager, but mailed to [REDACTED] because she was unable to sign. *Id.* at page 28.

7. A physical exam, dated [REDACTED] 2020, annotates that Petitioner is unable to ambulate. See PCE 1, page 267.

8. [REDACTED] testified that Petitioner's physical health is poor and frail, and her mental health has declined since she was hospitalized in [REDACTED] 2019. According to [REDACTED], Petitioner uses a walker to help ambulate and maintain her balance. Petitioner has not fallen in some time; however, she did slide off her bed, requiring 9-1-1 services to help her back up. At present, Petitioner cannot independently call for help or transfer out of her hospital bed, which has been equipped with bed rails. Mentally she has become forgetful and she will talk about things that do not make sense. She also becomes confused daily. According to [REDACTED], Petitioner can drink and eat on her own, but not always. She also will not eat as much if she is left alone.

9. [REDACTED] testified that the Home Health Aide ("HHA") is in Petitioner's home Monday through Thursday from 10:00 a.m. to 4:00 p.m., and Friday from 10:00 a.m. to 5:00 p.m. The HHA provides all of the of authorized services (personal care, homemaker, and adult companion) and will socialize with Petitioner by playing cards or reading books.

10. [REDACTED] also testified that someone lives with Petitioner, but she works Monday through Friday from 8:00 a.m. to 6:00 p.m. According to [REDACTED] this individual is provided free rooming in exchange for helping Petitioner, when she is not working. Each morning, the live-in individual will check on Petitioner and will either leave her alone sitting up in her bed or transfer her to the recliner with the television on. Once she leaves for work, Petitioner is alone from 8:00 a.m. to 10:00 a.m., Monday through Friday, until the HHA arrives for the day.

11. [REDACTED] testified that she works as a bookkeeper for a family nursery and a real estate agent. Due to Covid-19, she is working approximately 30 hours per week, visiting Petitioner daily, around mid-day, for about 60 to 90 minutes.

12. According to [REDACTED], Petitioner currently receives 1 hour of wound care every 4 days through Medicare, which includes changing bandages and taking Petitioner's vital signs. She was receiving daily wound care, but that changed on [REDACTED] 2020, after a follow-up visit with her physician.

13. Dr. Silverman testified that adult companion care services provide non-medical, supervision, and socialization. Based on medical necessity, Respondent determined that Petitioner did not meet the criteria because she is receiving over 30 hours of combined services, which provides enough companionship. There is also someone who lives in the home, as well as wound care provider, *via* a different agency, who comes into the home regularly.

14. Dr. Silverman testified that he reviewed Petitioner's medical records and agreed with the decision that an additional 12 hours of adult companion care is not medically necessary. Because of the progressive nature of Alzheimer's disease, Dr. Silverman testified that Petitioner's needs may change overtime, which may require additional services; however, Petitioner's Care Plan, states that Petitioner can be alone for 2 hours at time.

15. Despite meeting 3 of the 4 criteria for supervision outlined on page 88 of RCE 1, Dr. Silverman argued that Petitioner's request still did not meet demonstrate medical necessity because the information submitted does not support that the Petitioner is a risk to social isolation. If Petitioner's condition has changed since the time of the review, then she can submit a request for additional hours to meet any unmet needs.

16. Mr. Castanada testified that Petitioner's Care Plan, specifically page 23 of RCE 1, outlines what amount of time Petitioner can be left alone and what additional informal support is provided through other caregivers. According to Mr. Castanada, the Plan's care coordinator (██████████) will meet with the Petitioner and/or Petitioner's representative (██████████). ██████████ is required to sign the Care Plan, but it was mailed to her instead. The Care Plan shows that Petitioner can be safely left alone for 2 hours at a time and that she lives with someone who provides services outside of services approved through Sunshine. This information is either provided by the Petitioner or the Petitioner's caregiver. Between ██████████ and ██████████ ("██████████"), up to an additional 14 hours of companion care is provided weekly.

17. According to Mr. Castanada, the request for an additional 12 hours of adult companion services was requested to address that time she is alone in the morning from 8:00 a.m. to 10:00 a.m. Petitioner's services can be scheduled partially in the morning and afternoon to provide better coverage throughout the day. According to Mr. Castanada, Petitioner would not consider this approach.

#### **CONCLUSIONS OF LAW**

18. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

20. Because Respondent denied services, Fla. Admin. Code R. 59G-1.100(17)(g), assigns the burden of proof to the 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.).

21. The Florida Medicaid policy that applies to the provision of adult companion care, homemaker, and personal care services is the Florida Medicaid Statewide Medicaid Managed Care Long-Term Care Program Coverage Policy (March 2017) (“LTC Policy”). See [http://ahca.myflorida.com/medicaid/review/specific\\_policy.shtml](http://ahca.myflorida.com/medicaid/review/specific_policy.shtml).

22. The Agency’s LTC Policy has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.192.

23. According to section 4.1 of the LTC Policy, Florida Medicaid Long-term Care plans cover medically necessary services that do not duplicate another service and that meet the criteria specified in the LTC Policy.

24. In section 4.2.1.1 of the LTC Policy, adult companion care is defined as:

The provision of non-medical care, supervision when necessary to protect the health safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

25. In section 4.2.1.9 of the LTC Policy, homemaker services are defined as:

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

26. In section 4.2.2.6 of the LTC Policy, personal care provides:

[A]ssistance 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. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

27. In section 1.3.14 of the LTC Policy, medical necessity for long-term care services are addressed:

For the purposes of this policy, the service must meet either of the following criteria:

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

- 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 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

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

28. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy") contains definitions of commonly used terms that are applicable to all sections of Rule Division 59G, F.A.C., unless specifically stated otherwise in a service-specific coverage policy or rule. The Definitions Policy has been incorporated, by reference, into Rule 59G-1.010, F.A.C.

29. Section 2.83 of the Definitions Policy defines "medically necessary or medical necessity" as follows:

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 severe 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.

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

30. Respondent's LTC (Long Term Care) Ancillary Service Criteria establishes the clinical criteria to review Sunshine's line of business ancillary services for members residing in a home and community-based environment. See RCE 1, page 83-113. Among the services provided are: adult companion care; adult day care services; home delivered meals; homemaker services; personal care services; personal emergency response services; pest control services; and respite care services. *Id.* at page 83. When considering the level of support that the member requires the following will be considered:

- a. Activities of Daily Living (ADL's)/Instrumental Activities of Daily Living (IADL's)
  - i. Independent where member is able to provide the task without support, with or without assistive devices.
  - ii. Minimal functional impairment where the ADL's require one of the following:
    1. Supervision.
    2. At least minimum assistance.
    3. Member ambulates with assistance of a person or a device.
    4. Member transfers require at least minimum assistance.
  - iii. Moderate functional impairment where two of the follow apply:
    1. Member has ADLs requiring at least minimal assistance.

2. Member ambulates with assistance of a person or device.
  3. Member transfers require at least minimum assistance.
- iv. Maximum and persistent functional impairment without available caregiver support where all of the following exist:
1. Member has ADLs requiring total assistance.
  2. Member is non-ambulatory.
  3. Member transfers require one (1) to two (2) person assist.
  4. Member's treating physician has certified that member meets maximum functional impairment.
- v. Living situation consideration
1. Lives alone.
  2. Lives with family (with consideration of the number of days and hours that family members are not available to assist the member).
  3. Lives with non-family (with consideration of the number of days and hours that non-family members are not available to assist the member).
- vi. Supervision needs, including:
1. Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
  2. Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
  3. Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
  4. Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.
- vii. Available Supports
1. No assistance needed or always has assistance
  2. Has assistance most of the time
  3. Rarely has assistance
  4. Never has assistance
- viii. Services in Place

1. Provided by Sunshine Health
2. Provided by other provider Insurance

*Id.* at pages 87-89. In addition, adult companion care is defined as:

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

*Id.* at page 89.

31. As the burden of proof was on the Petitioner, the undersigned finds that Petitioner did not provide sufficient testimony or evidence to establish that the requested additional hours of adult companion care services were medically necessary. As required by Medicaid policy, a request for service must meet the criteria of medical necessity. *Supra* ¶ 29. Therefore, a Plan of Care (a.k.a. Care Plan) is developed which will identify the enrollee's goals for long-term care, including the services and supports needed to meet those goals. *See* §§ 1.3.18, 4.2, and 6.2 of the LTC Policy. The Plan of Care will also address the specific service needs of each enrollee, showing the projected duration, frequency, and scope of services needed to meet the enrollee's needs. *Id.* The goal of these services is intended to enable the enrollee to reside in the most appropriate and least restrictive setting. *Id.* at § 4.2.

32. As established by the record evidence, Petitioner is currently receiving a combination of 7 hours/per week of personal care services, 5 hours/per week of adult companion care services, 7 hours/per week of homemaker services, and 7 home delivered meals per week. *See* RCE 1, page 25. According to the LTC Program Policy, adult companion care services provides non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or

social enrichment of a functionally impaired enrollee. *Supra* ¶ 24. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee. *Id.* Sunshine's definition of adult companion care services is similar to that of the LTC Program Policy. See RCE 1, page 89.

33. Petitioner's HHA works from 10:00 a.m. to 4:00 p.m. Monday through Thursday, and 10:00 a.m. to 5:00 p.m. on Friday. *Supra* ¶ 9. Petitioner's roommate (██████████) works from 8:00 a.m. to 6:00 p.m. Monday through Friday. *Supra* ¶ 10. Before ██████████ leaves for work each weekday, she will check in on Petitioner and prop her up in her bed or transfer her to the recliner with the television on. *Id.* Because the Petitioner cannot ambulate or transfer independently, she will remain in her bed or recliner until the HHA comes in the morning, which is generally at 10:00 a.m. each weekday. *Id.* The HHA will perform a host of activities addressing Petitioner's personal, homemaking, and companion needs, including socialization by playing cards and reading books. *Supra* ¶ 9. Except for Friday, the HHA will leave for the day at 4:00 p.m. *Id.* Petitioner is then home alone until her roommate arrives home from work, which is generally around 6:00 p.m. *Supra* ¶ 10. However, every fourth day she is visited by a nurse through Medicare for about an hour each time. *Supra* ¶ 12. Although the nurse only provides wound care and takes Petitioner's vital signs, this provides another opportunity for adult companionship. *Id.*

34. As annotated in Petitioner's Care Plan, dated May 7, 2020, Petitioner can be safely alone for up to 2 hours at a time. *Supra* ¶ 6. Approximately one year ago she was able to be safely alone for up to 8 hours at time. *Id.* Each Care Plan is reviewed every 90 days between the care coordinator and the individual or entity responsible for monitoring the Care Plan (here, ██████████). The May 7<sup>th</sup> Care Plan annotates that approximately 14 hours of adult companionship is

provided weekly between [REDACTED] and [REDACTED], which is in addition to the 5 hours that she receives through the HHA per week. *Id.* Based on the services already in place, daily visits by [REDACTED], and the fact that [REDACTED] lives in Petitioner's home, the evidence does not demonstrate that Petitioner is at risk of social isolation.

35. As the record does not demonstrate that Petitioner is at risk of social isolation, the question turns to whether the additional hours were medically necessary to protect the health, safety, and well-being of the enrollee. Neither the record evidence or testimony demonstrate that Petitioner requires more assistance with her IADLs; therefore, it was not established if the hours requested were incidental to the care and supervision of the Petitioner while she completed IADLs tasks such as meal preparation, laundry, and/or light housekeeping. It is clear from Petitioner's 701B, dated May 7, 2020, that she unable to complete most IADLs on her own. *Supra* ¶ 5.f. Alternatively, if there are unmet IADL or ADL needs, then Petitioner may request more hours of services intended to address those needs, such as personal care services or homemaker services. *Supra* ¶ 15.

36. Since the evidence does not demonstrate that the requested hours are to assist Petitioner with tasks incidental to her IADLs, it is not otherwise clear what they are for other than to have a person in the home in the event something should happen. Other than an incident in [REDACTED] 2019, at night, the record is absent of any other falling incidents since that time. In addition, Petitioner's latest Care Plan states that she can be safely alone for up to 2 hours at a time. Moreover, the evidence indicates that the Petitioner can no longer ambulate. *Supra* ¶ 7. During her testimony, [REDACTED] stated that the Petitioner is either left in her bed or transferred to her recliner each morning before her roommate leaves for work. *Supra* ¶ 10. If she is left in bed, the

bed is equipped with bed rails (*Supra* ¶ 8), thus minimizing the risk of falling out of bed. Other than watching television, there is no evidence of other activities Petitioner attempts to engage when she is alone in the morning. Stating that Petitioner requires supervision for the time she is left alone, in itself, does not establish medical necessity, as services furnished in a manner primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider cannot be authorized. *Supra* ¶ 27. While Petitioner may schedule her services to lessen the time that she is alone, this idea was rejected by Petitioner. *Supra* ¶ 17.<sup>3</sup>

37. In light of the foregoing, the evidence does not demonstrate that the requested services are: individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of her needs; are reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. Accordingly, based on the record evidence, testimony, and applicable policies and legal authorities, the undersigned concludes that the Petitioner did not prove by a preponderance of the evidence that the denial of services was incorrect.

### **DECISION**

Respondent's denial of an additional 12 hours of adult companion care services is UPHELD. Petitioner's request for relief is DENIED.

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<sup>3</sup> The hours requested (12) also do not align with the time Petitioner is alone, which totals 19 hours, Monday through Friday.

**DONE AND ORDERED** this 12th day of August, 2020, in Tallahassee, Leon County, Florida.



THOMAS CONGDON  
20-FH [REDACTED]  
2020.08.12 07:40:01  
-04'00'

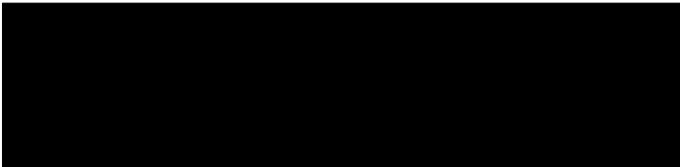
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**THOMAS CONGDON, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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:**



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