



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

**FILED**

Aug 17, 2020, 1:17 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

COVENTRY HEALTHCARE OF FLORIDA, INC.  
D/B/A AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

COVENTRY HEALTHCARE OF FLORIDA, INC.  
D/B/A AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Medicaid Fair Hearing in the above-styled case on July 15, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Debra Wingo  
Director of Long Term Care  
Aetna Better Health of Florida, Inc.

**STATEMENT OF ISSUE**

The first issue (AHCA Case Number 20-FH [REDACTED]) is whether the denial of 16 additional hours of personal care services weekly was incorrect.

The second issue (AHCA Case Number 20-FH [REDACTED]) is whether the reduction of personal care services from 21 hours per week to 5 hours per week was correct.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s daughter and Designated Authorized Representative, appeared on behalf of Petitioner.

Debra Wingo (“Ms. Wingo”), Director of Long Term Care (“LTC”), appeared on behalf of Respondent, Aetna Better Health of Florida, Inc. (“Aetna” or “Respondent”). Dr. Olunwa Ikpeazu (“Dr. Ikpeazu”), Medical Director for Aetna, and Ms. Wingo appeared as witnesses for Respondent and offered testimony on behalf of Respondent. The following individuals appeared on Respondent’s behalf, but did not provide testimony: Mariangela Cacaluna, Manager for LTC for Aetna; Damaris Segura, Manager of Grievances and Appeals for Aetna; Natalie Gately, Intern with Aetna; and Dr. Lia Rodriguez, Medical Director for Aetna.

Lisa Sanchez, Medical Healthcare Program Analyst for the Agency for Health Care Administration (“AHCA” or “Agency”), appeared as an observer.

Lisa, translator number 214201, from Language Line Solutions, Inc., provided Spanish interpretation services for Petitioner’s Authorized Representative during the hearing. Rosa, translator number 220632, from Language Line Solutions, Inc., also provided Spanish interpretation services for Petitioner’s Authorized Representative during the hearing.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a 20-page evidence packet. The packet included the following: an email from [REDACTED] to the

Office of Fair Hearings, sent June 28, 2020; the Designation of Authorized Representative for Medicaid Fair Hearing Participation (Sample) form; medical records from [REDACTED] [REDACTED] (“[REDACTED]”), dated June 2, 2020; and the Durable Power of Attorney for Financial Management, signed September 30, 2015, with attachments. Absent an objection from Respondent, Petitioner’s 20-page evidence packet was admitted into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 117-page evidence packet. The packet included the following: Respondent’s Medicaid Fair Hearing and Appeal Document Checklist; the Acknowledgement of Medicaid Fair Hearing Request, filed June 9, 2020 (English and Spanish versions); the Notice of Adverse Benefit Determination (“NABD”), dated May 20, 2020; a letter to Petitioner from Aetna, dated May 27, 2020; the Notice of Plan Appeal Resolution (“NPAR”), dated June 1, 2020 (the “6/1/20 NPAR”); the Comprehensive LTSS Plan of Care (“care plan”), signed April 6, 2020; the Florida Department of Elder Affairs – 701B Comprehensive Assessment (“701B”), dated January 24, 2020; Aetna’s Caregiver Supplemental Assessment, completed on November 5, 2019; the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“SMMC LTC Policy”); Florida Medicaid Home Health Visit Services Coverage Policy (November 2016) (“HHV Coverage Policy”); and the Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Policy”). Absent an objection from Petitioner, Respondent’s 117-page hearing packet was admitted into evidence as Respondent’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Petitioner the Notice of Plan Appeal Resolution, dated March 10, 2020, (the “3/10/20 NPAR”). During the hearing, Respondent

offered the 3/10/20 NPAR in evidence. Absent an objection from Petitioner, Respondent's 3/10/20 NPAR was admitted into evidence as Respondent's Exhibit 2.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Aetna's Long-Term Care ("LTC") program. See Respondent's Composite Exhibit 1, page 44. Aetna is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is 86-year-old widowed female who resides in a private residence with her grandson and her daughter, [REDACTED]. See Respondent's Composite Exhibit 1, page 49 – 50. Petitioner "has diagnosis of Alzheimer's and has cognitive and memory problems," and she is "usually alert but disoriented to time." *Id.* at 51.

3. The 701B reflects that Petitioner requires assistance (but not total help) with the following activities of daily living ("ADLs"): dressing; eating; using the bathroom; walking/mobility; and transferring. See Respondent's Composite Exhibit 1, page 53. Petitioner requires total assistance with bathing. *Id.* Petitioner uses an assistive device for transferring and walking/mobility. *Id.* The 701B states:

[Petitioner] needs assistance with all ADLs due to her functional deficits. She ambulates with a walker and needs some assistance also. The ADC and her daughter through the PDO- Personal Care program provide the necessary assistance. [Petitioner] receives incontinence supplies.

...

[Petitioner] suffers from several health conditions, including IDDM, HTN and Incontinence. She has unsteady gait and is at risk of falls. All conditions are controlled with medication, managed by caregiver and PCP monitoring monthly. No recent hospitalizations or ER visits . No skilled services current.

...

[Petitioner] needs constant supervision for her cognitive and mental state. She is constant supervised at the ADC and by her daughter at home.

See Respondent's Composite Exhibit 1, pages 53, 56 and 58.

4. Regarding instrumental activities of daily living ("IADLs"), the 701B reflects that Petitioner requires total assistance with heavy chores, light housekeeping, managing money, preparing meals, shopping, and transportation. See Respondent's Composite Exhibit 1, page 54. Petitioner needs assistance (but not total help) with using the telephone and managing medication. *Id.* Petitioner uses assistive devices for transportation. *Id.*

5. On February 7, 2020, Respondent issued an NABD reducing Petitioner's personal care services from 21 hours per week to five hours per week. See Respondent's Composite Exhibit 2, page 3.

6. Petitioner requested a plan appeal regarding Respondent's reduction of personal care services from 21 hours per week to 5 hours per week. On March 10, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. See Respondent's Composite Exhibit 2, page 3. The NPAR stated as follows:

On February 14, 2020 we received your timely plan appeal request regarding Aetna Better Health of Florida's Notice of Adverse Benefit Determination dated February 7, 2020, NABD Number [REDACTED], reducing Personal Care Hours from (21 hours to 5 hours weekly) and Homemaker hours from (7 hours to 5 hours weekly) provided to [Petitioner].

On March 9, 2020, after consideration of the information you provided to Aetna Better Health of Florida in support of your plan appeal, Aetna Better Health of Florida hereby partially denies your plan appeal. As a result, [Petitioner] will receive 5 personal care hours per week, 8 homemaking hours per week, for a total of 13 hours of a home health aide per week and 5 ADC per week, effective 3/12/2020.

Dr. David Gilchrist, D.O., Senior Medical Director, Florida Board certified in Emergency Medicine and Internal Medicine reviewed your appeal for the care plan which suggested a reduction. Your new care plan was reduced to 5 hours of personal care, 5 hours of homemaking, for total of 10 hours of a home health aide and 5 visits to an adult day care (ADC) per week. You live with your caregiver who

works outside the home and is your direct service worker. We have records dated 1/27/20 that shows you need total assistance with bathing and dressing; some assistance with eating, using the bathroom, transferring and walking/mobility. You need total assistance with heavy chores, light housekeeping, shopping, preparing meals, managing money, managing medicines, and using the telephone. The notes state you always have the care you need.

We do not see that you:

- Have had any change in your condition.
- Do not have enough care.
- Any recent hospitalizations.
- At risk for social isolation

Based on the clinical records we have, we will add an additional 3 hours of homemaking per week. The new approved care plan will be 5 personal care hours per week, 8 homemaking hours per week, for a total of 13 hours of a home health aide per week and 5 Adult day care (ADC) per week. Legal guardians must help provide care as much as possible. You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-term Care Program and Home Health Visits Coverage Policy.

Respondent's Composite Exhibit 2, pages 3 – 4.

7. On May 20, 2020, Respondent issued an NABD denying Petitioner's request for 16 additional hours of personal care services per week. See Respondent's Composite Exhibit 1, page

16. The NABD stated the reason for Respondent's determination as follows:

Aetna Better Health of Florida has reviewed your request for 16 additional hours of Personal Care

Services weekly, which we received on 05/13/2020. After our review, this service has been: Denied as of 05/20/2020

We made our decision because:

....

We determined that your requested services are **not medically necessary** because the services

do not meet either of the reason(s) checked below: *(See Rule)*

....

Meet all of the following criteria for all extended state plan services used for the purposes of

maintenance therapy and all other home and community-based services:

- 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; and
- 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.

Other authority

The facts that we used to make our decision are:

You have asked Aetna Better Health of Florida to cover 16 additional hours of Personal Care Services weekly. We will not approve this request because you are receiving enough hours to meet your needs. You are currently getting 5 hours of Personal Care Services weekly and 8 hours of Homemaker Services weekly, for a total of 13 hours of a Home Health Aide weekly, and 5 days of Adult Day Care weekly. You live with your caregiver. We have records dated 5/13/2020 that shows you need assistance with bathing, dressing, using the bathroom, walking/mobility and transferring; you need supervision or prompt with eating. You need total assistance with light housekeeping, doing laundry, meal preparation, shopping, managing money, managing medicines, and using the telephone.

We do not see that you:

- have had any change in your condition.
- do not have enough care.
- are at risk of isolation.

You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. Based on the clinical records we have; your care plan will be the same, 5 hours of Personal Care Services weekly and 8 hours of Homemaker Services weekly, for a total of 13 hours of a Home Health Aide weekly, and 5 days of Adult Day Care weekly. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide

Medicaid  
Managed Care Long-term Care Program pages 4-7.

Respondent's Composite Exhibit 1, pages 16 and 17.

8. Petitioner requested a plan appeal regarding Respondent's denial of the 16 additional hours of personal care services per week. See Respondent's Composite Exhibit 1, page 27. On June 1, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 36.

The NPAR stated as follows:

On May 26, 2020 we received your timely plan appeal request regarding Aetna Better Health of Florida's Notice of Adverse Benefit Determination dated May 20, 2020, NABD Number [REDACTED], denying 16 additional hours of Personal Care Services weekly provided to [Petitioner].

On June 1, 2020, after consideration of the information you provided to Aetna Better Health of Florida in support of your plan appeal, Aetna Better Health of Florida hereby denies your plan appeal. As a result, [Petitioner] will not receive 16 additional hours of Personal Care Services weekly, effective 6/1/2020

Dr. David Gilchrist, D.O., Chief Medical Officer, Florida Board certified in Emergency Medicine and Internal Medicine reviewed your appeal for an additional 16 hours of personal care per week. You live with your daughter who is your paid caregiver and does work outside the home full time. We have records dated 1/24/20 that shows you need some assistance with bathing, dressing, using the bathroom, transferring and walking/mobility; supervision for eating. You need total assistance with heavy chores, light housekeeping, shopping, preparing meals, managing money, managing medicines, and using the telephone. We do not see that you:

- Have had any change in your condition.
- Do not have enough care.
- Any recent hospitalizations.
- At risk for social isolation

Based on the clinical records we have, the care plan will remain the same. This care plan is 5 personal care hours per week, 8 homemaking care hours per week for a total of 13 hours of a home health aide in addition to 5 days in an adult day care (ADC). You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. We made this decision using clinical records and the Florida Medicaid Handbook Policy for

Statewide Medicaid Managed Care Long-term Care Program and Home Health Visits Coverage Policy.

Respondent's Composite Exhibit 1, pages 36 – 37.

9. The personal care services at issue in this case are under the Participant Directed Option ("PDO") program. [REDACTED] provides the personal care services to Petitioner under the PDO program. [REDACTED] is Petitioner's daughter, direct service worker, and caregiver.

10. On June 3, 2020, Petitioner requested a Fair Hearing due to the denial of 16 additional hours of personal care services per week, and the reduction of personal care services from 21 hours per week to 5 hours per week. On June 12, 2020, the undersigned scheduled the Fair Hearing for July 15, 2020, at [REDACTED], and all parties were duly notified.

11. During the Fair Hearing, [REDACTED] confirmed that she is seeking to restore Petitioner's personal care services to 21 hours per week. [REDACTED] works outside the home from 6:00 a.m. until 9:00 a.m., seven days per week. The reduction of personal care service hours limits [REDACTED]'s ability to work and do her "personal stuff." [REDACTED] believes that Petitioner's physical and mental condition are getting worse, and that Petitioner is becoming more dependent. Petitioner's hands shake due to Parkinson's disease. [REDACTED] has to watch Petitioner more closely, and direct Petitioner to go to bathroom.

12. Petitioner is currently authorized to receive eight hours per week of homemaker services, five hours per week of personal care services, and five days (full day) of adult day care services. Petitioner's adult day care provider is closed due to the Covid-19 global pandemic. As such, Aetna authorized Petitioner to receive on a temporary basis an additional 12 hours of personal care services per week. The 12 temporary hours of personal care services per week have been in place since April 6, 2020, which is the date that Petitioner's adult day care provider closed. The

temporary hours were still in place at the time of the hearing, and will remain in place until the adult day care facility opens.

13. Dr. Ikpeazu is the Medical Director for Aetna. Dr. Ikpeazu testified that it is her professional opinion that five hours per week of personal care services -- along with the temporary 12 hours of personal care services per week -- are sufficient to meet Petitioner's needs at this time.

### **CONCLUSIONS OF LAW**

14. 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. This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

16. 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.

17. For AHCA Case Number 20-FH [REDACTED], Petitioner requested additional hours of personal care services. Because Petitioner requested additional services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Petitioner for AHCA Case Number 20-FH [REDACTED]. For AHCA Case Number 20-FH [REDACTED], Respondent reduced personal care services. Because

Respondent is reducing existing services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent for AHCA Case Number 20-FH[REDACTED]. 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.).

18. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“SMMC LTC Policy”). The Agency’s SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC LTC Policy provides as follows:

**1.1 Description and Program Goal**

Under the Statewide Medicaid Managed Care Long-term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

**1.3 Definitions**

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

**1.3.1 Activities of Daily Living (ADLs)**

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

...

**1.3.5 701-B Comprehensive Assessment**

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

### **1.3.9 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

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

...

### **1.3.14 Medically Necessary or Medical Necessity**

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.

...

## **2.2 Who Can Receive**

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

## **4.0 Coverage Information**

### **4.1 General Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

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

### **4.2 Specific Criteria**

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

...

#### **4.2.1.1 Adult Companion Care**

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.

#### **4.2.1.2 Adult Day Health Care**

The provision of social and health related therapeutic services and activities, self-care training, nutritional services, and respite, in accordance with Chapter 429, Part III, F.S. Nutritional meals are included as part of this service when the enrollee is at the adult day health care center during meal times. This service includes medical screening emphasizing prevention and continuity of care, including routine blood pressure checks and diabetic maintenance checks. Physical, occupational, and speech therapies indicated in the enrollee's plan of care are furnished as components of this service. Nursing services, which include periodic evaluation, medical supervision of self-care services directed toward activities of daily living, and personal hygiene are also a component of this service.

...

#### **4.2.1.9 Homemaker Services**

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.

...

#### **4.2.2.6 Personal Care**

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

...

### **6.0 Documentation**

...

#### **6.2 Specific Criteria**

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

SMMC LTC Policy, pages 1-8.

19. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “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 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.

20. In the instant cases, Respondent denied Petitioner's request for an additional 16 hours of personal care services per week (AHCA Case Number 20-FH[REDACTED]), and reduced Petitioner's personal care services from 21 hours per week to 5 hours per week (AHCA Case Number 20-FH[REDACTED]). See supra ¶ 6–8. The evidence admitted and testimony presented in this case established that Respondent made the determinations, because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. *Id.*

21. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 18. Section 4.2.2.6 of the LTC Policy reflects that personal care services are “[t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee.” See supra ¶ 18.

22. Petitioner is currently authorized to receive eight hours per week of homemaker services, five hours per week of personal care services, and five days (full day) of adult day care services. Petitioner's adult day care provider is closed due to the Covid-19 global pandemic. See supra ¶ 12. As such, Aetna authorized Petitioner to receive on a temporary basis an additional 12 hours of personal care services per week. *Id.*

23. Petitioner requires total assistance with bathing, and requires assistance (but not total help) with dressing, eating; using the bathroom; walking/mobility, and transferring. See supra ¶ 3. Petitioner uses an assistive device for transferring and walking/mobility. *Id.* Regarding IADLs, Petitioner needs assistance (but not total help) with using the telephone and managing medication, but requires total assistance with heavy chores, light housekeeping, managing money, preparing meals, shopping, and transportation. See supra ¶ 4. Petitioner uses assistive devices for transportation. *Id.*

Denial of Additional Personal Care Services (AHCA Case Number 20-FH [REDACTED])

24. In this case, Respondent denied Petitioner's request for 16 additional hours of personal care services. The evidence presented in this case does not reflect that Petitioner is in need of 16 additional hours per week of personal care services. Specifically, Petitioner requires assistance with ADLS and IADS. See supra ¶ 23. Petitioner uses assistive devices for transportation. *Id.* [REDACTED] is seeking to restore Petitioner's personal care services to 21 hours per week. See supra ¶ 11. Petitioner has unsteady gait, is at risk of falls, and requires constant supervision. See supra ¶ 3. However, Petitioner resides in the home with [REDACTED], who is Petitioner's daughter, direct service worker, and caregiver. See supra ¶ 10. Although [REDACTED] works outside the home from 6:00 a.m. until 9:00 a.m., seven days per week, *supra* ¶ 11, the record

does not reflect that [REDACTED] cannot assist Petitioner when not working. Petitioner provided no evidence (e.g., a daily schedule, a schedule of ADLs and IADLs, the amount of time needed for each ADL and IADL) to justify the approval of 16 additional hours of personal care services weekly. Although [REDACTED] believes that Petitioner’s physical and mental condition are getting worse, and that Petitioner is becoming more dependent, *supra* ¶ 11, she provided no substantive evidence to support the request for additional personal care services. Based upon the evidence presented by both parties, Petitioner failed to establish that the additional personal care services are warranted in this case.

25. Appurtenant to this matter, section 1.3.14 of the LTC Policy requires that “LTC supportive 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 supra* ¶ 18. Petitioner is currently authorized to receive home and community-based supportive services. *See supra* ¶ 22. Additionally, Dr. Ikpeazu testified that it is her professional opinion that five hours per week of personal care services – along with the temporary 12 hours of personal care services per week – are sufficient to meet Petitioner’s needs at this time. *See supra* ¶ 13. Considering the LTC Policy’s definitions for adult day care services, homemaker services, and personal care services, *supra* ¶ 18, Petitioner did not demonstrate that her aforementioned needs, *supra* ¶ 2-4, 6-8, and 11, are not sufficiently met by her currently authorized services. Given that Petitioner failed to establish that the requested personal care services are warranted in this matter, *supra* ¶ 24, the requested 16 additional hours weekly of personal care services is “in excess of [Petitioner’s] needs.” *See supra* ¶ 15.

Reduction of Personal Care Services (AHCA Case Number 20-FH [REDACTED])

26. In this case, Respondent reduced Petitioner's personal care services from 21 hours per week to five hours per week. [REDACTED] is seeking to restore Petitioner's personal care services to 21 hours per week. See supra ¶ 11. The evidence presented in this case reflects that Respondent's reduction of personal care services is warranted under the circumstances of this case. Specifically, Petitioner requires assistance with ADLS and IADL. See supra 23. Petitioner has Parkinson's disease, Alzheimer's disease, and other medical conditions. See supra ¶ 2, 3, and 11. Petitioner "has cognitive and memory problems," unsteady gait, and is at risk of falls. See supra ¶ 2 and 3. The record reflects that Petitioner requires constant supervision. *Id.* However, [REDACTED] is Petitioner's caregiver and resides in the home with Petitioner. See supra ¶ 2 and 10. [REDACTED] believes that Petitioner's physical and mental condition are getting worse, and that Petitioner is becoming more dependent. See supra ¶ 11. However, the NPAR explains that Respondent does "not see" that Petitioner: had any change in her condition or recent hospitalizations; does not have enough care; or is at risk for social isolation. See supra ¶ 8. Although Petitioner is authorized to receive five days (full day) of adult day care services, Petitioner's adult day care provider is closed due to the Covid-19 global pandemic. See supra ¶ 12. To address this matter, Aetna authorized Petitioner to receive on a temporary basis an additional 12 hours of personal care services per week, which will remain in place until the adult day care facility opens. See supra ¶ 12. Further, Dr. Ikpeazu testified that it is her professional opinion that five hours per week of personal care services – along with the temporary 12 hours of personal care services per week – are sufficient to meet Petitioner's needs at this time. See supra ¶ 13. Based upon the evidence presented by both parties, Respondent established that the reduction of personal care services is warranted in this case.

27. The record reflects that reduction of personal care service hours limits [REDACTED]'s ability to work and do her "personal stuff." See supra ¶ 11. However, section 1.3.14 of the LTC Policy requires that "LTC supportive services must . . . [b]e furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." See supra ¶ 18.

28. It is relevant that section 1.3.14 of the LTC Policy requires that "LTC supportive 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 supra ¶ 18. Even though [REDACTED] works outside the home from 6:00 a.m. until 9:00 a.m. seven days per week, supra ¶ 11, Respondent authorized Petitioner to receive home and community-based supportive services. See supra ¶ 22. Considering the LTC Policy's definitions for adult day care services, homemaker services and personal care services, supra ¶ 18, Respondent demonstrated that Petitioner's aforementioned needs, supra ¶ 2-4, 6-8, and 11, are sufficiently met by her currently authorized services. Further, given that Respondent established that the requested personal care services are not warranted in this matter, supra ¶ 26 and 27, the requested hours per week of personal care services is "in excess of [Petitioner's] needs." See supra ¶ 18.

#### Conclusion

29. In light of the both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the SMMC LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to demonstrate that the requested additional 16 hours weekly of personal care services are medically necessary, and

failed to prove by a preponderance of the evidence that Respondent's denial of the requested additional 16 hours weekly of personal care services was incorrect. The Hearing Officer also finds that Respondent met its burden of proving that the reduction of personal care services from 21 hours per week to 5 hours per week was correct.

**DECISION**

Respondent's denial of an additional 16 hours per week of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of the additional personal care services is **DENIED**.

Respondent's reduction of personal care services from 21 hours per week to 5 hours per week is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of personal care services is **DENIED**.

**DONE AND ORDERED** this 17<sup>th</sup> day of August, 2020, in Tallahassee, Leon County, Florida.



Tracie Hardin  
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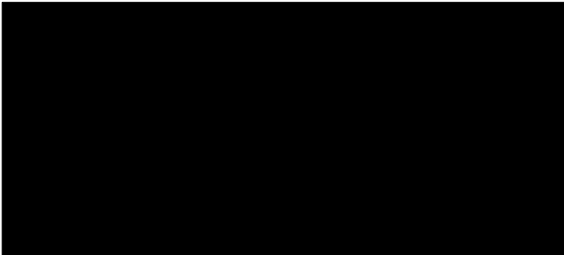
**TRACIE HARDIN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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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