



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

FILED

Aug 18, 2020, 10:08 am

OFFICE OF FAIR HEARINGS

████████████████████,

PETITIONER,

AHCA Case No.: 20-FH-████████

Plan ID No.: ██████████

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 20, 2020, at ██████████.

**APPEARANCES**

For the Petitioner: ██████████  
Petitioner's Authorized Representative

For the Respondent: Maria Mojica  
Compliance Specialist  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that its decision to terminate Petitioner's adult companion care was correct.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and husband, ██████████ ("████████"), appeared on behalf of the Petitioner.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”) appeared on behalf of Respondent. The following appeared as witnesses for the Respondent: Dr. John Carter (“Dr. Carter”), Long Term Care Medical Director for Sunshine; Suzanne Clark, Care Coordinator for Sunshine; Francis Bombard, Supervisor for Sunshine; Jacqueline Seaton, Manager of Case Management for Sunshine; Melissa Layne, Senior Manager for Quality Improvement for Sunshine; and Laura Campbell, Supervisor of Utilization Management for Sunshine.

Doris Rivera, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and eleven (111) -page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination (“NABD”), dated March 4, 2020; a Long Term Care Person-Centered Care Plan (“POC”), dated February 21, 2020; a POC, dated May 6, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated February 18, 2020; a 701B, dated May 6, 2020; a Standard Appeal Acknowledgement, dated March 16, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated April 15, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09 (“LT.UM.09”); and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner undersigned admitted the one hundred and eleven (111)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

#### **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. Petitioner is fifty-five (55)-years old. See page 13 of Respondent's Composite Exhibit 1. Petitioner lives with her spouse, [REDACTED]. *Id.* at 35. [REDACTED] is Petitioner's caregiver through the participant directed option ("PDO") program. *Id.*
3. Petitioner is diagnosed with the following: advanced stage multiple sclerosis and constant bowel and bladder incontinence. *Id.* at 37 and 40. Petitioner needs total assistance (cannot do at all) with all of her activities of daily living ("ADLs"). *Id.* at 35. Petitioner needs total assistance (cannot do at all) with the following instrumental activities of daily living ("IADLs"): heavy chores; light housekeeping; preparing meals; shopping; managing medication; and using transportation. *Id.* at 36.
4. Petitioner talks to friends, relatives, or others at least two (2) to six (6) times per week. *Id.* at 45. Petitioner spends time with someone who does not live with her at least once per week. *Id.* Petitioner participates in activities outside the home that interest her several times per month. *Id.* As testified to by [REDACTED], Petitioner's son, daughter-in-law, and three (3) grandchildren visit at least three (3) times per week. As testified to by [REDACTED], prior to the COVID-19 pandemic, he and Petitioner were "out and about" frequently. As testified to by [REDACTED], [REDACTED] works three (3) hours per week with a paper route. As testified to by [REDACTED], Petitioner accompanies [REDACTED] while he is working.
5. Petitioner's former plan of care included the following: one and a quarter (1.25) hours of adult companion care, weekly; eight (8) hours of homemaker services, weekly; and thirty-two (32) hours of personal care services, weekly. *Id.* at 20.

6. In the NABD, dated March 4, 2020, Respondent terminated Petitioner's adult companion care services. *Id.* at 4 through 12. The NABD explained the basis of the termination as follows:

We determined that your requested services are not medically necessary because the services do not meet either of the reasons 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:
  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.

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services. The member's present care plan includes 1.25 hours/week of Companion Care Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 1.25 hours/week of Companion Care Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

...

*Id.* at 5.

7. Petitioner requested a plan appeal and received an NPAR dated April 15, 2020, upholding the termination. The NPAR explained as follows:

The reason for our decision was: The appeal to overturn the termination of 1.25 hours per week of Companion Care is denied for lack of medical necessity. Companion Care is provided to present social isolation. The member does not live

alone and there is low risk of social isolation. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 73.

8. Petitioner's present plan of care includes the following: eight (8) hours of homemaker services, weekly; and thirty-two (32) hours of personal care services, weekly. *Id.* at 29.

9. Dr. Carter testified that a routine assessment was performed, and it was determined that the adult companion care hours were not medically necessary, as Petitioner lives with her husband and receives other services.

### **CONCLUSIONS OF LAW**

10. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

12. Because Respondent is terminating a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.)

13. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to adult companion care services:

#### **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.

...

#### **1.3.1 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

...

#### **1.3.9 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)

...

#### **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

...

##### **4.2.1.1 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.

...

14. The LTC Policy also addresses medical necessity:

### **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.

15. LT.UM.09 provides as follows in regards to adult companion care and home delivered meals:

#### **2. Adult Companion Care**

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.

#### Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental illness requiring supervision

- Parkinson’s disease
  - Multiple sclerosis
  - ALS
  - Congestive Heart Failure
  - COPD
  - Cancer
  - End State Renal Disease
  - TBI
  - Other diagnosis as deemed medically necessary by Medical Director
- b) Four (4) Dimensions of Determination
- Need for Supervision – safety risk if left without supervision
    - See Section C.1.c for more details
  - Informal supports
    - None
    - Few friends/family in area
    - Family nearby
  - Living Situation
    - Lives alone
    - Lives with other but is alone for extended periods of time due to the necessary absence of a caregiver
    - Lives with caregiver and others
  - Services in Place
    - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations Adult Companion Care include but are not limited to:

1. Service must be provided at member’s residence.
2. Member must reside in a non-facility based setting.
3. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.
5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.

10. Cognitive ability of member to engage in an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

...  
*Id.* at 86 through 87.

16. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, 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 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.

17. In the NABD, dated March 4, 2020, Respondent terminated Petitioner’s adult companion care services. *Id.* at 4 through 12. In the NABD, Respondent explained that adult companion care services were not medically necessary, and that the termination was “[b]ased on the assessment of the member’s care needs and household and caregiver status . . . .” *Id.* at 4 through 5.

18. As provided in Respondent’s policy, LT.UM.09, adult companion care services are to “provide non-medical care, supervision, and socialization to a functionally impaired adult.” As

discussed in LT.UM.09, adult companion care services are determined, in part, based on: the recipient's need for supervision; the recipient's informal supports; the recipient's living situation; and the services in place for the recipient. Moreover, as provided in the LTC Policy, adult companion care is to provide "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." As provided in the record, Petitioner lives with her husband. *Id.* at 35. Further, as testified to by ██████████, *supra* ¶ 4, Petitioner has family that visits up to three (3) times per week, and prior to the COVID-19 pandemic, frequently spent time outside of the home. Additionally, the evidence shows that she participates frequently in activities outside of her home, as well as frequently she spends time with someone outside of her home. *Id.* at 45. Thus, the record shows that Petitioner has frequent opportunities to socialize.

19. However, adult companion care may also provide for "assistance with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee." As provided in the record, Petitioner needs total assistance (cannot do at all) with light housekeeping and meal preparation. *Id.* at 36. Here, Respondent failed to demonstrate that the approved services available to Petitioner were sufficient to address the light housekeeping, meal preparation, and other areas that adult companion care services may also address.

20. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's termination of adult companion care was correct.

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

Respondent's termination of adult companion care services is **REVERSED**. Petitioner's appeal based on Respondent's termination of adult companion care service is **GRANTED**.

**DONE AND ORDERED** this 18th day of August, 2020, in Tallahassee, Leon County, Florida.



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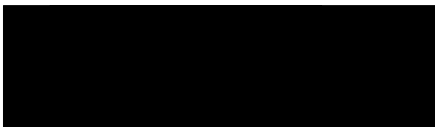
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**JOSEPH MABRY, Hearing Officer**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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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