



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

**FILED**

Aug 18, 2020, 9:22 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 on July 21, 2020,

at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Maria Mojica

Compliance Specialist

Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUES**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of five (5) hours per week of adult companion care services was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and mother, appeared for the hearing and offered testimony on Petitioner’s behalf.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”), appeared as a representative for Respondent. Dr. Heather Lutz (“Dr. Lutz”), Medical Director for Sunshine, appeared as a witness for Respondent. Laura Campbell, Supervisor of Utilization Management in Long Term Care for Sunshine, appeared as a witness for Respondent. Melissa Layne, Senior Manager for Quality Improvement for Sunshine, appeared as a witness for Respondent. Elizabeth Perez, Care Coordinator for Sunshine, appeared as a witness for Respondent. Alsheneeka Williams, Case Manager Supervisor for Sunshine, appeared as a witness for Respondent.

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Interpreter Fadi, translator number 3511566 with Language Line Solutions, appeared for the hearing and provided translation services on behalf of the Petitioner.

Prior to hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred sixty-three (163)-page hearing packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; Medicaid Fair Hearing Summary, dated July 2, 2020; Notice of Adverse Benefit Determination (“NABD”), dated [REDACTED], 2020; Long Term Care Person-Centered Care Plan and Summary, signed March 17, 2020; Long Term Care Person-Centered Care Plan and Summary, signed June 17, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment”), dated March 17, 2020; 701B Assessment,

dated June 12, 2020; Standard Appeal Acknowledgement, dated April 16, 2020; [REDACTED]  
[REDACTED] Imaging Report, dated [REDACTED], 2019; [REDACTED]  
[REDACTED] Fax Cover Sheet; [REDACTED] Imaging Report, dated [REDACTED], 2019;  
[REDACTED] Fax Cover Sheet; [REDACTED],  
dated [REDACTED] 2019; [REDACTED] Report, dated [REDACTED], 2019; [REDACTED]  
[REDACTED], dated [REDACTED] 2019; [REDACTED] Progress Notes, dated  
[REDACTED] 2013; Petitioner's medical records from [REDACTED],  
dated [REDACTED] 2016; [REDACTED] Progress Notes, dated [REDACTED],  
2013; [REDACTED] summaries, dated [REDACTED]  
2013; [REDACTED] Initial Evaluation Worksheet, dated [REDACTED] 2013;  
[REDACTED] Imaging Report regarding lumbar spine, dated [REDACTED] 2013; [REDACTED]  
[REDACTED] Imaging Report regarding thoracic spine, dated [REDACTED] 2013; [REDACTED]  
[REDACTED] Progress Notes, dated [REDACTED] 2013; Office Physician Notes, dated [REDACTED] 2014;  
[REDACTED] patient charts, dated [REDACTED], 2019, [REDACTED], 2019, [REDACTED] 2019,  
[REDACTED] 2019, [REDACTED], 2014, [REDACTED], 2013, and [REDACTED], 2013; Notice of Plan Appeal  
Resolution ("NPAR"), dated May 10, 2020; Sunshine Health Policy and Procedure, LTC (Long Term  
Care) Ancillary Service Criteria, LT.UM.09; Florida Administrative Code Rule ("Fla. Admin. Code  
R.") 59G-1.010. Absent an objection, the undersigned admitted Respondent's one hundred sixty-  
three (163)-page hearing packet into evidence as Respondent's Composite Exhibit 1.

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine’s Long-Term Care (“LTC”) program. See Respondent’s Composite Exhibit 1 at pages 23 – 29. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is a 36 year old female who lives with her mother. *Id.* at 23, 33 and 52. Petitioner is diagnosed with epilepsy, cerebral palsy, and mental retardation. *Id.* at 39.
3. Regarding Petitioner’s activities of daily living (“ADLs”), Petitioner needs assistance (but not total help) with bathing, eating, transferring, and walking/mobility. *Id.* at 55. Petitioner needs total assistance (cannot do at all) using the bathroom, and Petitioner needs supervision or prompt with eating. *Id.*
4. Regarding Petitioner’s instrumental activities of daily living (“IADLs”), Petitioner needs assistance (but not total help) with managing medication and using transportation. *Id.* at 56. Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, and shopping. *Id.*
5. On April 2, 2020, Respondent issued an NABD terminating five (5) hours per week of adult companion care services. *Id.* at 4 – 8. The NABD stated the reason for Sunshine’s determination as follows:

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:

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.

...

**Other authority**

The facts that we used to make our decision are: Sunshine Health has looked at the member's present care needs and provided home services. The member's present care plan includes:

- 20 hours per week of Personal Care Services
- 5 hours per week of Homemaker Services
- 5 hours per week of Companion Care Services
- 5 meals per week of Home Delivered Meals

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 5 hours per week of Companion Care Services. The updated care plan approved by Sunshine Health will include:

- 20 hours per week of Personal Care Services
- 5 hours per week of Homemaker Services
- 5 meals per week of Home Delivered Meals

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 4 – 5.

6. On April 16, 2020, Petitioner requested a plan appeal. *Id.* at 70. On May 10, 2020, Respondent sent Petitioner an NPAR denying Petitioner's plan appeal regarding the termination of adult companion care services. *Id.* at 125 - 127. The NPAR denied Petitioner's plan appeal and stated as follows:

On April 16, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated April 2, 2020, Notice of Adverse Benefit Determination Number [REDACTED], terminating the 5 hours per week of companion care (the person who helps and watches over you), provided to [Petitioner].

On May 5, 2020 after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [Petitioner] will not receive 5 hours/week of Companion Care Services, effective May 5, 2020.

The reason for our decision was:

Based on the assessment of the member's care needs and household and caregiver status, the termination of the 5 hours/week of Companion Care Services is upheld. The presently approved home services are enough to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

This decision was made by a Sunshine Health's Medical Director who is Board Certified in Internal Medicine, Geriatric Medicine, and Hospice & Palliative Care.

*Id.* at 125.

7. On June 10, 2020, Petitioner requested a Fair Hearing due to the termination of 5 hours per week of adult companion care services. On June 30, 2020, the undersigned scheduled the Fair Hearing for July 21, 2020, at [REDACTED] and all parties were duly notified.

8. Dr. Lutz testified that upon a routine periodic review, Petitioner will continue to receive a total of twenty (20) hours weekly of personal care services, five (5) hours weekly of homemaker services, and five (5) home delivered meals per week.

9. As Dr. Lutz testified, Petitioner's mother does not work outside the home. Petitioner has one adult sister who is married but resides locally, and she has a second sister who resides in the home. Dr. Lutz argued that adult companion care services are not intended to provide hands-on nursing care services; rather, companion care services are intended for members who live alone or are left alone for long periods of time such that they are at risk of isolation. Dr. Lutz asserted

that because Petitioner lives with her mother who does not work outside the home and a sister, there is no risk of social isolation.

10. ██████ testified that she lives with the Petitioner. Further, although Petitioner has two sisters, one is married and the other one works during the day outside the home. ██████ stated that Petitioner is disabled and sick, and she cannot walk.

### **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), Florida Statutes. This order is the final administrative decision of AHCA under section 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 Respondent is terminating services, 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.)

15. 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) (“LTC Policy”). The Agency’s LTC Policy has been incorporated by reference into Fla. Admin. Code R. 59G-4.192. The 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.

...

**4.2.1.9 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 Mixed Services**

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

**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.

LTC Policy at pages 1-8.

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

Definitions Policy at Page 7.

17. Petitioner requested continuation of 5 hours per week of adult companion care. *See supra* ¶ 6. In the NPAR, dated May 10, 2020, Respondent terminated Petitioner’s adult companion care hours. *See supra* ¶ 6. Respondent’s witness explained that the adult companion care services at issue in this case are not medically necessary because Petitioner’s social needs are met by her

mother who does not work outside the home and her sisters who reside locally. See supra ¶ 2 and 9.

18. As provided in the LTC Policy, adult companion care is intended 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.” See supra ¶ 15. Dr. Lutz testified, supra ¶ 8, that Petitioner needs “hands-on” services that will be continued. However, Petitioner’s adult companion care services are in excess of her needs because Petitioner lives with her family and has opportunities to socialize with them. See supra ¶ 9.

19. The 701B Assessment states that the “member requires supervision due to her epilepsy/seizure episodes.” See Respondent’s Composite Exhibit 1 at page 41. However, the box “[n]ot at all” was checked, which indicates that none of the following behaviors occur: forgetful or easily confused, gets lost or wanders off, easily agitated or disruptive, intentionally injures or harms herself, expresses suicidal feelings or plans, and hallucinates. *Id.*

20. Thus, with regard to Petitioner’s socialization needs, the testimony and evidence demonstrate that Petitioner does not have an unmet need for adult companion care services because Petitioner lives with her family full time. See supra at ¶ 2 and 9. Petitioner may have some need for services based on the 701B Assessment. However, Petitioner already receives either some or total assistance with her ADLs and IADLs. See supra at ¶ 5 - 8.


21. Therefore, upon consideration of both parties’ sworn testimony, Respondent’s Composite Exhibit 1, the LTC Policy, and the Definitions Policy, the undersigned finds that Respondent has proved by a preponderance of the evidence that Respondent’s termination of adult companion care services was correct.

**DECISION**

Respondent's termination of a five (5) hours per week of adult companion care services is **AFFIRMED**. Petitioner's request for the continuation of five (5) hours per week of adult companion care services is **DENIED**.

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



Laura Gallagher  
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**LAURA GALLAGHER, 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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