



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

FILED

Aug 21, 2020, 11:30 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 Hearing Officer convened a telephonic Fair Hearing in the above-styled case on July 22, 2020, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]

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 Respondent's reduction of Adult Companion Care services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the Fair Hearing telephonically. [REDACTED]
("Petitioner's Authorized Representative" or "[REDACTED]") appeared for the Fair Hearing to

provide testimony. The following persons appeared as witnesses for Petitioner: [REDACTED] (“[REDACTED]”), Petitioner’s daughter; and [REDACTED] (“[REDACTED]”), Petitioner’s daughter.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine Health”), appeared as a representative for Respondent. The following persons appeared as witnesses for Respondent: Elizabeth Perez, Care Coordinator for Sunshine Health; Melissa Layne, Senior Manager for Quality Improvement for Sunshine Health; Alshanetha Williams, Case Manger Supervisor for Sunshine Health; Tammy Swan, Director of Case Management for Sunshine Health; Dr. John Carter (“Dr. Carter”), LTC Medical Director for Sunshine Health; and Leticia Hughes, Care Coordinate Supervisor for Sunshine Health.

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

Petitioner’s Authorized Representative did not introduce any exhibits at the Fair Hearing. Respondent introduced an evidence packet containing one hundred and twenty-seven (127) pages, which was admitted into evidence as Respondent’s Composite Exhibit 1. Respondent’s Composite Exhibit 1 included the following: Table of Contents; Medicaid Fair Hearing Summary (dated July 3, 2020); Notice of Adverse Benefit Determination (“NABD”) (dated March 23, 2020); Long Term Care Person-Centered Plan (“Previous Plan of Care”) (signed by Care Manager on March 10, 2020); Long Term Care Person-Centered Plan (“Current Plan of Care”) (signed by Care Manager on June 15, 2020); Florida Department of Elder Affairs: 701B Comprehensive Assessment (“Previous 701B Assessment”) (dated March 10, 2020); Florida Department of Elder Affairs: 701B Comprehensive Assessment (“Current 701B Assessment”) (dated June 2, 2020);

NABD (dated March 23, 2020); Letter from [REDACTED] (“[REDACTED]”) (dated [REDACTED], 2020); Letter from [REDACTED] (dated April 20, 2020); Request for an Appeal or Grievance Form (dated April 23, 2020); List of daily medications document (undated); Standard Appeal Acknowledgment letter (dated May 6, 2020); Notice of Plan Appeal Resolution (“NPAR”) (dated May 30, 2020); Sunshine Health Policy and Procedure: LTC (Long Term Care) Ancillary Service Criteria (LT.UM.09); Sunshine Health Policy and Procedure: LTC (Long Term Care) Durable Medical Equipment (DME)/ Supplies / Orthotics & Prosthetics (O&P) Criteria (LT.UM.10); and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010 (166).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine Health’s Long-Term Care (“LTC”) Program. Sunshine Health is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.
2. On March 20 2020, Sunshine Health’s LTC Utilization Management Team reviewed Petitioner’s LTC services. *See Respondent’s Composite Exhibit 1, page 2.*
3. On March 23, 2020, Sunshine Health issued an NABD reducing Petitioner’s Adult Companion Care services and incontinence wipes. *Id.* at 5-7. The NABD stated as follows:

We made our decision because:
(Check all boxes that apply)

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

...

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

The member's present care plan includes:

- 19 hours/week of Companion Care Services
- 3 boxes/month of Gloves
- 1 case/month of Disposable Underpads

Based on the assessment of the member's care needs and household and caregiver status, **Sunshine Health will reduce the Companion Care Services from 19 hours/week to 9 hours/week (which is a reduction of 10 hours/week of Companion Care Services), and will reduce the Gloves from 3 boxes/month to 2 boxes/month (which is a reduction of 1 box/month of Gloves), and will terminate the 1 case/month of Disposable Underpads, and will approve the one-time addition of 6 Reusable Underpads.**

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Id. at 5-7. (Emphasis added).

4. On May 30, 2020, Sunshine Health issued an NPAR denying Petitioner's plan appeal. *Id.*

at 80-81. The NPAR stated as follows:

On May 29, 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 an additional 10 hours of companion care services, effective May 29, 2020.

The reason for our decision was: Appeal for reduction of Companion Care from 19 hours/week to 9 hours/week (a reduction of 10 hours/week Companion Care) and termination of 1 case per month of disposable underpads is denied. Companion Care services (supervises and provides socialization to prevent isolation) do not provide hands-on assistance (bathing, dressing, eating, cleaning) and you are not at risk of social isolation as you live with your daughter. You have also received 6 reusable underpads, therefore disposable underpads are not needed. Sunshine Health further assessed your care needs and household and determined that your current Service Hours are adequate to meet your health care needs. It is recommended that you speak with your Care Coordinator about changing your 9 hours/week Companion Care hours to either Personal Care or Homemaking hours to better meet your needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

This decision was made by a Medical Director who is Board Certified Physician in Family Medicine.

Id.

5. Petitioner's Current Plan of Care is as follows:

- Wipes – 3 packs per month;
- Underpads – 1 case;
- Gloves – 2 boxes per month;
- Adult Companion Care services – 9 hours per week from April 7, 2020, through June 10, 2020;
- Adult Companion Care services – 19 hours per week from June 11, 2020, through June 30, 2020;
- Respite Care services – 5 hours per month;
- Personal Care services – 19 hours per week;
- Pull-ups – 2 cases per month;
- Homemaker services – 8 hours per week; and
- Liner/Shield/Pads – 1 case per month.

Id. at 30.

6. Petitioner is an eighty-two (82) year old woman residing with her daughter, [REDACTED].

Id. at 50-67. Petitioner is diagnosed with the following health conditions: Allergies; Rheumatoid Arthritis; High cholesterol; IDDM Diabetes; Frequent dizziness; Heart problems; frequent bladder incontinence; Kidney problems; Osteoporosis; Parkinson's disease; Stroke/CVA; Urinary Tract

Infection (UTI); and sleep apnea. *Id.* Petitioner needs supervision due to fall risk and complex medical conditions. *Id.* at 59. Petitioner’s daughter works full-time outside of the home. *Id.* at 64.

7. Petitioner’s current needs for assistance with Activities of Daily Living (“ADLs”) and Instrumental Activities of Daily Living (“IADLs”) are as follows:

<u>ADLs</u>	<u>Needs</u>
Bathing	Needs total assistance (cannot do at all)
Dressing	Needs total assistance (cannot do at all)
Eating	Needs assistance (but not total help)
Using the bathroom	Needs assistance (but not total help)
Transferring	Needs assistance (but not total help)
Walking/Mobility	Needs assistance (but not total help)

<u>IADLs</u>	<u>Needs</u>
Heavy chores	Needs total assistance (cannot do at all)
Light housekeeping	Needs total assistance (cannot do at all)
Using the telephone	Needs assistance (but not total help)
Managing money	Needs total assistance (cannot do at all)
Preparing meals	Needs total assistance (cannot do at all)
Shopping	Needs total assistance (cannot do at all)
Managing medication	Needs assistance (but not total help)
Using transportation	Needs assistance (but not total help)

Id. at 54-55.

8. ██████████ declared that the Petitioner has a history of falls resulting in injuries, such as bruising on her back, due to her medical conditions. *Id.* at 69. ██████████ recommended more hours of home services for the Petitioner to receive. *Id.*

9. On June 10, 2020, ██████████ timely requested a Fair Hearing to contest the reduction of Adult Companion Care services.

10. ██████████ is the Petitioner’s daughter. Petitioner lives with ██████████, who has full-time employment. Petitioner needs total assistance with ADLs and hands-on care, such as bathing, dressing, toileting, changing adult diapers, walking, and eating. Petitioner cannot be left alone.

██████████ is unable to provide natural support to the Petitioner because she resides in ██████████. ██████████, Petitioner's primary caregiver and daughter, is currently unemployed and does not work outside of the home due to "Covid." However, prior to the coronavirus, ██████████ worked daily 6:00 a.m. to 3:00 p.m. ██████████ expects to be called back to work soon and will resume her previous work schedule.

11. Dr. Carter is a Long-term Care Medical Director for Sunshine Health. Dr. Carter's medical background includes Internal Medicine, Geriatric Medicine, and Palliative Medicine. Dr. Carter also works a home health physician for a Home Health Agency. Respondent's decision to reduce both services were based on the current 701B Comprehensive Assessment and Petitioner residing with her daughter, ██████████. Dr. Carter used the current 701B Comprehensive Assessment to make a medical necessity determination reducing the Petitioner's Adult Companion Care services. Dr. Carter determined that nineteen (19) hours per week of Adult Companion Care services were excessive, and only ten (10) hours per week of Adult Companion Care services were medically necessary.

12. ██████████ is the Petitioner's Care Coordinator for Sunshine Health. Petitioner's Home Health Aide renders all of the Petitioner's LTC services. The work schedule of the home health aide is as follows: Monday through Friday (8:00 a.m. to 5:00 p.m.); Saturdays (9:00 a.m. to 3:00 p.m.); and Sundays (9:00 a.m. to 2:00 p.m.).

CONCLUSIONS OF LAW

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

14. Pursuant to Fla. Admin. Code R. 59G-1.100(17)(b), this hearing was held as a *de novo* proceeding.

15. 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.

(Emphasis added).

16. Because Respondent reduced existing services, the burden of proof is on the Respondent. See Fla. Admin. Code R. 59G-1.100(17)(g). The standard of proof in an administrative hearing is a preponderance of the evidence. *Id.* The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

17. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“LTC Policy”) (March 2017), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs LTC services available to eligible Medicaid recipients in the State of Florida.

18. The 701B Comprehensive Assessment is, “an individualized, complete assessment of an individual’s medical, developmental, behavioral, social, financial, and environmental status. . . . to determine eligibility for the LTC program based on the need for a nursing facility level of care.” § 1.3.5 of the LTC Policy.

19. Natural Supports are, “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” § 1.3.16 of the LTC Policy.

20. The LTC Coverage Policy defines ADLs and IADLs as follows:

1.3.1 Activities of Daily Living (ADLs)

When necessary for the recipient to function independently, including:

- 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)

IADLs include:

- 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)

21. The LTC Policy states the following coverage criteria:

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary;
- Do not duplicate another service; and
- Meet the criteria as specified in the 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 restrictive setting

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

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:

4.2.2.5 Medical Equipment and Supplies

In accordance with Rule 59G-4.070, F.A.C. This service includes the provision of medical equipment and supplies specified in the plan of care, including: devices, controls, or appliances that enable the enrollee to increase the ability to perform activities of daily living; devices, controls, or appliances that enable the enrollee to perceive, control, or communicate with the environment in which he or she lives; items necessary for life support or to address an enrollee's physical conditions, along with ancillary supplies and equipment necessary to the proper functioning of such items; such other durable and non-durable medical equipment not available under the State Plan that is necessary to address enrollee needs, including consumable medical supplies, such as adult diapers; and repair of such items or replacement parts.

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.

22. The LTC Policy defines "Medically Necessary" or "Medical Necessity" as follows:

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.

23. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to all sections of Fla. Admin. Code R. 59G, unless specifically stated otherwise in a service-specific coverage policy or rule. The Definitions Policy defines Medically Necessary or Medical Necessity as:

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.

24. Respondent relied upon Sunshine Health Policy and Procedure: LTC Ancillary Service Criteria (LT.UM.09) to make its Medical Necessity determination. See Respondent's Composite Exhibit 1, pages 87-117. The LTC Ancillary Service Criteria states as follows regarding Adult Companion Care services:

1. Determinants for Services

When considering the level of support the member requires and which of the ancillary services may support the member's cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member's support needed due to ADL deficits, living situation, and supervision needs.

a) Activities of Daily Living (ADL's)/Instrumental Activities of Daily Living (IADL's)

- Independent where member is able to provide the task without support, with or without assistive devices
- Minimal functional impairment where the ADL's require one of the following:
 - Supervision
 - At least minimum assistance
 - Member ambulates with assistance of a person or a device
 - Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply
 - Member has ADLs requiring at least minimal assistance
 - Member ambulates with assistance of a person or device
 - Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
 - Member has ADLs requiring total assistance
 - Member is non-ambulatory
 - Member transfers require one (1) to two (2) person assist

- Member's treating physician has certified that member meets Maximum functional impairment.

b) Living situation consideration

- Lives alone.
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member). Lives with non-family (with consideration of the number of days and hours that nonfamily members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- 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.
- 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.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to call for help, even with assistance of a personal emergency response unit.

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

The criteria for each ancillary service is described below:

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 include

Adult Companion Care 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 Stage 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 others 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 for 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 care tasks.
6. The member has memory deficits, which prevent him or her from managing 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 and comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

Respondent's Composite Exhibit 1, pages 87-117.

25. Petitioner is an eighty-two (82) year old woman residing with her daughter, [REDACTED]. See supra ¶ 6. Petitioner is diagnosed with Parkinson's disease and is a fall risk. See supra ¶ 6. Petitioner needs supervision due to fall risk and complex medical conditions. See supra ¶ 6. Petitioner requires some or total assistance with ADLs and IADLs. See supra ¶ 7. Respondent argued that the ten (10) hours per week of Adult Companion Care services, at issue, were no longer medically necessary because based on the current 701-B Comprehensive Assessment and the natural support of [REDACTED]. See supra ¶ 10. Respondent determined that nine (9) hours per week of Adult Companion Care services were sufficient to meet the Petitioner's needs. See supra ¶ 10.

26. To be medically necessary, a service must meet the five criteria set forth in section 1.3.14 of the LTC Policy. Based on the record, Respondent reduced Petitioner's Adult Companion Care services for not meeting the following medical necessity standard: must be individualized,

specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs. *See supra* ¶ 3-4.

27. Sunshine defines Adult Companion Care services as, "Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult." *See supra* ¶ 24. Florida Medicaid defines Adult Companion Care services as, "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* ¶ 21.

28. To be medically necessary, the Definitions Policy requires that the Adult Companion Care services at issue are "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." The record indicates that Adult Companion Care services are not individualized and specific to Petitioner's symptoms, diagnosis, or injury. Dr. Carter asserted that the Petitioner's needs for Adult Companion Care services are met with the natural support of ██████████, who lives with the Petitioner, and nine (9) hours per week of Adult Companion Care services. ██████████ asserted that ██████████ does not currently work outside of the home, but will return to work in the future. It is undisputed by both parties that the Petitioner's needs assistance with hands-on care, *supra* ¶¶ 7 and 9; however, hands-on care is addressed under the Personal Care services in the LTC Policy, not Adult Companion Care services. *See supra* ¶ 21. The record indicates that although both parties agree that the Petitioner needs supervision, the Petitioner has the natural support of her daughter, ██████████, who does not work outside of the home at this time, and nine (9) hours per week of Adult Companion Care services. Further, the Petitioner's home health aide is present in the home Monday through Friday (8:00 a.m. to 5:00 p.m.); Saturdays (9:00 a.m. to

3:00 p.m.); and Sundays (9:00 a.m. to 2:00 p.m.). See supra ¶ 12. Nothing in the record indicates that the Petitioner's primary caregiver cannot provide supervision to meet the Petitioner's needs outside of those hours. Based on the record, Respondent demonstrated that Adult Companion Care services at issue (ten (10) hours per week) are in excess of the Petitioner's needs at this time. Thus, the Petitioner no longer meets criterion number two for medical necessity.

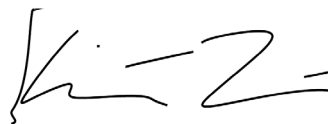
29. [REDACTED], as Petitioner's provider, recommended that the Petitioner to receive a more hours of home services. See supra ¶ 8. However, the recommendation does not specifically address the Petitioner's need for Adult Companion Care services. In addition, the fact that a provider has recommended services does not, in itself, establish medical necessity of the services. See supra ¶ 23.

30. Accordingly, upon consideration of Respondent's Composite Exhibit 1, the parties' sworn testimony, the LTC Policy, the Definitions Policy, and Sunshine's LTC Ancillary Service Criteria, the undersigned concludes that Respondent has shown by a preponderance of the evidence that Respondent's reduction of Adult Companion Care services was correct.

DECISION

Respondent's reduction of Petitioner's Adult Companion Care services is **AFFIRMED**.
Petitioner's request for relief is hereby is **DENIED**.

DONE and ORDERED this 21st day of August, 2020, in Tallahassee, Leon County, Florida.



Digitally signed by Kristopher León
Reason: 20-FH [REDACTED]
Date: 2020.08.21 11:27:28 -04'00'

KRISTOPHER LEÓN, Hearing Officer
Agency for Health Care Administration
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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.

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