

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



FILED

Sep 15, 2020, 12:46 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____/

PETITIONER,

PETITIONER,

AHCA Case No.: 20- [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____/

PETITIONER,

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AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____/

PETITIONER,

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 the instant case on August 10, 2020, at [REDACTED]

APPEARANCES

For the Petitioner: [REDACTED] [REDACTED]
Petitioner's Authorized Representative

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

STATEMENT OF ISSUE

The first issue (AHCA Case Number 20-FH [REDACTED]) is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional seven (7) hours per week of personal care services was incorrect.

The second issue (AHCA Case Number 20-[REDACTED]) is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional three (3) hours per week of homemaker services was incorrect.

The third issue (AHCA Case Number 20-FH [REDACTED]) is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of seven (7) hours per week of adult companion care services was incorrect.

The fourth issue (AHCA Case Number 20-FH[REDACTED]) is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate one case per month of Underpads/Chux and one case per month of Liners was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] [REDACTED] ("[REDACTED]"), Petitioner's Authorized Representative and daughter, appeared at the Fair Hearing and provided testimony on Petitioner's behalf. The Petitioner also appeared at the hearing but did not testify.

Maria Mojica ("Ms. Mojica"), Senior Paralegal for Sunshine State Health Plan, Inc. ("Sunshine" or "Respondent"), represented Respondent at the hearing. Dr. John Carter ("Dr. Carter"), Long Term Care Medical Director for Sunshine, appeared as a witness for Respondent. The following individuals appeared as witnesses on behalf of Respondent, but did not testify: Louise Jeanty, Supervisor of Quality Improvement for Sunshine; Solange Luna, Long Term Care Supervisor for Sunshine; Jacqueline Seaton, Manager of Case Management for Sunshine; and Anhara Moreno, Case Manager for Sunshine.

Marielisa Amador, Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Interpreter Adelita, translator number 345152 with Language Line Solutions, appeared for the hearing and provided translation services on behalf of Petitioner.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred eighteen (118)-page evidence packet. The evidence packet consisted of the following documents: the Medicaid Fair Hearing Table of Content; Medicaid Fair Hearing Summary, dated July 21, 2020; Notice of Adverse Benefit Determination ("NABD") regarding personal care,

an objection from Petitioner, the undersigned admitted the ninety-six (96)-page evidence packet into evidence as Respondent's Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. See Respondent's Composite Exhibit 1 at page 22. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is 85-years old with a history of advanced stage Parkinson's disease with tardive dyskinesia, osteoarthritis, bladder incontinence, hypothyroidism, and gallbladder removal. *Id.* at 35, 49, 53 and 56. Petitioner lives with her daughter and son-in-law. *Id.* at 51. Petitioner's daughter, [REDACTED], is her primary caregiver. *Id.* at 54. Petitioner's mobility is limited and she spends long periods of time in bed. *Id.* at 67. Petitioner experiences frequent bladder incontinence. See Respondent's Composite Exhibit 2 at page 17, 26 and 55.

3. Regarding Activities of Daily Living ("ADLs"), Petitioner needs assistance (but not total help) with bathing, dressing, eating, using the bathroom, transferring, and walking/mobility. See Respondent's Composite Exhibit 1 at page at 53.

4. Regarding Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping. *Id.* at 54. Petitioner needs assistance (but not total help) using the telephone, managing medication, and using transportation. *Id.* Petitioner's 701B Assessment indicates that [REDACTED] assists Petitioner with her IADLs and that Petitioner "always has assistance" with IADLs. *Id.* at 36.

5. In the 701B Assessment, the box “several days” was checked for “forgetful or easily confused.” *Id.* at 58. The box “[n]ot at all” was checked for the following: gets lost or wanders off; intentionally injures or harms herself; expresses suicidal feelings or plans; or hallucinates, hears/sees things that are not there. *Id.* at 70. The 701B Assessment further indicates that Petitioner needs supervision due to forgetfulness and physical limitations. *Id.*

6. Petitioner requested an additional seven (7) hours per week of personal care, an additional three (3) hours per week of homemaker service, an additional seven (7) hours per week of companion care services, and the continuation of one (1) case per month of Liners and one (1) case per month of Disposable Underpads/Chux. *Id.* at 4 – 5, and 80; Respondent’s Composite Exhibit 2 at page 4. Petitioner also requested to close out adult day care services because Petitioner is physically unable to attend. *Id.* at 67.

7. On March 19, 2020, Respondent issued an NABD reducing Petitioner’s medical supplies. Respondent’s Composite Exhibit 2 at pages 4 - 8. The NABD stated the reason for the reduction 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.

...

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

- 1 case/month of Diapers
- 1 case/month of Liners; and
- 1 case/ month of Disposable Underpads/CHux

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 1 case/month of Liners, and will terminate the 1 case/month of Disposable Underpads/Chux, and will approve the one-time addition of 6 reusable Underpads.

Id. at 4.

8. On March 20, 2020, Respondent issued an NABD denying Petitioner's request for additional personal care, homemaker, and adult companion care services. *Id.* at 4. The NABD stated the reason for Respondent's termination 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.

...

The facts that we used to make our decision are: The request for an extra 7 hours/week of Personal Care Services + an extra 3 hours/week of Homemaker Services + the addition of 7 hours/week of Companion Care Services is denied. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs.

The member's present care plan includes:

- 5 days/week of Adult Day Card (ADC) Services;
- 14 hours/week of Personal Care Services; and
- 4 hours/week of Homemaker Services.

Id. at 6 - 10.

9. On [REDACTED] 2020, Petitioner's provider, [REDACTED], submitted a letter concerning

Petitioner's medical conditions. The letter states:

This letter is to notify that the patient [Petitioner], DOB: [REDACTED]1935, has been under my care and she suffers of the following medical conditions:

1. Major depression
2. Peripheral arterial disease
3. Parkinson's disease
4. Tardive dyskinesia
5. Chronic insomnia
6. Urinary incontinence
7. Osteoarthritis of the knees
8. Hypothyroidism,
9. Osteoarthritis of the knees bilaterally
10. Chronic constipation
11. Osteoarthritis of the femoral neck
12. Osteoarthritis of the left hip
13. Functional decline

Because of all the above medical conditions the pt needs 24 hour supervision and needs help at home, pt also needs to have pull-ups and the sheets to place on bed.

Id. at 73.

10. Petitioner requested a plan appeal and received an NPAR, dated June 3, 2020, upholding Sunshine's decision to deny Petitioner's request for additional personal care, homemaker, and adult companion care services. *Id.* at 80 - 82. The NPAR explained as follows:

On June 3, 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 extra 7 hours per week of Personal Care Services, an extra 3 hours per week of Homemaker Services, and the addition of 7 hours per week of Companion Care Services, effective June 3, 2020.

The reason for our decision was:

The appeal to overturn the denial of an extra 7 hours per week of Personal Care Services, an extra 3 hours per week of Homemaker Services, and the addition of 7 hours per week of Companion Care Services is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 5 days per week of Adult Day Care (ADC) Services (temporarily closed), 14 hours per week of Personal Care Services, and 4 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 80.

11. Petitioner requested a plan appeal and received an NPAR, dated June 3, 2020, upholding Sunshine's decision to terminate 1 box of Liners per month and 1 box of Underpads/Chux per month. Respondent's Composite Exhibit 2 at pages 80 - 82. The NPAR explained as follows:

On June 3, 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 1 case a month of adult brief, effective June 3, 2020.

The reason for our decision was:

The appeal to overturn the reduction of Briefs from 1 case a month to 1 case every other month and the termination of 1 case per month of Liners and 1 case per month of Disposable Underpads/Chux is denied. Based on the assessment, the currently approved supplies are adequate to meet the member's care needs. The present care plan includes:

- box per month of Gloves
- 1 case every other month of Briefs

- 1 case per month of Pull-Ups
- 6 Reusable Underpads, one time
- 1 tube per month of Barrier Cream

Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria was used in this decision.

Id. at 80.

12. At the hearing, ██████ testified that Petitioner suffers from advanced stage Parkinson's disease with functional decline and tardive dyskinesia. She argued that an increase in personal care and homemaker services, and adult companion care services, are warranted because Petitioner is no longer physically able to attend adult day care. ██████ asserted that Petitioner is a fall risk and cannot be left alone because her osteoarthritis makes it impossible to move or walk without assistance. Because her mobility is limited, Petitioner spends long periods of time (approximately 18 hours per day) in bed. ██████ stated that Petitioner's physician, ██████, submitted a letter indicating that Petitioner needs 24 hours of supervision per day. ██████ testified that, due to the frequency and amount of Petitioner's urinary incontinence, washable liners are not feasible, will grow fungus, and may cause Petitioner's skin to peel over time. ██████ further asserted that Petitioner qualifies for companion care services due to her Parkinson's disease diagnosis.

13. ██████ currently works from home for four to five (4 – 5) hours per day. She testified that she has been unable to work a full eight (8) hours per day since Petitioner no longer attends adult day care. ██████'s husband works full-time and runs many of the household errands so that ██████ can stay at home with Petitioner.

14. Dr. Carter is an internal medicine and home care physician. Dr. Carter confirmed that Sunshine added seven (7) hours hours of personal care services to Petitioner's Care Plan, and he

stated that Petitioner currently receives twenty-one (21) hours of personal care, four (4) hours of homemaker services and seven (7) home delivered meals per week. He argued that, because Petitioner lives with two adult family members, additional hours of homemaker services and companion care services are not medically necessary.

15. Dr. Carter testified that Petitioner's Liners were terminated because she already receives disposable pull-ups, and Liners do not need to be used with disposable undergarments. Dr. Carter testified that Petitioner's disposable Underpads/Chux were terminated because Petitioner has six (6) reusable pads that can be laundered.

CONCLUSIONS OF LAW

16. 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 (2019). This order is the final administrative decision of the Agency under section 409.285(2)(a).

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

18. Because Petitioner is requesting new services with regard to Issue numbers one through three (1 – 3) above, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. Because Respondent is terminating medical supplies in Issue number four (4) above, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to 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.)

19. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2018) (“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 and homemaker 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.

...

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.

...

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.

20. 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.

LTC Policy at pages 2 – 3.

21. The Florida Medicaid Definitions Policy (August 2017) ("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.

22. LT.UM.09 provides as follows in regards to adult companion care:

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
23. LT.UM.10 provides as follows in regards to incontinence supplies:

2. Incontinence Supplies

Prior Authorization is required for diapers, gloves, perineal wipes, emollients and absorbent products used to manage incontinence in individuals covered by Sunshine Health LTC product. Coverage determinations are based on an

assessment of the individual's unique clinical needs as documented in the clinical information submitted by the requesting provider and/or the current 701B assessment completed by the LTC Care Coordinators. The 701B assessment is used to identify the member's level of incontinence, functional status as measured through Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL), and level of caregiver support.

Sunshine Health does not require a physician's prescription to review, approve or deny a request for standard incontinence supplies found on the Florida Medicaid Fee Schedule. Sunshine Health covers items for LTC members listed on the fee schedules for Medicaid Recipients " Under the Age of 21 Years" and "All Medicaid Recipients", even when the member is over the age of 21. Diapers, gloves, perineal wipes, emollients and absorbent products may be considered medically necessary in the management of incontinence associated with a broad range of medical conditions including, but not limited to neurological conditions, congenital anomalies, injuries to the pelvic region, injuries to the spinal cord, fistula, bowel prolapse and infections. Consideration is always given to the unique needs of a given individual.

Criteria to support need for incontinence products

Upon review of the 701B assessment, Sunshine Health will consider but is not limited to the following:

- Member must have current incontinence of the bladder and/or bowel; and/or
- Member must have one of the following limitations in their Activities of Daily living:
Using the bathroom (toileting, hygiene, cleaning) and/or Walking/Mobility and/or Transferring:
 - Needs supervision or prompt
 - Needs assistance without a caregiver
 - Needs assistance with a caregiver
 - Needs total assistance without a caregiver
 - Needs total assistance with a caregiver

Sunshine Health may approve up to the amount allowed on the Medicaid fee schedule depending on the member's level of incontinence.

The clinical reviewer takes into consideration the individual needs of the member, which includes assessment and identification of the individual's specific medical, mobility and psychosocial needs. The assessment includes the frequency in which a member may need an incontinence diaper/brief changed and considers the health and lifestyle of the member wearing them. An independent individual with limited functional deficits may be able wear an incontinence diaper/brief longer

than someone who is frail and bedridden. Most adults with incontinence need to change their diaper between 5-8 times a day.

Diapers/briefs should be changed as soon as they become soiled or wet. If a bedbound individual does not wet diapers or briefs often, or has small leakage, consideration may be given to alternating between pads and diapers. The frequency and volume of urinary and bowel incontinence should be identified in order to select the appropriate type and amount of incontinence supplies. The goal is promote skin integrity. The impact of a brief allowing good air circulation, must be considered as this can lead to skin irritation and rashes.

Pull on briefs are appropriate when there is the presence of a medical condition causing bowel/bladder incontinence and the member is able to care for his/her toileting needs independently or with minimal assistance from a caregiver. Factors such as cognitive impairment, dementia and high fall risk are also taken into consideration. The criteria for Pull on briefs includes:

- Presence of a medical condition causing bowel/bladder incontinence, and one of the following :
 - The member would not benefit from a bowel/bladder program but has the cognitive ability to independently care for his/her toileting needs, or
 - The member is actively participating and demonstrating definitive progress in a bowel/bladder program.

Respondent's Composite Exhibit 2 at 87 – 95.

Personal Care Services

24. In the NPAR dated June 3, 2020, Respondent denied Petitioner's request for seven (7) additional hours per week of personal care services. See supra ¶ 11. On August 10, 2020, the Office of Fair Hearings received an approval letter from Respondent, dated July 28, 2020, authorizing the seven (7) additional hours per week of personal care services that Petitioner requested. At the Fair Hearing, Ms. Mojica acknowledged on the record that the requested personal care services were approved.

25. In light of the fact that Respondent authorized the requested personal care services at issue for an additional seven (7) hours per week of personal care services, the undersigned Hearing Officer finds that the issue of personal care services in AHCA Case Number 20-FH [REDACTED], is moot.

Homemaker Services

26. In the instant case, Respondent requested an additional three (3) hours per week of homemaker services. As established on the record by the evidence and testimony, Respondent denied Petitioner's request for additional homemaker services because the current amount (four hours per week) are adequate to meet Petitioner's care needs. See supra ¶ 11 and 15.

27. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 18.

28. The testimony and evidence presented in this case reflect that Petitioner failed to show that the additional homemaker services are medically necessary. Specifically, Petitioner's homemaker services failed to satisfy the medical necessity criteria, which requires that the requested 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 ¶ 19.

29. As stated in the LTC Policy, homemaker services provide for general household activities and routine household care by a trained homemaker, "when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities." See supra ¶ 18. The record reflects that Petitioner lives with two adult family members. See supra ¶ 2 and 14.

Petitioner's primary caregiver, [REDACTED], currently works from home for four to five hours per day. See supra ¶ 2 and 14. Petitioner's son-in-law works full time, but he runs errands for the household so that [REDACTED] can stay at home with Petitioner. *Id.* at 13.

30. Dr. Carter testified that he reviewed Petitioner's medical history and current medical needs. See supra ¶ 14. Dr. Carter testified that, in his professional opinion, the additional homemaker hours requested by Petitioner in this case exceed her medical needs.

31. In light of the fact that [REDACTED] assists Petitioner with light housekeeping, managing money and medication, and preparing meals, and her husband runs errands for the household so that [REDACTED] can stay with Petitioner, *supra* ¶ 2, 13 and 14, Dr. Carter's testimony, that additional homemaker services are not medically necessary, is credible. See supra ¶ 14. As provided above, homemaker services are intended for situations where the individual regularly responsible for those activities is temporarily absent or unable to manage these activities, which at present, appears to not entirely be the case here. Based on the foregoing, Petitioner has not demonstrated an unmet need for homemaker services. Indeed, Petitioner's 701B Assessment indicates that Petitioner currently "always has assistance" with IADLs. See supra ¶ 4. As such, Petitioner has not shown that three (3) additional hours per week of homemaker services are not in excess of Petitioner's needs.

32. Therefore, upon consideration of both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the LTC Policy, and the Definitions Policy, the undersigned finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of additional homemaker services was incorrect.

Adult Companion Care Services

33. As provided in the LTC Policy, the purpose of adult companion care services 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.” See supra ¶ 19. Companion care is designed to prevent social isolation or to provide supervision. See supra ¶ 9 and 12.

34. Petitioner resides with daughter and son-in-law. See *supra* ¶ 2. The testimony and record evidence reflects that ██████ assists Petitioner with her ADLs and IADLs, supra ¶ 2, 12 - 13, and that ██████ is Petitioner’s primary caregiver. See *supra* ¶ 4. ██████ works from home and her husband runs errands so that Petitioner is not left alone. See supra ¶ 2, 12 – 13. Thus, Petitioner has the opportunity to socialize with other people, and Petitioner is not at risk for social isolation.

35. With regard to a medical need for companion care supervision, ██████ testified that Petitioner qualifies for adult companion care due to her Parkinson’s diagnosis. See supra ¶ 22. In Petitioner’s 701B Assessment, the box “[n]ot at all” was checked for the following behaviors: forgetful or easily confused; gets lost or wanders off; intentionally injures or harms herself; expresses suicidal feelings or plans; or hallucinates, hears/sees things that are not there. See supra ¶ 3 and 5. However, the assessment expressly indicates that Petitioner “needs supervision” at some level. See supra ¶ 5.

36. ██████ testified that Petitioner is a fall risk due to her osteoporosis. See supra ¶ 12. This is consistent with Petitioner’s 701B which states that Petitioner requires some level of “supervision” due to forgetfulness and physical limitations. See supra ¶ 5. However, Petitioner did not present any evidence specifying the amount of companion care Petitioner requires, nor

did she demonstrate that Petitioner is left alone for extended period of time. To the contrary, [REDACTED] testified that Petitioner is confined to bed for long periods of time, that [REDACTED] works from home, and that Petitioner's son-in-law runs household errands to enable [REDACTED] to stay with Petitioner.

37. Based on the foregoing, the Petitioner is not at risk of social isolation because she lives with her daughter and son-in-law, her daughter works from home, and Petitioner is not left alone for extended periods of time. Although Petitioner may need a level of supervision at this time; Petitioner did not submit evidence as to how many hours of companion care is medically necessary. As such, Petitioner failed to demonstrate that the requested adult companion care service hours are individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and are not in excess of the Petitioner's needs.

38. [REDACTED]'s letter states, "[b]ecause of all the above medical conditions the pt needs 24 hour supervision and needs help at home, pt also needs to have pull-ups and the sheets to place on bed." See supra ¶ 9. Further, "[t]he 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." See supra ¶ 21. Therefore, a statement from [REDACTED] does not, in itself, make the requested services medically necessary or a medical necessity.

39. Therefore, upon consideration of both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the LTC Policy, and the Definitions Policy, the undersigned finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of adult companion care services was incorrect.

Medical Supplies

40. In the NPAR, dated June 3, 2020, Respondent approved the termination of one (1) case per month of liners and one (1) case per month of disposable underpads/chux. *See* Respondent's Composite Exhibit 2 at page 26. Dr. Carter, an internal medicine and home care physician, testified that Sunshine's decision was based on the assessment of the Petitioner's care needs as well as the approval of disposable pull-ups and six (6) reusable liners.

41. As provided in Respondent's policy, LT.UM.10, incontinence supplies may be provided when members "have current incontinence of the bladder/and or bowel; and/or" "one of the following limitations in their Activities of Daily Living: Using the bathroom. . . and/or Walking/Mobility/and/or Transferring." *See supra* ¶ 24. In this case, Petitioner has frequent bladder incontinence. *See supra* ¶ 2. Further, Petitioner needs the assistance of a caregiver using the bathroom and with transferring and walking/mobility. *See supra* ¶ 3. Dr. Carter, an internal medicine and home care physician and plan Medical Director, testified that the one (1) case of pull-ups and six reusable liners are adequate to meet Petitioner's needs. *See supra* ¶ 16.

42. However, as Respondent is reducing a previously approved service, Respondent bears the burden of proof. Here, the evidence shows that Petitioner's bladder incontinence is frequent and Petitioner has personal care services. However, no other evidence was provided by Respondent for the undersigned to consider, such as how many pull-ups or liners a person with frequent bladder incontinence would require. The Respondent did not demonstrate a change in Petitioner's medical needs such that the termination of liners and pads is warranted.

43. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent did not prove by a

preponderance of the evidence that Respondent's reduction of medical supplies (liners and pads) was correct.

44.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

AHCA Case Number 20-FH [REDACTED] is dismissed as **MOOT**, and is now closed.

Respondent's denial of three (3) additional hours of homemaker services per week **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's denial of seven (7) hours of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

Respondent's termination of one case per month of Underpads/Chux and one case per month of Liners is **REVERSED**. Petitioner's appeal based on Respondent's termination is **GRANTED**.

DONE and ORDERED this 15th day of September, 2020, in Tallahassee, Leon County, Florida.



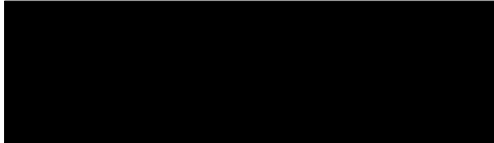
Laura Gallagher
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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 CHEADQUARTERS 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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