



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

**FILED**

Oct 07, 2020, 9:11 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

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[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

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[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

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[REDACTED],

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AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

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RESPONDENT.

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PETITIONER,

AHCA Case No.: 20-FH \_\_\_\_\_

Plan ID No.: \_\_\_\_\_

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 8, 2020, at \_\_\_\_\_

**APPEARANCES**

For the Petitioner:

\_\_\_\_\_

Petitioner’s Authorized Representative

For the Respondent:

Maria Mojica  
Compliance Specialist  
Sunshine State Health Plan Inc.

**STATEMENT OF ISSUE**

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny three (3) hours per week of Homemaker services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny two (2) hours per week of Personal Care services was incorrect.

The third issue is whether the Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's Personal Care services by three (3) hours per week was correct.

The fourth issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate the provision of two (2) packs of wipes per month to Petitioner was correct.

The fifth issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate the provision of seven (7) home delivered meals per week to Petitioner per month was correct.

#### **PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and mother, [REDACTED] ("[REDACTED]"), appeared on behalf of the Petitioner. [REDACTED] ("[REDACTED]"), a licensed social worker who assists [REDACTED], attended as a witness for Petitioner.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent. The following individuals attended as witnesses for Respondent: Fredrinisha Player, Care Coordinator – Long Term Care for Sunshine; Louise Jeunty Supervisor of Quality/Improvement for Sunshine; Yana Langford, Supervisor for Sunshine; Dr. Andrew Russell ("Dr. Russell"), Medical Director for Sunshine; and Alshonica Williams, Care Coordinator Supervisor for Sunshine.

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

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and fifty-two (252)-page evidence packet<sup>1</sup>. The evidence packet included the following: the Table of Contents for 20-FH████ & 20-FH████; a summary for 20-FH████ & 20-FH████; a Notice of Adverse Benefit Determination (“NABD”), denying homemaker services and personal care services, dated June 1, 2020; a Plan of Care, signed May 28, 2020<sup>2</sup>; A Plan of Care, signed August 3, 2020<sup>2</sup>; a Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated May 27, 2020<sup>2</sup>; another 701B, dated July 9, 2020<sup>2</sup>; an Expedited Appeal Acknowledgment, dated June 19, 2020; a Revised Expedited Appeal Acknowledgment, dated August 3, 2020; a Notice of Plan Expedited Appeal Resolution (“NPAR”), upholding the denial of homemaker services and personal care services, dated June 20, 2020; a Revised NPAR, dated August 3, 2020; Sunshine Health Policy and Procedure LT.UM.09, last revised November 2019<sup>2</sup>; and Fla. Admin. Code R. 59G-1.010(166)<sup>2</sup>; the Table of Contents for 20-FH████; the NABD, reducing personal care services, dated June 12, 2020, and Expedited Appeal Acknowledgment, dated June 18, 2020; a Revised Expedited Appeal Acknowledgment, addressing the reduction of personal care hours, dated August 3, 2020; an NPAR, addressing the reduction of personal care hours, dated June 20, 2020; and a Revised NPAR, addressing the reduction of personal care hours, dated August 3, 2020. Absent an objection from Petitioner’s Authorized Representative, the undersigned admitted the two hundred and fifty-two (252)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

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<sup>1</sup> Respondent’s Composite Exhibit 1 is split into two parts, each numbering 126 pages. The part pertaining to 20-FH████ & 20-FH████ is referred to in the Final Order as pages 1 through 126. The part pertaining to 20-FH████ is referred to as pages 127 through 252 of Respondent’s Composite Exhibit 1.

<sup>2</sup> Document duplicated. Omitted after first appearance.

Prior to the hearing, Respondent also sent to the Office of Fair Hearings and Petitioner a one-hundred and twenty-eight (128)-page evidence packet. The evidence packet included the following: the Table of Contents for 20-FH [REDACTED] and 20-FH [REDACTED]; the NABD, terminating the home delivered meals and wipes, dated June 12, 2020; a Plan of Care, signed August 25, 2020; a 701B, dated August 12, 2020; an Expedited Appeal Request Decision, dated June 19, 2020; a Standard Appeal Acknowledgment, dated June 19, 2020; and an NPAR, terminating the home delivered meals and wipes, dated July 18, 2020; and Sunshine Health Policy and Procedure LT.UM.10, last revised March 2018. Absent an objection from Petitioner's Authorized Representative, the undersigned admitted the one hundred and twenty-eight (128)-page packet into evidence as Respondent's Composite Exhibit 2.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is thirty-two (32)-years old and diagnosed with osteoarthritis, frequent dizziness, depression, anxiety, and post traumatic stress disorder. Respondent's Composite Exhibit 2 at 51 and 57 through 58. Petitioner has chronic knee pain and utilizes a rollator ("rolling walker") to ambulate at home. *Id.* at 55. Petitioner is not diagnosed with bowel incontinence. *Id.* at 57.
3. Prior to June 22, 2020, Petitioner's plan of care included the following: twelve (12) hours of personal care services per week; six (6) hours of homemaker services per week; two (2) packs of wipes per month; and seven (7) home delivered meals per week. *See* Respondent's Composite Exhibit 1 at 5 and Respondent's Composite Exhibit 2 at 5.

4. Petitioner lives with her mother who at the time of the hearing was sixty-nine (69)-years old. See Respondent's Composite Exhibit 2 at 65. Petitioner's mother receives compensation from Sunshine to act as Petitioner's caregiver under the Patient Direct Option ("PDO") outside of the acting as Petitioner's caregiver. See *Id.* at 38. Petitioner's mother is Petitioner's sole natural support. *Id.* at 65.

5. Petitioner always has assistance or does not need assistance with bathing, dressing, eating, using the bathroom, transferring, and mobility. *Id.* at 55. Additionally, Petitioner always has assistance with or does not need assistance with heavy chores, light housekeeping, using the telephone, managing money, preparing meals, shopping, managing medication, and using transportation. *Id.* at 56.

6. Petitioner requested three (3) hours per week of additional Homemaker services and an additional two (2) hours per week of Personal Care Services. Petitioner's request was denied in the NABD dated June 1, 2020. The NABD explained the basis of the denial as follows:

Sunshine Health has reviewed your request for an extra 2 hours per week of Personal Care Services (the person who helps bathe and dress you) and an extra 3 hours per week of Homemaker Services (the person who cleans for you), which we received on 05/27/2020. After our review, this service has been: DENIED as of 06/01/2020.

...

- 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: The request for an extra 2 hours per week of Personal Care Services and an extra 3 hours per week of Homemaker 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:

- 12 hours per week of Personal Care Services
- 6 hours per week of Homemaker Services
- 7 meals per week of Home Delivered Meals

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

Respondent's Composite Exhibit 1 at 4 through 5.

7. Petitioner requested a plan appeal and received an NPAR dated June 20, 2020, upholding the denial. The NPAR explained as follows:

Based on the assessment of the member's care needs and household and caregiver status, the denial of an extra 2 hours per week of Personal Care Services is upheld, and the denial of an extra 3 hours per week of Homemaker Services is upheld. The presently approved 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.

*Id.* at 81.

8. Respondent reduced Petitioner's Personal Care services, effective June 22, 2020, in an NABD dated June 12, 2020. The NABD explained the basis of the denial as follows:

Sunshine Health has reviewed your request for 12 hours a week of personal care (the person who helps bathe and dress you), which we received on 06/07/2020. After our review, this service has been: REDUCED as of 06/22/2020.

...

- 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 has looked at the member's present care needs and provided home services. The member's present care plan includes 12 hours per week of Personal Care Services and 6 hours per week of Homemaker Services.

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce Personal Care Services from 12 hours per week to 9 hours per week, a reduction of 3 hours per week of Personal Care Services. The updated care plan approved by Sunshine Health will include 9 hours per week of Personal Care Services and 6 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 130 through 131.

9. Petitioner requested a plan appeal and received an NPAR dated June 20, 2020, upholding the reduction. The NPAR explained as follows:

Based on the assessment of the member's care needs and household and caregiver status, the reduction of Personal Care Services from 12 hours/week to 9 hours/week is upheld. The 9 hours/week of Personal Care Services is 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.

*Id.* at 207.

10. Respondent terminated delivery of Petitioner's seven (7) home delivered meals per week and two (2) packs per month of incontinence wipes, effective June 22, 2020, in an NABD dated June 12, 2020. The NABD explained the basis of the termination as follows:

Sunshine Health has reviewed your request for 2 packs a month of incontinence wipes (wipes used to help keep you clean and throw away after use) and 7 meals a week of home delivered meals (meals sent to your home), which we received on 06/07/2020. After our review, this service has been:  
TERMINATED as of 06/22/2020.

...

- 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 has looked at the member's present care needs and provided home services and supplies. The member's present care plan includes:

- 9 hours per week of Personal Care Services
- 6 hours per week of Homemaker Services
- 7 meals per week of Home Delivered Meals
- 1 unit per month of PERS (Personal Emergency Response System)
- 2 packs per month of Wipes

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 7 meals per week of Home Delivered Meals. The member lives with her mother and has Homemaker Services which can help with food shopping and preparation. Sunshine Health will terminate the 2 packs per month of Wipes. The member is continent of both bladder and bowel. The use of Wipes is intended for incontinence of bowel, and is considered a convenience when used for incontinence of the bladder or general hygiene.

The updated care plan approved by Sunshine Health will include:

- 9 hours per week of Personal Care Services
- 6 hours per week of Homemaker Services
- 1 unit per month of PERS (Personal Emergency Response System)

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

Respondent's Composite Exhibit 2 at 6 through 7.

11. Petitioner requested a plan appeal and received an NPAR dated July 18, 2020, upholding the reduction. The NPAR explained as follows:

The reconsideration request for resumption (to restart) of Home Delivered Meals and Wipes is denied and the original denial is upheld. Sunshine Health has looked at your present care needs and provided home services and supplies. Your previous care plan included:

- 9 hours per week of Personal Care Services
- 6 hours per week of Homemaker Services
- 7 meals per week of Home Delivered Meals
- 1 unit per month of PERS (Personal Emergency Response System)
- 2 packs per month of Wipes

Based on the assessment of your care needs and household and caregiver status, Sunshine Health terminated (stopped) the 7 meals per week of Home Delivered Meals. You live with your mother and has Homemaker Services which can help

with food shopping and preparation. Sunshine Health terminated (stopped) the 2 packs per month of Wipes. The member is continent of both bladder and bowel. The use of Wipes is intended for incontinence of bowel, and is considered a convenience when used for incontinence of the bladder or general hygiene.

The updated care plan approved by Sunshine Health will include:

- 9 hours per week of Personal Care Services
- 6 hours per week of Homemaker Services
- 1 unit per month of PERS (Personal Emergency Response System)

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 81 through 82.

12. ██████ testified that she does all tasks necessary to provide for Petitioner's care and is able to complete those tasks with the approved hours, including Petitioner's laundry. In describing meal preparation, ██████ testified that she regularly adds other items and ingredients. ██████ argued that the care hours requested and home delivered meals were necessary because the compensation she receives as the caregiver and home delivered meals allow her meet her and Petitioner's financial needs.

13. Dr. Russell testified that Respondent considered Petitioner's conditions, any recent hospitalizations, and current care plan in addressing Petitioner's care hours, home delivered meals, and wipes. Dr. Russell argued that Petitioner's personal care needs can be met with fewer hours and that home delivered meals were terminated because Petitioner's needs for meal preparation were already met through the homemaker services provided. As to the wipes, Dr. Russell testified that wipes are provided when a recipient is diagnosed with bowel incontinence and noted that Petitioner is not diagnosed with bowel incontinence.

## CONCLUSIONS OF LAW

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

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

16. Petitioner is requesting new services and Respondent has reduced or terminated other services. Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to the moving party. Where Petitioner is requesting new services, Petitioner has the burden of proof. Where Respondent has reduced or terminated services, Respondent has the burden of proof. 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.

17. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services, homemaker services, home delivered meals and medical supplies:

### **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

...

#### **4.2.1.8 Home Delivered Meals**

The provision of nutritionally sound meals delivered to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

#### **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.

...

#### **4.2.2.5 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.

18. 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.

#### **Denial of Homemaker Services**

19. Petitioner requested three (3) hours of homemaker services in addition to the six (6) hours per week of homemaker services Petitioner is already receiving. Supra ¶ 6. On the NABD, Respondent indicated that the request did not meet the criteria for medical necessity. *Id.* The evidence shows that ██████ acts as Petitioner's caregiver for care hours provided by Respondent. Supra ¶ 4. Petitioner's most recent 701B shows that Petitioner always has assistance with heavy chores, light housekeeping, and preparing meals. Supra ¶ 5. ██████ testified that she regularly prepares individualized meals for Petitioner and regularly does Petitioner's laundry. Supra ¶ 12. ██████ also testified that she is able to complete all tasks for Petitioner's care. *Id.*

20. As provided in the LTC Policy, Homemaker services are intended to provide of general household activities (such as meal preparation) and routine household care (including laundry and pest control). Supra ¶ 17. A component of medical necessity is that services must 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. Supra ¶ 18. Here, Petitioner's needs for household activities and routine household care are met with the homemaking hours provided and ██████'s efforts outside of those hours as a natural support. Petitioner has not shown that additional Homemaker services are not in excess of her needs. Accordingly, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of an additional three (3) hours of homemaker services was incorrect.

**Denial of Personal Care Services**



█. Petitioner requested two (2) additional hours per week of Personal Care services in addition to the twelve (12) hours of personal care services Petitioner had been receiving. Supra ¶ 6. On the NABD, Respondent indicated that the request did not meet the criteria for medical necessity. *Id.* The 701B shows that Petitioner always has assistance with her IADLs and ADLs. Supra ¶ 5.

22. As provided in the LTC Policy, Personal Care services are to provide assistance with ADLs and IADLs. Supra ¶ 17. The component of medical necessity at issue is that services must 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. As shown in the 701B and █'s testimony, Petitioner's IADLs and ADLs are currently met with the current personal care hours approved by Respondent and █'s care acting as a natural support for Petitioner. Petitioner has not shown that additional Personal Care services are not in excess of her needs. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of an additional two (2) hours of homemaker services was incorrect.

#### **Reduction of Personal Care Services**

23. Respondent reduced Petitioner's personal care services by three (3) hours per week. Supra ¶ 8. On the NABD, Respondent indicated that the request did not meet the criteria for medical necessity. *Id.* The NABD did not address which component(s) of medical necessity was not met in deciding to reduce Petitioner's hours. Dr. Russell testified that Respondent's decision

to reduce Petitioner's personal care services was made considering Petitioner's condition and existing care hours provided by Respondent. Supra ¶ 13.

24. The medical necessity component at issue is whether the personal care services 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. Supra ¶ 17. As addressed in the section on the Denial of Personal Care Services, Petitioner's IADLs and ADLs are currently being met with the care hours provided by Respondent. The evidence does not show a change in Petitioner's condition that served as the rationale for reducing Petitioner's Personal Care hours. Neither Petitioner's witnesses nor Respondent's witnesses provided testimony as to how Petitioner's IADLs and ADLs could be met with the reduced hours. Respondent has the burden showing that Petitioner's IADLs and ADLs can be met with the reduced hours and has not done so in this case. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has not proved by a preponderance of the evidence that Respondent's reduction of three (3) personal care hours per week was correct.

#### **Termination of Wipes**

25. Respondent terminated Petitioner's receipt of two (2) cases per month of wipes. Supra ¶ 10. On the NABD, Respondent indicated that the request did not meet the criteria for medical necessity. *Id.* Dr. Russell testified that wipes are intended for use in recipients diagnosed with bowel incontinence. Supra ¶ 13. Respondent's Utilization Management policy reflects that wipes are classified as incontinence supplies. Respondent's Composite Exhibit 2 at 122. The most recent 701B shows that Petitioner is not diagnosed with bowel incontinence. *See supra* ¶ 2. Dr. Russell

testified that when wipes are provided to recipients without incontinence it is done for the convenience of the recipient. Supra ¶ 13. During the hearing, Petitioner's witnesses did not address the termination of the wipes.

26. As provided in the LTC Policy, the wipes must be medical necessary. A component of medical necessity is that services must be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. Supra ¶ 18. Here, the wipes provided to Petitioner are not consistent with Respondent's Utilization Management plan or their purpose to be provided to recipients with incontinence. As testified to by Dr. Russell they were provided in this case as a convenience. Even if not provided as a convenience, the wipes are not provided for any condition or diagnosis identified. Respondent has shown that the wipes were provided as a convenience to Petitioner, or in the alternate, that the wipes are not individualized, specific, and consistent with Petitioner's symptoms or diagnoses. Thus, Respondent has demonstrated that the wipes are not medically necessary. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent has proved by a preponderance of the evidence that Respondent's termination of two (2) packs per months of wipes provided to Petitioner was correct.

#### **Termination of Home Delivered Meals**

27. Respondent terminated Petitioner's receipt of seven (7) home delivered meals per week. Supra ¶ 10. On the NABD, Respondent indicated that the request did not meet the criteria for medical necessity. *Id.* Dr. Russell testified that Petitioner's homemaker hours were considered when terminating Petitioner's home delivered meals. Supra ¶ 13. ████████ testified that she has

always prepared Petitioner's meals and that Petitioner needed home delivered benefits as an adjunct benefit to benefits received from the Supplemental Nutritional Assistance Program. ■■■

■■■ added that she routinely adds ingredients and other items to Petitioner's meals.

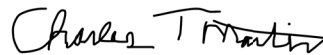
28. As provided in the LTC Policy, home meal delivery is intended to provide nutritionally sound meals to an enrollee's home when an enrollee has difficulty shopping for, or preparing food, without assistance. Supra ¶ 17. Home meal delivery must be medically necessary. At issue is whether the provision of home delivered meals exceeds Petitioner's needs or is provided primarily for the convenience of the caretaker and Petitioner. Supra ¶ 18. As shown in the 701B and ■■■'s testimony, Petitioner always has assistance with shopping and with preparing meals. Given that ■■■ still engages in meal preparation to supplement the home delivered meals, ■■■'s testimony shows that the home delivered meals provide a benefit in excess of the Petitioner's needs for assistance with meal preparation and shopping. ■■■'s argument that the meals are necessary as form of financial assistance is rejected as that violates the provision that services be provided not for the convenience of the caretaker or petitioner. Respondent has shown that the provision of seven (7) home delivered meals per week to Petitioner is in excess of Petitioner's needs and not medically necessary. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned finds that Respondent has proved by a preponderance of the evidence that Respondent's termination of seven (7) home delivered meals per week was correct.

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

Respondent's denial of three (3) hours of homemaker services per week is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**. Respondent's denial of two (2)

hours of personal care services per week is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**. Respondent's reduction of three (3) hours of personal care services per week is **REVERSED**. Petitioner's appeal based on Respondent's reduction is **GRANTED**. Respondent's termination of two (2) packs of wipes per month is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**. Respondent's termination of seven (7) home delivered meals per week is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

**DONE and ORDERED** this 7th day of October, 2020, in Tallahassee, Leon County, Florida.



Charles Martin  
20-FH [REDACTED], 20-FH [REDACTED], 20-  
FH [REDACTED], 20-FH [REDACTED], & 20-FH [REDACTED]  
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**CHARLES MARTIN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
**Office: (850) 412-3649**  
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**Email: OfficeOfFairHearings@ahca.myflorida.com**

**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:**

[REDACTED]



**Sunshine State Health Plan, Inc.**  
**SunshineHealth\_MFH@centene.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**