



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

FILED

Sep 24, 2020, 8:09 am
OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 20-FH █
Plan ID No.: █

vs.

COVENTRY HEALTHCARE OF FLORIDA, INC. d/b/a
AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

_____ /

█

PETITIONER,

AHCA Case No.: 20-FH █
Plan ID No.: █

vs.

COVENTRY HEALTHCARE OF FLORIDA, INC. d/b/a
AETNA BETTER HEALTH OF FLORIDA, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic consolidated Fair Hearing in the above-styled case on August 21, 2020, at █

APPEARANCES

For the Petitioner: █
Petitioner

For the Respondent: Tammy Pwenhofel
Manager of Long-Term Care

PRR0000430

Coventry Healthcare of Florida, Inc. d/b/a
Aetna Better Health of Florida, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional thirty-five (35) hours per week of Homemaker services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional five (5) hours per week of Personal Care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the Fair Hearing telephonically. Petitioner appeared for the Fair Hearing to provide testimony and did not call any witnesses.

Tammy Pwenhofel ("Ms. Pwenhofel"), Manager of Long-Term Care for Coventry Healthcare of Florida, Inc. d/b/a Aetna Better Health of Florida, Inc. ("Aetna"), appeared on behalf of the Respondent. The following persons appeared as witnesses on behalf of Respondent: Dr. Olunwa Ikpiazu ("Dr. Ikpiazu"), Medical Director for Aetna; Fabiola Serna, Grievance and Appeals Analyst for Aetna; and Dr. Lia Rodriguez, Medical Director for Aetna.

Sheila Gonzalez, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer..

Petitioner did not introduce any exhibits at the Fair Hearing. Respondent introduced an evidence packet for Homemaker services in AHCA Case Number 20-FH [REDACTED] and an evidence packet for Personal Care services in AHCA Case Number 20-FH [REDACTED].

The three hundred and three (303) page evidence packet for Homemaker services in AHCA Case Number 20-FH [REDACTED] includes the following: Medicaid Fair Hearing & Appeal Document Checklist; Acknowledgement of Medicaid Fair Hearing Request (dated July 9, 2020); Notice of Adverse Benefit Determination (“NABD”) (dated May 13, 2020); Plan Appeal Acknowledgement letter (dated [REDACTED], 2020); Notice of Plan Appeal Resolution (“NPAR”) (dated May 28, 2020); Comprehensive LTSS Plan of Care (dated May 4, 2020); Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B Comprehensive Assessment”) (dated July 6, 2020); Caregiver Supplemental Assessment (undated); Medical records from [REDACTED] (dated [REDACTED] 2019); Occupational Therapy Evaluation Form (dated [REDACTED] 2019); [REDACTED] Plan of Care (dated [REDACTED] 2019); Occupational Therapy Evaluation Form (dated [REDACTED] 2019); Medical records from [REDACTED] (dated [REDACTED], 2020); Discharge Summary (dated [REDACTED], 2020); Occupational Therapy Evaluation Form (dated [REDACTED], 2020); Medical records from [REDACTED] (dated [REDACTED], 2020); Discharge Summary (dated [REDACTED], 2020); Occupational Therapy Evaluation Form (dated [REDACTED], 2020); [REDACTED] EEG Analyses (dated [REDACTED] 2020); Addendum to [REDACTED] Report; Medicaid Fair Hearing & Appeal Document Checklist; Addendum to [REDACTED] Report; Neuropsychological Evaluation (dated [REDACTED] 2020); Cervical/Thoracic Evaluation (dated [REDACTED], 2020); Assessment Report: Cervical/Thoracic Spine (dated [REDACTED], 2020); Knee Evaluation (dated [REDACTED] 2020); Assessment Report: Knee (dated [REDACTED] 2020); [REDACTED]: Release of Information form (dated June 12, 2020); Individual’s Request for a Copy of their own Health Information (dated June 6, 2020); Medical records from [REDACTED] (printed on

June 12, 2020); [REDACTED]: Release of Information form (dated June 12, 2020); Medical records from [REDACTED] (printed on June 12, 2020); [REDACTED] medical records (dated [REDACTED], 2020); [REDACTED] medical records (dated [REDACTED], 2020); [REDACTED] Authorization to Release Medical Information Form; [REDACTED] Authorization to Release Protected Health Information; Florida Medicaid Statewide Medicaid Managed Care Long-Term Care Program Coverage Policy (“LTC Policy”) (March 2017); and Florida Medicaid Home Health Visit Services Coverage Policy (November 2016).

The three hundred and seventeen (317) page evidence packet for Personal Care services in AHCA Case Number 20-FH [REDACTED] includes the following: Medicaid Fair Hearing & Appeal Document Checklist; Acknowledgement of Medicaid Fair Hearing Request (dated July 9, 2020); NABD (dated May 13, 2020); Plan Appeal Acknowledgement letter (dated May 18, 2020); NPAR (dated May 28, 2020); Comprehensive LTSS Plan of Care (dated May 4, 2020); 701B Comprehensive Assessment (dated July 6, 2020); Caregiver Supplemental Assessment (undated); Medical records from [REDACTED] (dated [REDACTED] 2019); Occupational Therapy Evaluation Form (dated [REDACTED] 2019); [REDACTED] Plan of Care (dated [REDACTED] 2019); Occupational Therapy Evaluation Form (dated [REDACTED] 2019); Medical records from [REDACTED] (dated [REDACTED], 2020); Discharge Summary (dated [REDACTED], 2020); Occupational Therapy Evaluation Form (dated [REDACTED], 2020); Medical records from [REDACTED] (dated [REDACTED], 2020); Discharge Summary (dated [REDACTED], 2020); Occupational Therapy Evaluation Form (dated [REDACTED], 2020); [REDACTED] EEG Analyses (dated [REDACTED] 2020); Addendum to [REDACTED] Report; Medicaid Fair Hearing & Appeal Document Checklist; Addendum to

Report; Neuropsychological Evaluation (dated 2020); Cervical/Thoracic Evaluation (dated 2020); Assessment Report: Cervical/Thoracic Spine (dated 2020); Knee Evaluation (dated 2020); Assessment Report: Knee (dated 2020); Release of Information form (dated June 12, 2020); Individual's Request for a Copy of their own Health Information (dated June 6, 2020); Medical records from (printed on June 12, 2020); Release of Information form (dated June 12, 2020); Medical records from (printed on June 12, 2020); medical records (dated 2020); medical records (dated 2020); Authorization to Release Medical Information Form; Authorization to Release Protected Health Information; LTC Policy (March 2017); Florida Medicaid Home Health Visit Services Coverage Policy (November 2016); and Florida Medicaid Personal Care Services Coverage Policy (November 2016).

Respondent's evidence packet for Homemaker services and Respondent's evidence packet for Personal Care services were admitted into the record as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. As of May 1, 2020, Petitioner is an enrolled member of Aetna's Long-Term Care ("LTC") Program. See Respondent's Composite Exhibit 1, Evidence Packet for Homemaker, page 39 and Evidence Packet for Personal Care, page 39. Aetna is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.

2. Petitioner is a sixty-six (66) year old male residing in the community with his primary caregiver, his wife. *See id* at Evidence Packet for Homemaker, page 43, and Evidence Packet for Personal Care, page 39. Petitioner has a history of hospitalizations. *Id.* at Evidence Packet for Homemaker, page 44 and Evidence Packet for Personal Care, page 44. Petitioner is diagnosed with memory loss by a psychologist. *Id.* at Evidence Packet for Homemaker, page 45 and Evidence Packet for Personal Care, page 45. Petitioner uses a walker and/or cane as an assistive device. *Id.* at Evidence Packet for Homemaker, page 46 and Evidence Packet for Personal Care, page 46. Petitioner is diagnosed with the following health conditions: Acid reflux; Allergies; High blood pressure; Cancer; High cholesterol; Constant dizziness; Heart problems; Occasional bladder incontinence; Seizure disorder; Ulcers; and Sarcoidosis. *Id.* at Evidence Packet for Homemaker, pages 49-50 and Evidence Packet for Personal Care, pages 49-51. Petitioner is also diagnosed with Depression, Anxiety, and Panic attacks. *Id.* at Evidence Packet for Homemaker, page 51 and Evidence Packet for Personal Care, page 51. Petitioner is prescribed twelve (12) medications. *Id.* at Evidence Packet for Homemaker, page 55 and Evidence Packet for Personal Care, page 55. Petitioner's primary caregiver is his wife, [REDACTED]. *Id.* at Evidence Packet for Homemaker, page 57 and Evidence Packet for Personal Care, page 57. Petitioner is a fall risk and reports neck pain. *Id.* at Evidence Packet for Homemaker, page 199 and Evidence Packet for Personal Care, page 199. As testified to by Petitioner at hearing, he has a weak left side, vision problems due to a history of strokes and a heart attack, wears an eye patch, and is no longer able to drive. Petitioner will be going through more testing for his vision in the coming month. As testified to by Petitioner at hearing, he has an enlarged prostate, but does not have difficulty using the bathroom. He attends doctor appointments, physical therapy sessions, and psychologist

appointments multiple times per week with an estimated travel time of 45 minutes to 90 minutes to and from each appointment. As testified to by Petitioner, he cannot transport himself to these appointments due to the decline in his vision. He relies on his wife to transport him to his appointments.

3. Petitioner needs some assistance with Activities of Daily Living (“ADLs”) such as bathing, and dressing. *See* Respondent’s Composite Exhibit 1, Evidence Packet for Homemaker, page 47. Petitioner needs no assistance with eating. *Id*; *see* Respondent’s Composite Exhibit 1, Evidence Packet for Personal Care, page 47. Petitioner uses an assistive device for using the bathroom, transferring, and walking/mobility. *Id*. Petitioner’s ADL performance has improved (bathing, dressing, eating, grooming, and hygiene). *Id*. at Evidence Packet for Homemaker, page 74 and Evidence Packet for Personal Care, page 74.

4. Petitioner needs some assistance with Instrumental Activities of Daily Living (“IADLs”) such as light housekeeping, preparing meals, shopping, managing medication, and using transportation. *Id*. at Evidence Packet for Homemaker, page 48. Petitioner needs no assistance using the telephone and managing money. *Id*; *see* Respondent’s Composite Exhibit 1, Evidence Packet for Personal Care, page 48. Petitioner needs total assistance with heavy chores. *Id*. Petitioner’s IADL performance is also improved. *Id*. Petitioner’s Dash Disability Score is 61.7. *Id*. at Evidence Packet for Homemaker, page 76 and Evidence Packet for Personal Care, page 76.

5. Petitioner currently receives five (5) hours per week of Personal Care (PDO) services and five (5) hours per week of Homemaker (PDO) services. *See id* at Evidence Packet for Homemaker, pages 41-42 and Evidence Packet for Personal Care, pages 41-42. Petitioner’s wife is his Direct Service Work (DSW) in the PDO program. *Id*. Petitioner’s wife denies any medical limitations or

disabilities that hinders her ability for the Petitioner. *Id.* at Evidence Packet for Homemaker, page 63 and Evidence Packet for Personal Care, page 63. As testified to by Ms. Pwenhofel at hearing, Petitioner received 14 hours per week of home health care services through [REDACTED]. As testified to by Ms. Pwenhofel, Petitioner's wife does not work outside of the home and provides for the Petitioner's needs.

6. On May 6, 2020, Aetna received Petitioner's request for an additional five (5) hours per week of Personal Care services and an additional thirty-five (35) hours per week of Homemaker services. See Respondent's Composite Exhibit 1, Evidence Packet for Homemaker, pages 11-12 and Evidence Packet for Personal Care, pages 11-12.

7. On May 13, 2020, Aetna issued an NABD denying Petitioner's request for an additional five (5) hours per week of Personal Care services and an additional thirty-five (35) hours per week of Homemaker services. *Id.* The NABD states as follows:

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

...

Other Authority

The facts that we used to make our decision are: You have asked Aetna Better Health of Florida to cover 5 additional hours of Personal Care Services weekly and 35 additional hours of Homemaker Services weekly. We will not approve this request because you are receiving enough hours to meet your needs. You are currently getting 5 hours of Personal Care Services weekly and 5 hours of Homemaker Services weekly, for a total of 10 hours of a Home Health Aide weekly. You live with your caregiver. We have records dated 5/4/2020 that shows you need assistance with bathing and dressing; no assistance is needed with eating; you use an assistive device for using the bathroom, transferring and walking/mobility. You need total assistance with doing laundry; you need assistance with light housekeeping, meal preparation, managing money, managing medicines, and using the telephone.

We do not see that you:

- have had any change in your condition.
- do not have enough care.

- are at risk of isolation.
- have had any recent hospitalizations.

You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. Based on the clinical records we have; your care plan will be the same. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-term Care Program pages 4-7.

Id.

8. On May 28, 2020, Aetna issued an NPAR upholding the denial of additional Personal Care services and additional Homemaker services. *See id* at Evidence Packet for Homemaker pages 30-31 and Evidence Packet for Personal Care, pages 30-31. The NPAR explains as follows:

Florida in support of your plan appeal, Aetna Better Health of Florida hereby denies your plan appeal. As a result, [Petitioner] will receive 5 personal care hours per week, 5 homemaking hours per week, for a total of 10 hours of a home health aide per week, effective 5/28/2020.

Dr. David Gilchrist, D.O., Chief Medical Officer, Florida Board certified in Emergency Medicine and Internal Medicine reviewed your appeal for the care plan. You live with your caregiver who does not work outside the home and your sister spends companion time with you. We have records dated 5/4/20 that shows you need some assistance with bathing and dressing; no assistance with eating; use an assistive device for using the bathroom, transferring and walking/mobility. You need total assistance with heavy chores, laundry, and light housekeeping; some assistance with shopping, preparing meals, managing money, managing medicines, and using the telephone. The notes state you always have the care you need and your caregiver is not strained. We do not see that you:

- Have had any change in your condition.
- Do not have enough care.
- Any recent hospitalizations.
- At risk for social isolation

Based on the clinical records we have, your care plan will remain unchanged. The care plan will remain 5 personal care hours per week, 5 homemaking hours per week, for a total of 10 hours of a home health aide per week. You should discuss treatment options with your doctor. Decisions about the care you will have are between you and your doctor. We made this decision using clinical records and

the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-term Care Program and Home Health Visits Coverage Policy.

Id.

9. On June 30, 2020, Petitioner timely requested a Fair Hearing to contest the Respondent's denial of additional Personal Care services and Respondent's denial of additional Homemaker services. The consolidated hearing was initially scheduled to be conducted by telephone on July 30, 2020, at [REDACTED]. The hearing was rescheduled for the instant date.

10. At the hearing, Petitioner testified that he (Petitioner) stopped accepting home health care services through [REDACTED] due to Covid-19, and Petitioner now has his wife providing care for him to limit the number of visitors in the Petitioner's home. Petitioner stated that he does not know if he will resume receiving home health care services through the [REDACTED] because he is unsure if Covid-19 will be unalleviated. Petitioner does not want Aetna's transportation benefit because the [REDACTED] reimburses the Petitioner for gas and travel expenses when they use their own vehicle. Petitioner prefers to receive financial reimbursement for travel from the [REDACTED] Hospital, and have Aetna compensate Petitioner's wife, as his Direct Service Work, during the travel to his medical appointments. Petitioner argued that Petitioner's wife deserves to be paid for transporting him to and from his many medical appointments. Petitioner stated that they [Petitioner and his wife] could use the money that comes from the requested services.

11. Ms. Pwenhofel testified that Aetna offers transportation benefits to transport Medicaid recipients to their medical appointments. LTC services supplement the care provided by the recipient's natural support. Aetna provides transportation services, but Petitioner is choosing not

to use this benefit. Ms. Pwenhofel referenced page 108 of Respondent's Composite Exhibit 1 for the definition of Homemaker services. Ms. Pwenhofel argued that the PDO program is not implemented to give a Medicaid recipient's family member a full-time job.

12. Ms. Pwenhofel testified that Petitioner's request did not meet the following criteria: 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; and Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

13. Dr. Ikpiazu testified that Petitioner's request was not medically necessary upon her review of the 701-B Comprehensive Assessment, the Petitioner's needs, the natural support of Petitioner's wife, who transports him to his medical appointments, and the Petitioner's ■■■ benefits. Aetna, as part of the Florida Medicaid program, is the payer of last resort.

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 Florida Statutes ("Fla. Stat.") § 409.285(2) (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

16. 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).

17. Because Petitioner requested new services, the burden of proof is on the Petitioner. 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.).

18. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs LTC services available to eligible Medicaid recipients in the State of Florida. See Respondent’s Composite Exhibit 1, Evidence Packet for Homemaker, pages 269-290 and Evidence Packet for Personal Care, pages 269-290.

19. 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. See Respondent’s Composite Exhibit 1, Evidence Packet for Homemaker, page 271 and Evidence Packet for Personal Care, page 271.

20. 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. See Respondent’s Composite Exhibit 1, Evidence Packet for Homemaker, pages 273 and Evidence Packet for Personal Care, pages 273.

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

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
- 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)

Respondent's Composite Exhibit 1, Evidence Packet for Homemaker, pages 271 & 272 and Evidence Packet for Personal Care, pages 271 & 272.

22. 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:

4.2.1.9 Homemaker Services

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

4.2.2 Mixed Services

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

...

4.2.2.6 Personal Care

In accordance with Rule 59G-4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

4.2.2.11 Transportation

In accordance with Rule 59G-4.330, F.A.C. The provision of transportation to and from the LTC covered services and expanded benefits as described in the LTC plan's contract with AHCA.

5.0 Exclusion

The LTC program benefit does not include coverage for the following:

- Adaptations which add to the total square footage of the home.
- Food or the cost of meals when provided other than through home-delivered meal services.
- Personal emergency response system services for enrollees who do not live alone or who are not home alone for significant parts of the day and would not otherwise require high intensity or constant supervision.
- Respite care services for enrollees residing in a nursing facility or an assisted living facility (ALF).
- Services provided to enrollees in a:
 - Hospital licensed pursuant to Chapter 395, F.S.
 - Group home licensed pursuant to Chapters 393, 394, or 397, F.S.
 - State mental health hospital licensed pursuant to Chapter 395, F.S.
 - Intermediate care facility for individuals with intellectual disabilities licensed pursuant to Chapter 400, F.S.

- Room and board payments to ALFs or adult family care homes.
- Transportation services when transportation is available to the enrollee without charge from family, neighbors, friends, or community agencies.

Respondent's Composite Exhibit 1, Evidence Packet for Homemaker, pages 274-278 and Evidence Packet for Personal Care, pages 274-278.

23. 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.

Respondent's Composite Exhibit 1, Evidence Packet for Homemaker, pages 272-273 and Evidence Packet for Personal Care, pages 272-273.

24. 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:

26. The LTC Policy covers Homemaker services and Personal Care services if they are deemed to be medically necessary. To be medically necessary, a service must meet the criteria set forth in section 1.3.14 of the LTC Policy. Based on the record, Respondent denied Petitioner's requests for not meeting the following medical necessity standards: 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; and Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. *See supra* ¶ 13.

27. Homemaker services provide "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." *See supra* ¶ 23. Petitioner requested thirty-five (35) hours per week of Homemaker services. Thus, in order to be medically necessary, these 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. Petitioner provided no evidence or testimony as it relates to his additional need for assistance with general household activities and routine household care. Petitioner's testimony centered around a need for his wife to be compensated for transporting him to and from various types of appointments. Petitioner currently receives five (5) hours per week of Homemaker (PDO) services. Respondent argues that transportation are not the type of need that is met through Homemaker services, and Respondent offers transportation services to transport the Petitioner to and from appointments.

According to the LTC Policy, Transportation services (Mixed Service) are a covered benefit of the LTC Program, and are a separate service from Homemaker services (Home and Community-Based Supportive Service). See supra ¶ 22. However, Petitioner declines such transportation and alludes to a desire to be financially compensated by both Aetna and the ■ Hospital for attending medical appointments. In addition, Petitioner's wife resides in the home, does not work outside of the home, and provides significant natural support to the Petitioner. The record does not indicate that the Petitioner has an unmet need of thirty-five (35) hours per week of Homemaker services. Thus, the Petitioner did not meet the first criterion for medical necessity under § 1.3.14(b) of the LTC Policy.

28. Personal Care services provide "assistance with ADLs and IADLs." See supra ¶ 23. According to the LTC Policy, assistance with transportation is included in the definitions of IADLs. See supra ¶ 23. Petitioner requested five (5) hours per week of Personal Care services. Thus, in order to be medically necessary, these 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. Petitioner provided no evidence or testimony as it relates to his additional need for assistance with ADLs. Petitioner's testimony centered around a need for his wife to be compensated for transporting him to and from various types of appointments, which is addressed under IADLs. Petitioner currently receives five (5) hours per week of Personal Care (PDO) services. Respondent argues that Respondent offers transportation services to transport the Petitioner to and from appointments. According to the LTC Policy, Transportation services are a covered benefit of the LTC Program. See supra ¶ 22. Respondent also argues that Petitioner's transportation needs are currently met as Petitioner's wife transports him to and

30. Lastly, the requested additional five (5) hours per week of Personal Care services and additional thirty-five (35) hours per week of Homemaker services must be “furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.” Petitioner provided no testimony or evidence that either of the requested Personal Care services or Homemaker services are furnished in a manner not primarily intended for the convenience of the Petitioner, or the Petitioner’s caretaker, who is his wife. Again, Respondent offered to provide Transportation services to Petitioner’s medical appointments, but Petitioner declined the offer, requesting financial compensation instead. The record indicates that Petitioner requested these services to compensate his wife for transporting him to and from medical appointments. However, Petitioner already receives financial reimbursement through the ■ Hospital for transportation, and is requesting an additional five (5) hours per week of Personal Care services and an additional thirty-five (35) hours per week of Homemaker services to provide the same Transportation services he is already being reimbursed for. Based on the record, the evidence presented by Petitioner focuses on Petitioner’s request for financial compensation for his wife, rather than his need for assistance with ADLs, IADLs, general household activities, and routine household care. Thus, the Petitioner did not meet the third criterion for medical necessity under § 1.3.14(b) of the LTC Policy.

31. Accordingly, upon consideration of Respondent’s Composite Exhibit 1, both parties’ sworn testimony, the LTC Policy, and the Definitions Policy, the undersigned Hearing Officer concludes that Petitioner has not shown by a preponderance of the evidence that Respondent’s denial of Personal Care services and Respondent’s denial of Homemaker services was incorrect.

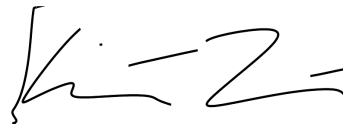
Thus, Petitioner has not shown that the additional Personal Care services and the additional Homemaker services are medically necessary.

DECISION

Respondent's denial of Petitioner's request an additional five (5) hours per week of Personal Care services is **AFFIRMED**. Petitioner's request for relief is hereby is **DENIED**.

Respondent's denial of Petitioner's request an additional thirty-five (35) hours per week of Homemaker services is **AFFIRMED**. Petitioner's request for relief is hereby is **DENIED**.

DONE AND ORDERED this 24th day of September, 2020, in Tallahassee, Leon County, Florida.



Digitally signed by
Kristopher León
Reason: 20-FH[REDACTED]; 20-
FH[REDACTED]
Date: 2020.09.24 08:02:34
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KRISTOPHER LEÓN, 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
Fax: (850) 487-1423
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.

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Aetna

AHCA_MFH_Requests@aetna.com

AHCA Medicaid Hearing Unit

MedicaidHearingUnit@ahca.myflorida.com