



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

FILED

Sep 28, 2020, 8:09 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

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 Fair Hearing in the above-styled case on August 25, 2020, at [REDACTED]

APPEARANCES

For the Petitioner: [REDACTED]
Authorized Representative

For the Respondent: Deborah Wingo
Director of Long-Term Care
Coventry Healthcare of Florida, Inc. d/b/a
Aetna Better Health of Florida, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's partial denial of Personal Care services¹ was incorrect.

¹ Both Petitioner and Respondent were in agreement that Personal Care services were requested. However, Respondent argued that the quantity of Personal Care services, at issue, should be thirty-six (36) hours per week, not forty-three (43) hours per week. Respondent (Ms. Wingo) stated that Petitioner initially requested sixty (60) hours per week of Personal Care services, and Respondent approved seventeen (17) hours per week of Personal Care services and seven (7) hours per week of Homemaker services, for a total of twenty-four (24) hours of home

PRELIMINARY STATEMENT

All parties and witnesses appeared for the Fair Hearing telephonically. [REDACTED] ("Petitioner's Authorized Representative" or "[REDACTED]") appeared for the Fair Hearing to provide testimony and did not call any witnesses.

Deborah Wingo ("Ms. Wingo"), Director 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; Damaris Seguro, Grievances and Appeals Manager for Aetna; and Dr. Lia Rodriguez, Medical Director for Aetna.

Stephanie Lang, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer..

Petitioner's Authorized Representative introduced an evidence packet containing twenty-four (24) pages, which was admitted into evidence as Petitioner's Composite Exhibit 1. Petitioner's Composite Exhibit 1 included the following: E-mail from [REDACTED] (dated August 18, 2020); Medical records from [REDACTED] (dated [REDACTED], 2020); Fax cover sheet; Initial Evaluation from [REDACTED] (dated [REDACTED], 2020); Re-evaluation from [REDACTED] (dated [REDACTED], 2020); Initial Evaluation from [REDACTED] (dated [REDACTED], 2020); and a Re-evaluation from [REDACTED] (dated [REDACTED] 2020).

care services, and as such, the seven (7) hours per week of Homemaker services should be deducted from the Petitioner's initial request for Personal Care services. The undersigned found that given that Petitioner specifically requested Personal Care services, only the approval of such Personal Care services could be attributed to the Statement of the Issue.

Respondent introduced an evidence packet containing one hundred and thirty-nine (139) pages, which was admitted into evidence as Respondent’s Composite Exhibit 1. Respondent’s Composite Exhibit 1 included the following: Medicaid Fair Hearing & Appeal Document Checklist; Acknowledgement of Medicaid Fair Hearing Request (dated July 27, 2020); Notice of Adverse Benefit Determination (“NABD”) (dated May 18, 2020); Plan Appeal Acknowledgement letter (dated June 12, 2020); Notice of Plan Appeal Resolution (“NPAR”) (dated June 25, 2020); Comprehensive LTSS Plan of Care (dated May 26, 2020); Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701-B Comprehensive Assessment”) (dated [REDACTED] 2020); Caregiver Supplemental Assessment (undated); Medical records from [REDACTED] [REDACTED] (dates: [REDACTED], 2020, [REDACTED] 2020); Medical records from [REDACTED] [REDACTED] (dated [REDACTED] 2019); Medical records from [REDACTED] (dated January 23, 2020); Medical records from [REDACTED] (dated [REDACTED], 2020); Medical records from [REDACTED] (dated [REDACTED], 2020); Medical records from [REDACTED] (dated [REDACTED], 2019); Psychological Evaluation from [REDACTED] [REDACTED] (dated [REDACTED] 2008); Florida Medicaid Statewide Medicaid Managed Care Long-Term Care Program Coverage Policy (“LTC Policy”) (March 2017); Florida Medicaid Home Health Visit Services Coverage Policy (November 2016); and Florida Medicaid Personal Care Services Coverage Policy (November 2016).

FINDINGS OF FACT

1. As of [REDACTED] 2020, Petitioner is an enrolled member of Aetna’s Long-Term Care (“LTC”) Program. See Respondent’s Composite Exhibit 1, page 41. Aetna is a Medicaid Managed Care

organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.

2. As of the date of the Fair Hearing, Petitioner is a thirty-four (34) year old male residing in the community with his primary caregiver. *Id.* at 45-62. Petitioner is diagnosed with the following health conditions: Occasional dizziness; Head/brain/spinal cord trauma; Left hand paralysis; Dystonia; Encephalopathy; X-Linked Adrenoleukodystrophy; and Falls. *Id.* at 51-52. Petitioner has a learning disorder and mild mental retardation, according to [REDACTED], licensed psychologist. *Id.* at 91. Petitioner is functioning substantially below his same-age peers. *Id.* at 91. As testified to by [REDACTED], Petitioner has difficulty walking, talking, eating, and chewing food, but medical professionals can not determine the root cause of Petitioner's disability. As testified to by [REDACTED], Petitioner cannot eat, drink, or chew certain foods or fluids. As testified to by [REDACTED], Petitioner suffered a brain contusion from a recent fall in [REDACTED] 2020. As testified to by [REDACTED], Petitioner cannot walk on his own and uses an assistive device (Gait belt) to assist him in maintaining balance while walking, so that he does not fall.

3. [REDACTED] is the Petitioner's primary caregiver. *Id.* at 59. [REDACTED] works full-time outside of the home. *Id.* Petitioner is not safe to be left alone. *Id.* at 64. *See also* Aetna Caregiver Supplement Assessment. [REDACTED] assists the Petitioner with ADLs and IADLs. *Id.* [REDACTED] works 7:00 a.m., to 7:00 p.m., Monday through Friday. *Id.* Petitioner does not have anyone else assisting in his care. *Id.* As testified to by [REDACTED], he has a construction business supervising and running a team of employees, and cannot stay at home with the Petitioner during the day. As testified to by [REDACTED], he is the Petitioner's sole natural support in light of the recent passing of [REDACTED], Petitioner's mother.

4. [REDACTED], Neurologist for [REDACTED], has concerns for the Petitioner's safety and ability to care for himself. See Petitioner's Composite Exhibit 1, page 6. A recent fall under supervision led to the Petitioner's recent brain contusion and subarachnoid hemorrhage. *Id.* [REDACTED] recommends 24-hour care due to Petitioner's fall risk and progressive encephalopathy. *Id.*

5. Petitioner needs some assistance with Activities of Daily Living ("ADLs") such as dressing, eating, using the bathroom, transferring, and walking/mobility. See Respondent's Composite Exhibit 1, page 49. Petitioner needs total assistance with bathing. *Id.* Petitioner needs total assistance with Instrumental Activities of Daily Living ("IADLs") such as heavy chores, light housekeeping, managing money, preparing meals, shopping. *Id.* at 50. Petitioner needs some assistance with using the telephone, managing medication, and using transportation. *Id.* As testified to by [REDACTED], Petitioner needs assistance with bathing, dressing, eating, completing hygiene routines, using transportation, and administering medication. As testified to by [REDACTED], Petitioner cannot perform any tasks on his own and needs someone to assist him with these tasks or to perform the task for them.

6. The 701-B Comprehensive Assessment (dated [REDACTED] 2020) states the following Case Manager notes and summaries:

Member suffers from mental and physical delay. Member was enrolled in learning disability classes since he was little. **Member's at a level of a 3rd grader due to his limitations.** An intelligence testing was completed years ago and yielded the following results: Wechsler Adult Intelligence Scale obtained a Verbal Scale IQ Score of 66; Performance Scale IQ Score of 59; Processing Speed Index Score of 68; Full Scale of 60. Member's Full Scale IQ Score places him in the 0.4 percentile, which falls within the Mentally Deficient range. Significant weaknesses emerged on tasks measuring English word knowledge, ability to understand meaningful relationship between things and/or ideas, numerical reasoning ability, immediate recall, and awareness of conventional standards of social behavior. **Member has**

had 2 hospitalizations in the past year due to respiratory distress, and as a result of a fall respectively. Member was hospitalized last [REDACTED]/2020 after falling and cracking his head open. Apparently, [REDACTED] just ran out to dispose of a trash bag and when he came back inside the house, member was laying on the floor in a pool of blood. This fall resulted in a brain contusion.

...

Member relies on his father for assistance with his ADLs. Member has little use of his hands (left worse than the right). Member is right handed. The neurologist that oversaw member's tests described his hands as being like claws. Member is unable to unbutton his pants and requires assistance from his father when he needs to void. Member is unable to comprehend the use of ambulatory aids. Member typically holds on to someone's arm when walking. [REDACTED] described member as being top heavy. Member presents with a shuffling gait.

...

Member relies on his father for assistance with his IADLs. [REDACTED] prepares meals on the weekends to get it ready for the week.

...

OTHER HEALTH CONDITIONS: Hx Contusion of Right Frontal Lobe, Progressive Spasticity, Dysarthria, and Shuffling Gait. Physical Therapy and Speech Therapy are both on hold in response to COVID-19. Prior to the quarantine, member was receiving therapy 2x/week for each service. PT's via [REDACTED] while ST's via [REDACTED]. ST will continue to address member's swallowing issue once they're able to resume. [REDACTED] engages member with reading, writing, coloring, and memory retention exercises daily for mental stimulation. [REDACTED] added that he constantly works with his son on exercises that emphasize specific syllables and words to improve his speech.

...

[REDACTED] works in concrete construction which means that he has to stay in the job site until the job has been completed. [REDACTED] works all over, as far as Clermont and the Orlando area. [REDACTED] works from 7 am - 7 pm Monday to Friday. [REDACTED] also takes odd jobs on weekends. [REDACTED] is suffering financially because he can't leave his son at home. [REDACTED] stated that if he doesn't work that they don't have money for food or to pay the bills. [REDACTED] has resorted to taking his son with him to job sites, which is rather unsafe. It's not unusual for member to be in [REDACTED]'s pick up truck whilst [REDACTED] is working. [REDACTED] has glaucoma, and a bad left hip.

Id. (Emphasis added).

7. On May 11, 2020, Aetna received Petitioner's request for sixty (60) hours per week of Personal Care services. *Id.* at 11-12.

8. On May 18, 2020, Aetna issued an NABD partially denying Petitioner's request for sixty (60) hours per week of Personal Care services. *Id.* at 11-12. The NABD stated as follows:

We made our decision because:

(Check all boxes that apply)

We determined that your requested services are not medically necessary because the services do not meet either of the reason(s) checked below: (See Rule)

...

Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:

1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or
2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice.

...

Other Authority

The facts that we used to make our decision are:

You have asked Aetna Better Health of Florida to cover 60 hours of Personal Care Services weekly. We will not approve all of this request. There are currently no services in place. You live with your caregiver. We have records dated 5/1/2020 that shows you need total assistance with bathing; you need assistance with dressing, transferring, walking/mobility, using the bathroom, and eating. You need total assistance with light housekeeping, shopping and meal preparation; you need assistance with 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 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 new care plan will be, 17 hours of Personal Care Services weekly and 7 hours of Homemaker Services weekly, for a total of 24 hours of a Home Health Aide weekly.** 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. (Emphasis added).

9. On June 25, 2020, Aetna issued an NPAR upholding the denial of Personal Care services.

Id. at 32-33. The NPAR explained as follows:

On June 24, 2020, after consideration of the information you provided to Aetna Better Health of Florida in support of your plan appeal, Aetna Better Health of Florida hereby denies your plan appeal. **As a result, [Petitioner] will receive 17 hours of personal care weekly, 7 hours of homemaker services weekly, for a total of 24 hours of a home health aide weekly, effective 6/25/2020.**

Dr. Avril Anthony-Wilson, MD, Medical Director, Florida Board Certified in Family Medicine reviewed your appeal. You have appealed to Aetna Better Health of Florida to cover a total of 60 hours of weekly personal care services. We will not approve this request.

The records we have do not show:

- a change in your condition.
- any recent hospitalizations.
- a lack of enough care.
- risks of isolation

Based on the clinical records we have, your care plan will be 17 hours of personal care weekly, 7 hours of homemaker services weekly, for a total of 24 hours of a home health aide weekly. We made this decision using clinical records and the Florida Medicaid Handbook Policy for Statewide Medicaid Managed Care Long-term Care Program page 4-7.

Id. (Emphasis added).

10. On July 23, 2020, [REDACTED] timely requested a Fair Hearing to contest Respondent's denial of Personal Care services.

11. At the hearing, [REDACTED] declined Respondent's offer of Adult Day Care services in lieu of Petitioner's request for Personal Care services, due to potential exposure to COVID-19 in a setting with several other individuals, and the Petitioner's need for one-one-one hands on care, and inability to function independently in a group setting where staff cannot provide one-to-one attention to individuals. [REDACTED] argued that Adult Day Care should not be a suitable alternative given that there is no guarantee that Petitioner could be placed at an Adult Day Care based on Dr. Ikpiazu's testimony regarding Adult Day Care closures due to COVID-19. [REDACTED] cited that Respondent performed the 701-B Comprehensive Assessment via telephone as evidence that physical contact with individuals is not advised. [REDACTED] testified that he would enroll the Petitioner into the Florida Medicaid PDO program if Personal Care services are approved, so he can personally select Petitioner's caregiver. [REDACTED] testified that it would most likely be a member of his church.

12. At the hearing, Dr. Ikpiazu testified that Adult Day Care services are "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" that the Petitioner needs. Dr. Ikpiazu testified that Petitioner's request was not "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." Dr. Ikpiazu recommended an Adult Day Care placement, five days per week, during [REDACTED]'s work schedule so that the Petitioner is cared for and has socialization during the

day. Dr. Ikpiazu testified that many Adult Day Care centers are closed due COVID-19, and are not able to accept Medicaid recipients.

CONCLUSIONS OF LAW

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

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

15. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. **The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service.** The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

(Emphasis added).

16. Because Petitioner requested a new service, 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.).

17. 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, pages 92-113.

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

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

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

1.3.1 Activities of Daily Living (ADLs)

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, pages 92-113.

21. The LTC Policy states the following coverage criteria:

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

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

4.2 Specific Criteria

Florida Medicaid LTC plans cover services that meet all of the following:

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least restrictive setting

4.2.1 Home and Community-Based Supportive Services

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

4.2.1.2 Adult Day Health Care

The provision of social and health related therapeutic services and activities, self-care training, nutritional services, and respite, in accordance with Chapter 429, Part III, F.S. Nutritional meals are included as part of this service when the enrollee is at the adult day health care center during meal times. This service includes medical screening emphasizing prevention and continuity of care, including routine blood pressure checks and diabetic maintenance checks. Physical, occupational, and speech therapies indicated in the enrollee’s plan of care are furnished as components of this service. Nursing services, which include periodic evaluation, medical supervision of self-care services directed toward activities of daily living, and personal hygiene are also a component of this service.

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.

Respondent's Composite Exhibit 1, pages 92-113.

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

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

- a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
- b) All other LTC supportive services must meet all of the following:
 - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
 - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
 - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or
- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

Respondent's Composite Exhibit 1, pages 92-113.

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

2.83 Medically Necessary or Medical Necessity

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- **Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide**
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

(Emphasis added).

24. Petitioner is a thirty-four (34) year old male residing in the community with his father, [REDACTED]. See supra ¶ 2. Petitioner is at a level of a 3rd grader due to his limitations. See supra ¶ 6. Petitioner is diagnosed with the following health conditions: Occasional dizziness; Head/brain/spinal cord trauma; Left hand paralysis; Dystonia; Encephalopathy; X-Linked Adrenoleukodystrophy; and Falls. See supra ¶ 2. Petitioner needs some assistance with ADLs and total assistance with IADLs. See supra ¶ 3 and 5. Petitioner is not safe to be left alone. See supra ¶ 3. Petitioner has no other support outside of [REDACTED]. See supra ¶ 3. Petitioner relies on [REDACTED] for assistance with his ADLs. See supra ¶ 3. Petitioner only has the use of his right hand. See supra ¶ 6. [REDACTED] works [REDACTED] works 7:00 a.m., to 7:00 p.m., Monday through Friday. See supra ¶ 3. Aetna partially denied Petitioner's request for sixty (60) hours per

week of Personal Care services based on medical necessity. *See supra* ¶ 8. Aetna approved seventeen (17) hours per week of Personal Care services and added seven (7) hours per week of Homemaker services to the Petitioner’s plan of care. *See supra* ¶ 8.

25. [REDACTED], Petitioner’s neurologist, recommended 24-hour care for the Petitioner. *See supra* ¶ 4. However, the fact that a provider has recommended services does not, in itself, make such services medically necessary. *See supra* ¶ 23. Nonetheless, the undersigned considered such a recommendation along with [REDACTED]’s testimony and Petitioner’s Composite Exhibit 1.

26. The LTC Policy covers Personal Care services if they are deemed to be medically necessary. To be medically necessary, the requested Personal Care services must meet the five criteria set forth in section 1.3.14 of the LTC Policy. *See supra* ¶ 22. Based on Respondent’s testimony, Respondent denied Petitioner’s request for not meeting the following medical necessity standard: must 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. *See supra* ¶ 12.

27. Personal Care services 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.” *See supra* ¶ 21. The LTC Policy includes the following activities as ADLs or IADLs: bathing, dressing, eating, maintaining continence, toileting, transferring, grocery shopping, laundry, light housework, meal preparation, medication management, money management, personal hygiene, transportation, and using the telephone. *See supra* ¶ 20.

28. Petitioner requested sixty (60) hours per week of Personal Care services and Respondent approved seventeen (17) hours per week of Personal Care services. See supra ¶ 8. Thus, forty-three (43) hours per week of Personal Care services were declared not medically necessary because Respondent determined that such services were not “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.” At the hearing, Dr. Ikpiazu testified that the Personal Care services, at issue, were not medically necessary because an Adult Day Health Care placement would 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.” See supra ¶ 12. Adult Day Health Care is defined and covered by the LTC Policy. See supra ¶ 21. Dr. Ikpiazu also testified that many Adult Day Health Care centers are closed due to COVID-19, and may be able to accept new Medicaid recipients. See supra ¶ 12. ██████████ testified that an Adult Day Health Care center would not be reflective of the level of service that can be safely furnished because of COVID-19 and being exposed to other people. See supra ¶ 11. The record indicates that the Petitioner is not self-autonomous, even though he is thirty-four years old, because his mental and physical development. Petitioner requires assistance with ADLs and IADLs, when his sole natural support, ██████████, is working. The record establishes that ██████████ can provide sufficient natural support to meet the Petitioner’s needs for assistance with ADLs and IADLs when he is present in the home. The record also establishes that ██████████ cannot meet the Petitioner’s needs for assistance with ADLs and IADLs when he is working and Petitioner cannot perform ADLs and IADLs on his home. Although Dr. Ikpiazu testified that the Petitioner should enroll into an Adult Day Health Care instead of requesting additional Personal

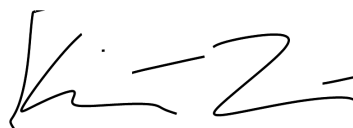
Care services, Dr. Ikipiazu also presented testimony that there are limited Adult Day Health Cares available to due recent closures in response to COVID-19, and limited availability for Medicaid recipients at the Adult Day Health Care centers remaining open. Based on the testimony elicited and the documentary evidence, the record reflects that the Personal Care services at issue are “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.” With respect to Petitioner’s needs for assistance with ADLs and IADLs, [REDACTED] established that Personal Care services 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. Thus, the Petitioner meets this criterion for medical necessity.

29. Accordingly, upon consideration of Respondent’s Composite Exhibit 1, Petitioner’s Composite Exhibit 1, both parties’ sworn testimony, the LTC Policy, and the Definitions Policy, the undersigned Hearing Officer concludes that Petitioner has shown by a preponderance of the evidence that Respondent’s denial of Personal Care services was incorrect. Thus, Petitioner has shown that the requested Personal Care services are medically necessary.

DECISION

Respondent’s partial denial of Personal Care services is **REVERSED**. Petitioner’s request for relief is hereby is **GRANTED**.

DONE and ORDERED this 28th day of September, 2020, in Tallahassee, Leon County, Florida.

 Digitally signed by Kristopher León
Reason: 20-FH [REDACTED]
Date: 2020.09.28 07:43:41 -04'00'

KRISTOPHER LEÓN, Hearing Officer

**Agency for Health Care Administration
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

COPIES FURNISHED TO:



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