



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

FILED

Oct 08, 2020, 8:02 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.

_____ /

[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 Medicaid Fair Hearing in the above-styled case on September 9, 2020, at [REDACTED] [REDACTED].

APPEARANCES

For the Petitioner: [REDACTED]

Petitioner's Authorized Representative

For the Respondent: Debra Wingo

Director of Long-Term Care
Aetna Better Health of Florida, Inc.

STATEMENT OF ISSUE

The first issue (AHCA Case Number 20-FH[REDACTED]) is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional 33 hours per week of adult companion care services was incorrect.

The second issue (AHCA Case Number 20-FH[REDACTED]) is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional 7 home delivered meals weekly was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] ("[REDACTED]"), Petitioner's daughter and Designated Authorized Representative, appeared on behalf of Petitioner.

Debra Wingo ("Ms. Wingo"), Director of Long-Term Care ("LTC"), appeared on behalf of Respondent, Aetna Better Health of Florida, Inc. ("Aetna" or "Respondent"). Dr. Olunwa Ikpeazu ("Dr. Ikpeazu"), Medical Director for Aetna, and Ms. Wingo appeared as witnesses for Respondent and offered testimony on behalf of Respondent. Damaris Segura, Manager of Grievances and Appeals for Aetna, also appeared on Respondent's behalf, but did not provide testimony.

Chrissie Simmons, Medical Healthcare Program Analyst for the Agency for Health Care Administration ("AHCA" or "Agency"), appeared as an observer.

Petitioner did not send to the Office of Fair Hearings and Respondent an evidence packet prior to the hearing, nor did Petitioner introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 100-page evidence packet for

AHCA case number 20-FH[REDACTED]. The packet included the following: Respondent's Medicaid Fair Hearing and Appeal Document Checklist; the Acknowledgement of Medicaid Fair Hearing Request, filed July 27, 2020; the Notice of Adverse Benefit Determination ("NABD"), dated June 10, 2020; a letter to Petitioner from Aetna, dated June 17, 2020; the Notice of Plan Appeal Resolution ("NPAR"), dated July 17, 2020; the Comprehensive LTSS Plan of Care ("care plan"), signed July 20, 2020; the Florida Department of Elder Affairs – 701B Comprehensive Assessment ("701B"), dated June 2, 2020; Aetna's Caregiver Supplemental Assessment for [REDACTED] (" [REDACTED]"), completed on June 2, 2020; Aetna's Caregiver Supplemental Assessment for [REDACTED], completed on June 2, 2020; the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("SMMC LTC Policy"); and the Florida Medicaid Home Health Visit Services Coverage Policy (November 2016) ("HHV Coverage Policy"). Absent an objection from Petitioner, Respondent's 117-page hearing packet for AHCA case number 20-FH[REDACTED] was admitted into evidence as Respondent's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 100-page evidence packet for AHCA case number 20-FH[REDACTED]. The packet included the following: Respondent's Medicaid Fair Hearing and Appeal Document Checklist; the Acknowledgement of Medicaid Fair Hearing Request, filed July 27, 2020; the NABD, dated June 10, 2020; a letter to Petitioner from Aetna, dated June 17, 2020; the NPAR, dated July 17, 2020; the Comprehensive LTSS Plan of Care ("care plan"), signed July 20, 2020; the Florida Department of Elder Affairs – 701B Comprehensive Assessment ("701B"), dated June 2, 2020; Aetna's Caregiver Supplemental Assessment for [REDACTED] (" [REDACTED]"), completed on June 2, 2020; Aetna's Caregiver Supplemental Assessment for [REDACTED], completed on June 2, 2020; the Florida Medicaid

Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“SMMC LTC Policy”); and the Florida Medicaid Home Health Visit Services Coverage Policy (November 2016) (“HHV Coverage Policy”). Absent an objection from Petitioner, Respondent’s 100-page evidence packet for AHCA case number 20-FH [REDACTED] was admitted into evidence as Respondent’s Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Aetna’s Long-Term Care (“LTC”) program. See Respondent’s Composite Exhibit 1, page 38, and Respondent’s Composite Exhibit 2, page 38. Aetna is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is an 80-year-old female who resides in a private residence with her daughter, [REDACTED], and her son-in-law, [REDACTED]. See Respondent’s Composite Exhibit 1, page 45, and Respondent’s Composite Exhibit 2, page 45.
3. Petitioner has the following health conditions: acid reflux/gastroesophageal reflux disease (“GERD”); allergies (Sulfa); arthritis (in both knees); high blood pressure; left broken ankle (past); high cholesterol; dehydration; insulin dependent diabetes mellitus (“IDDM”); occasional dizziness; gallbladder problems; heart problems (pacemaker and congestive heart failure (“CHF”)); constant bladder incontinence; constant bowel incontinence; kidney problems or renal disease; osteoporosis; past urinary tract infection (“UTI”); depression and anxiety. See Respondent’s Composite Exhibit 1, pages 50-51, and Respondent’s Composite Exhibit 2, page pages 50-51.

4. The 701B reflects that Petitioner requires no assistance with the following activities of daily living (“ADLs”): bathing, dressing, and using the bathroom. See Respondent’s Composite Exhibit 1, page 48, and Respondent’s Composite Exhibit 2, page 48. Petitioner requires supervision or prompting with eating. *Id.* Petitioner uses assistive devices for walking/mobility. *Id.* Petitioner needs assistance (but not total help) with transferring. *Id.*

5. Regarding instrumental activities of daily living (“IADLs”), the 701B reflects that Petitioner requires total assistance with heavy chores, light housekeeping, managing money, preparing meals, shopping, and transportation. See Respondent’s Composite Exhibit 1, page 49, and Respondent’s Composite Exhibit 2, page 49. Petitioner needs assistance (but not total help) with using the telephone and managing medication. *Id.*

6. Petitioner is currently authorized to receive the following home and community-based services: 6 hours of personal care services weekly; 7 hours of homemaker services weekly; and 7 home delivered meals weekly. Respondent’s Composite Exhibit 1, pages 12 and 38, and Respondent’s Composite Exhibit 2, pages 12 and 38. Additionally, Petitioner receives the following medical supplies: 1 case of pull- ups; 1 pack of wipes per month; and 1 case of Chux every other month. Respondent’s Composite Exhibit 1, page 38, and Respondent’s Composite Exhibit 2, page 38.

7. On June 10, 2020, Respondent issued an NABD denying Petitioner’s request for an additional 33 hours per week of adult companion care services and denying 7 additional home delivered meals weekly. See Respondent’s Composite Exhibit 1, page 11, and Respondent’s Composite Exhibit 2, page 11. The NABD states the reason for Respondent’s determination as follows:

We made our decision because:

....

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:

- 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;

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 33 hours of Adult Companion Care hours weekly and 7 additional Home Delivered Meals weekly. We will not approve this request because you are receiving enough hours to meet your needs. You are currently getting 6 hours of Personal Care Services weekly and 7 hours of Homemaker Services weekly, for a total of 13 hours of a Home Health Aide weekly, and 7 Home Delivered Meals weekly. You live with your caregivers. We have records dated 6/2/2020 that shows no assistance is needed with bathing, dressing and using the bathroom; you need assistance with transferring; you use an assistive device for walking/mobility; you need supervision or prompt with eating. You need total assistance with light housekeeping, doing laundry, meal preparation and shopping; 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 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, 6 hours of Personal Care Services weekly and 7 hours of Homemaker Services weekly, for a total of 13 hours of a Home Health Aide weekly, and 7 Home Delivered Meals weekly. We will not approve any hours of Adult Companion Care Services, as your caregivers can provide companionship to you. 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.

Respondent's Composite Exhibit 1, pages 11-12, and Respondent's Composite Exhibit 2, pages 11-12.

8. Petitioner requested a plan appeal regarding Respondent's denial of an additional 33 hours per week of adult companion care services and 7 additional home delivered meals weekly. On July 7, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. See Respondent's Composite Exhibit 1, page 30, and Respondent's Composite Exhibit 2, page 30. The NPAR stated as follows:

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 33 hours of Adult Companion Care hours weekly and 7 additional Home Delivered Meals weekly. We will not approve this request because you are receiving enough hours to meet your needs. You are currently getting 6 hours of Personal Care Services weekly and 7 hours of Homemaker Services weekly, for a total of 13 hours of a Home Health Aide weekly, and 7 Home Delivered Meals weekly. You live with your caregivers. You live with your caregivers. We have records dated 6/2/2020 that shows no assistance is needed with bathing, dressing and using the bathroom; you need assistance with transferring; you use an assistive device for walking/mobility; you need supervision or prompt with eating. You need total assistance with light housekeeping, doing laundry, meal preparation and shopping; 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 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, 6 hours of Personal Care Services weekly and 7 hours of Homemaker Services weekly, for a total of 13 hours of a Home Health Aide weekly, and 7 Home Delivered Meals weekly. We will not approve any hours of Adult Companion Care Services, as your caregivers can provide companionship to you. 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.

Respondent's Composite Exhibit 1, pages 30-31, and Respondent's Composite Exhibit 2, pages 30-31.

9. On June 3, 2020, Petitioner requested a Fair Hearing due to the denial of 33 additional hours of adult companion care services per week, and the denial of 7 additional home delivered meals weekly. On August 19, 2020, the undersigned scheduled the Fair Hearing for September 9, 2020, at [REDACTED], and all parties were duly notified.

10. During the Fair Hearing, [REDACTED] explained that Petitioner has memory problems, and she ([REDACTED]) is concerned about Petitioner being alone. [REDACTED] explained that three adults reside in the home with Petitioner: [REDACTED], [REDACTED], and [REDACTED]' 29-year old son. [REDACTED] currently works from home, but will return to working outside the home in November 2020. [REDACTED] is Petitioner's primary caregiver. When [REDACTED] is not present, [REDACTED] cares for Petitioner. [REDACTED] works outside the home, and is on call 24 hours, 7 days per week. When [REDACTED] and [REDACTED] are not present, the home companion from the home health care agency provides care to Petitioner. [REDACTED]' son tried to assist Petitioner in the past, but Petitioner is afraid of him because she does not remember who he is. [REDACTED] believes that someone needs to "keep an eye" on Petitioner, as Petitioner is taking a new medication for diabetes and has experienced hypoglycemic episodes.

11. Dr. Ikpeazu reviewed all documentation submitted to Aetna in this case. It is Dr. Ikpeazu's professional opinion that AETNA'S denial of the 33 additional hours of adult Companion care services weekly and 7 additional home delivered meals weekly was appropriate. In making its determination to deny Petitioner's request, Respondent considered the amount of assistance Petitioner needs with ADLs and IADLs, whether Petitioner lives alone, and who lives in the home with Petitioner. Dr. Ikpeazu explained that Petitioner is already receiving 7 home delivered meals per week, which is 1 per day. Dr. Ikpeazu testified that Respondent's assumption is that those who live with Petitioner can prepare food for Petitioner when they prepare food for themselves, so it is not medically necessary to have a second meal delivered to Petitioner each day.

12. Dr. Ikpeazu testified that regarding the hours that have been approved, they can be reallocated at Petitioner's discretion to meet her needs. d.

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

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

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.

16. Because Petitioner requested additional services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Petitioner. 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 Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“SMMC LTC Policy”). The Agency’s SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC LTC Policy provides as follows:

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 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

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)

...

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.

...

1.3.16 Natural Supports Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

1.3.18 Plan of Care A description of the enrollee’s goals for long-term care, the services and supports needed to meet those goals, and the specific service needs of each enrollee, showing the projected duration, desired frequency, and type of provider furnishing each service, and the scope of the services to be provided.

...

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary LTC services who are enrolled in a LTC plan and have a nursing facility level of care determined by the CARES program. Some services may be subject to additional coverage criteria as specified in section 4.0.

...

4.0 Coverage Information

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 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.

...

4.2.1 Home and Community-Based Supportive Services

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

4.2.1.1 Adult Companion Care

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal

preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

4.2.1.8 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.

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive

assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

SMMC LTC Policy, pages 1-8.

18. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “medical necessity” as follows:

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.

19. In the instant case, Petitioner requested an additional 33 hours per week of adult companion care services and an additional 7 home delivered meals weekly. *See supra* ¶¶ 7 and 8. As established on the record by the evidence and testimony, Respondent denied Petitioner’s request, because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. *Id.*

20. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 17. Section 4.2.1.1 of the SMMC LTC Policy reflects that adult companion care services are “[t]he provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.” *See supra* ¶ 17. Section 4.2.1.8 of the SMMC LTC Policy defines home delivered meals as “[t]he 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.” *See supra* ¶ 17.

21. The evidence presented in this case does not reflect that Petitioner is in need of an additional 33 hours per week of adult companion care services and an additional 7 home delivered meals weekly. Specifically, regarding ADLs, Petitioner requires: no assistance with bathing, dressing, and using the bathroom; supervision or prompting with eating; and assistance (but not total help) with transferring. *See supra* ¶ 4. Petitioner uses assistive devices for walking/mobility. *Id.* Regarding IADLs, Petitioner needs: total assistance with heavy chores, light housekeeping, managing money, preparing meals, shopping, and transportation; and assistance (but not total help) with using the telephone and managing medication. *See supra* ¶ 5. However, Petitioner has natural supports, as Petitioner resides in the home with [REDACTED] and [REDACTED]. *See supra* ¶ 2 and 10. When [REDACTED] is not present, [REDACTED] cares for Petitioner. *See supra*

¶ 10. ██████ works outside the home, and is on call 24 hours, 7 days per week; but when both ██████ and ██████ are not present, the home companion from the home health care agency provides care to Petitioner. *Id.* Petitioner also receives other home and community-based services. *See supra* ¶ 6. Although the record reflects that Petitioner has memory problems, is receiving a new medication for diabetes, and has experienced episodes of hypoglycemia, *supra* ¶ 10, ██████ did not provide evidence demonstrating why these needs require 33 additional hours of adult companion care services (e.g., a daily schedule, a schedule of non-medical care, supervision and social enrichment, or the amount of time needed for non-medical care, supervision and social enrichment).

22. Notwithstanding the above, Petitioner is already receiving 7 home delivered meals per week, *supra* ¶ 6, and ██████ offered no testimony to refute Respondent’s position that the adults who reside in the home with Petitioner can prepare food for Petitioner when they prepare food for themselves. *See supra* ¶ 11. Considering the totality of Petitioner’s circumstances – including the fact that Petitioner resides with ██████, and receives other home and community based services – Petitioner’s evidence fails to justify the approval of an additional 33 hours per week of adult companion care services and an additional 7 home delivered meals weekly. Based upon the evidence presented by both parties, Petitioner failed to establish that the requested adult companion care services and home delivered meals are warranted in this case.

23. Section 1.3.14 of the SMMC LTC Policy requires that the requested services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” *See supra* ¶ 17. It should be

noted that Petitioner is currently authorized to receive the following home and community-based services: 6 hours of personal care services weekly; 7 hours of homemaker services weekly; and 7 home delivered meals weekly. *See supra* ¶ 6. Additionally, Petitioner receives the following medical supplies: 1 case of pull-ups; 1 pack of wipes per month; and 1 case of Chux every other month. *Id.* Regarding the home and community-based service hours that have been approved, it is Respondent’s understanding that they can be reallocated at Petitioner’s discretion to meet her needs. *See supra* ¶ 12. Once services are authorized, Petitioner can adjust times the services are provided to meet her needs. *Id.* The NPAR explains that Petitioner is “receiving enough hours to meet your needs” and that Respondent “will not approve any hours of Adult Companion Care Services, as your caregivers can provide companionship to you.” *See supra* ¶ 8. Considering the SMMC LTC Policy’s definitions for natural supports, adult companion care services, homemaking services, home delivered meals, and personal care services, *supra* ¶ 17, Petitioner did not demonstrate that her aforementioned needs, *supra* ¶ 3, 4, and 21, are not sufficiently met by her currently authorized services. Given that Petitioner failed to establish that the additional adult companion care services and home delivered meals are warranted in this matter, *supra* ¶ 21 and 22, the requested additional adult companion care services and home delivered meals are “in excess of [Petitioner’s] needs.” *See supra* ¶ 17.

24. The record reflects that Petitioner has memory problems, and that ██████████ is concerned about Petitioner being alone. *See supra* ¶ 10. Additionally, ██████████ currently works from her home, but claims she will return to working outside the home in November 2020. *Id.* However, no other evidence was submitted to clarify or support her claim, and section 1.3.14 of the SMMC LTC Policy requires that the requested services must “[b]e furnished in a manner not

primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." See supra ¶ 17.

25. In light of the both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the SMMC LTC Policy, the Authorization Requirements Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to meet her burden of proving that an additional 33 hours per week of adult companion care services and an additional 7 home delivered meals weekly are medically necessary.

26. Accordingly, the undersigned Hearing Officer finds that Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of the additional adult companion care services and additional home delivered meals was incorrect.

DECISION

Respondent's denial of the additional 33 hours per week of adult companion care services is **AFFIRMED**. Respondent's denial of the additional 7 home delivered meals weekly is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

DONE AND ORDERED this 8th day of October, 2020, in Tallahassee, Leon County, Florida.



Tracie Hardin
20-FH [REDACTED] and 20-FH [REDACTED]
2020.10.08 07:11:43 -04'00'

TRACIE HARDIN, 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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