



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

FILED

Oct 21, 2020, 12:24 pm  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above-styled case on September 10, 2020, at [REDACTED]

[REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Maria Mojica  
Compliance Specialist for Sunshine  
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that its termination of 4 hours per week of adult companion care services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (" [REDACTED]"), Petitioner's Authorized Representative and father, appeared for the hearing and provided

testimony on Petitioner's behalf. Patricia Snead, Petitioner's mother, attended the Fair Hearing as a witness.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine"), appeared on behalf of Respondent. Dr. John Carter ("Dr. Carter"), Long Term Care ("LTC") Medical Director for Sunshine, attended as a witness for Respondent and provided testimony. The following individuals also appeared on behalf of Respondent, but did not provide testimony: Melissa Layne, Senior Manager for Quality Improvement for Sunshine; and Lyndere Persaud, Case Manager for Sunshine.

Chrissie Simmons, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for observational purposes.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a 16-page evidence packet. The packet included the following documents: an email from [REDACTED], dated August 31, 2020; an After Visit Summary, dated [REDACTED], 2020; an undated letter from [REDACTED] ("[REDACTED]"); a letter from [REDACTED], dated [REDACTED] 2020; the Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, dated August 19, 2020; and an undated letter from [REDACTED]. Absent an objection from Respondent, the undersigned admitted Petitioner's 16-page evidence packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 111-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated August 20, 2020; a Notice of Adverse Benefit Determination ("NABD"), dated February 25, 2020; Sunshine's Long Term Care Person-Centered Care Plan ("LTC Plan"), signed by the Care Manager on February 18, 2020; Sunshine's

LTC Plan, signed by the Care Manager on August 14, 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of February 18, 2020 (“Previous 701B”); the 701B with an assessment date of August 14, 2020 (“Current 701B”); Sunshine’s Standard Appeal Acknowledgment, dated March 12, 2020; the Notice of Plan Appeal Resolution (“NPAR”), dated March 16, 2020; the Sunshine Health Policy and Procedure LT.UM.09; and Fla. Admin. Code R. 59G-1.010(166). Absent an objection from Petitioner, the undersigned admitted Respondent’s 111-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine’s Long Term Care (“LTC”) plan. Respondent’s Composite Exhibit 1, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is a 34-year-old adult who resides in a private residence with his parents and brother. *Id.* at 49-50. Petitioner has the following health conditions: allergies; head, brain, or spinal cord trauma; frequent bladder incontinence; asthma; left eye blindness; left ear hearing loss; diabetes insipidus; and obsessive-compulsive disorder (“OCD”). *Id.* at 54-55.
3. Regarding Activities of Daily Living (“ADLs”), both the Previous 701B and the Current 701B reflect that Petitioner needs the following assistance: supervision or prompt with bathing, eating, using the bathroom, and mobility; some assistance with dressing; and no assistance with transferring. *Id.* at 35, 53.
4. Regarding Instrumental Activities of Daily Living (“IADLs”), both the Previous 701B and the Current 701B reflect that Petitioner needs the following assistance: some assistance with

heavy chores, light housekeeping, using the telephone, shopping, managing medication, and using transportation; and total assistance with managing money and preparing meals *Id.* at 36, 54.

5. Prior to the termination at issue in the instant case, Petitioner was authorized to receive the following LTC services: case management (ongoing monthly), personal care (38 hours weekly), homemaker (10 hours weekly), adult companion care (4 hours weekly), pull-ups (1 case monthly), underpads (1 case monthly), and gloves (1 box monthly). *Id.* at 29.

6. On February 25, 2020, Respondent issued an NABD terminating Petitioner's adult companion care services. *Id.* at 4. The NABD stated the reason for Respondent's determination as follows:

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

...

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

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

And one of the following:

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

...

The facts that we used to make our decision are:

Sunshine Health has looked at the member's present needs and provided home services.

The member's present care plan includes

- 38 hours per week of Personal Care Services, and
- 10 hours per week of Homemaker Services, and
- 4 hours per week of Companion Care Services

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 4 hours per week of Companion Care Services. The updated care plan approved by Sunshine Health will include 38 hours per week of Personal Care Services and 10 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 4-5.

7. Petitioner requested an appeal of Respondent's denial. *Id.* at 67. On March 12, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 73-79. The NPAR stated as follows:

On March 16, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [Petitioner] will not receive the 4 hours a week of companion care (the person who helps and watches over you), effective March 16, 2020.

The reason for our decision was: Based on the Long Term Care Assessment of the member's care needs, the termination of the 4hours/week of Companion Care services is upheld. These services are not medically needed to provided the needed care for the member. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 73.

8. On July 23, 2020, ██████████ requested a Fair Hearing on behalf of Petitioner due to the termination of adult companion care services. On August 19, 2020, the Office of Fair Hearings scheduled the Fair Hearing for September 10, 2020, at ██████████, and all parties were duly notified.

9. Dr. Carter is a Medical Director for Sunshine who specializes in internal medicine, geriatric medicine, and hospice and palliative medicine. Because Petitioner lives with his parents who both act as caregivers, Sunshine found that Petitioner's adult companion care services were not medically needed. Dr. Carter testified that Sunshine conducts ongoing assessments of its members and, in doing so, considered Petitioner's living situation when reviewing his case. Dr. Carter explained that family members inherently provide adult companion care services when they live in the household with a member. In addition, Dr. Carter noted that Petitioner's other LTC services, outlined supra ¶ 5, have not been altered. Dr. Carter reviewed the letters from Petitioner's physicians, but disagreed with their opinions.

10. Ms. Snead has a full-time job and sometimes works on the weekends. ██████ left his full-time job in April of 2010 to become Petitioner's full-time caretaker. ██████ testified that Petitioner requires assistance for safety purposes. For example, Petitioner cannot leave the home or cross the street alone, and has wandered away from his caretaker in the past. Further, Petitioner requires supervision while eating, because he will eat too quickly and choke on food. Contrary to the 701B, ██████ testified that Petitioner requires assistance with transferring and prompts for every task.

11. Petitioner's provider, ██████, wrote a letter which stated that Petitioner, "has severe difficulties in initiation of daily living skills" and, "requires continued prompting to not only start a task, but . . . to get through the task and complete it timely and/or safely." ██████'s letter corroborated the fact that Petitioner will choke on food without supervision, and added that Petitioner's OCD presents problems, "because [Petitioner] will become fixated on one thing ignoring everything else that is transpiring around him." According to the letter, Petitioner's OCD

has resulted in falls and constitutes a “major safety issue outside the home,” notably in parking lots and streets. ██████’s letter asserted that Petitioner “requires full-time care and supervision and needs the four hours of companion care.” Petitioner’s Composite Exhibit 1, page 5. The letter from Petitioner’s provider at ██████ states that, “Petitioner cannot take care of himself and requires full-time supervision.” *Id.* at 7.

### **CONCLUSIONS OF LAW**

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

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

14. 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.

15. Because Respondent terminated an existing service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Respondent. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

16. The Florida Medicaid Statewide Medicaid Managed Care Long Term Care Program Coverage Policy (“LTC Policy”) applies to the adult companion care services at issue. The Agency’s LTC Policy has been incorporated, by reference, into Fla. Admin. Code R. 59G-4.192. The 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.

...

## **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.

...

**4.2.1.9 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.

...

**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.

LTC Policy, pages 1-8.

17. 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.

18. In the instant case, Respondent terminated Petitioner’s 4 hours per week of adult companion care services because the information available to Respondent failed to establish that the services were medically necessary. See supra ¶ 6-7.

19. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the LTC Policy; (b) do not duplicate another

service; and (c) meet the criteria as specified in the LTC Policy. *See supra* ¶ 16. 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.” *Id.*

20. Petitioner lives with [REDACTED], who is Petitioner’s full-time caregiver, and Ms. Snead, who works full-time. *See supra* ¶ 2, 10. Petitioner requires partial to total assistance with ADLs and IADLs including dressing, transferring, heavy chores, light housekeeping, using the telephone, shopping, managing medication, using transportation, managing money, and preparing meals. Further, Petitioner requires supervision or prompt with his ADLs and IADLs for safety purposes. *See supra* ¶ 3-4, 10-11.

21. Adult companion care services are intended to provide non-medical care, supervision, or social enrichment. *See supra* ¶ 16. The record reflects that Petitioner requires assistance, supervision, or prompt with his ADLs and IADLs; however, the record also reflects that Petitioner lives with a full-time caregiver and other family members who provide supervision and socialization. Considering the totality of Petitioner’s circumstances, including the fact that Petitioner receives other home and community based services, the record supports Respondent’s termination of adult companion care.

22. Section 1.3.14 of the 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* ¶ 16. Outside of adult

companion care services, Petitioner is currently authorized to receive the following services: case management (ongoing monthly), personal care (38 hours weekly), homemaker (10 hours weekly), pull-ups (1 case monthly), underpads (1 case monthly), and gloves (1 box monthly). See supra ¶ 5. Considering the LTC Policy's definition for adult companion care services, supra ¶ 16, Respondent demonstrated that Petitioner's need for adult companion care services is sufficiently met by his living situation and currently authorized services. Thus, Respondent demonstrated that the requested adult companion care services are in excess of Petitioner's needs.

23. In light of the both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, the LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent demonstrated that the 4 hours of adult companion care services are not medically necessary. Accordingly, Respondent proved by a preponderance of the evidence that the termination of adult companion care services was correct.

**DECISION**

Respondent's termination of 4 hours per week of adult companion care services is **AFFIRMED**. Petitioner's request for 4 hours per week of adult companion care services is **DENIED**.

**DONE AND ORDERED** this 21st day of October, 2020, in Tallahassee, Leon County, Florida.



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**DILLON NICOLE, Hearing Officer**  
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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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