



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

FILED

Oct 09, 2020, 10:07 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 1, 2020, at [REDACTED] and September 8, 2020, at [REDACTED] [REDACTED] e.

**APPEARANCES**

For the Petitioner:

[REDACTED]  
Petitioner's Authorized Representative

For the Respondent:

Maria Mojica  
Compliance Specialist  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for personal care services was incorrect.

**PRELIMINARY STATEMENT**

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

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. Sapnalaxmi Amin ("Dr. Amin"), Medical Director for Sunshine; Carol French, Long Term Care Coordinator for Sunshine; Alshanetha Williams, Care Coordinator Supervisor, for Sunshine; Louise Jeanty, Supervisor of Quality Improvement for Sunshine; and Sara Rodriguez, Long Term Care Supervisor, for Sunshine.

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

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a one hundred and seventy-six (176)-page evidence packet. The evidence packet included: an e-mail, dated July 28, 2020, from [REDACTED]; a fax cover sheet, dated July 1, 2020, and including 20 pages of documents; an Order to Show Cause, dated July 31, 2020; an Acknowledgement of Third Party Medicaid Fair Hearing Request, dated July 30, 2020; the first page of a letter, dated August 6, 2020; a Designation of Authorized Representative Form ("DAR Form"), dated August 5, 2020; a DAR Form, dated August 5, 2020; a Designation of Authorized Representative for Selection of Managed Care Plan, dated August 5, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated July 2, 2020; a Notice of Plan Expedited Appeal Resolution, dated July 2, 2020; an NPAR, dated July 14, 2020; a Notice of Adverse Benefit Determination ("NABD"), dated June 18, 2020, regarding adult companion care; an NABD, dated June 18, 2020, regarding medical supplies; a Long Term Care Person-Centered Care Plan ("POC"), dated July 3, 2020; Petitioner's

medical record, dated [REDACTED] 2020; Petitioner's medical record, dated [REDACTED] 2020; Petitioner's medical record, dated [REDACTED], 2020; a Progress Note, dated [REDACTED], 2020; a Progress Note, dated [REDACTED], 2020; Petitioner's medical record, dated [REDACTED] 2020; a Progress Note, dated [REDACTED], 2020; Petitioner's medical record, dated [REDACTED], 2019; a fax cover sheet, dated October 9, 2019; a Request for an Appeal or Grievance Form, dated October 25, 2019; a fax cover sheet, dated November 7, 2019; a prescription for additional home care services, dated [REDACTED] 2019; Petitioner's medical record, date [REDACTED], 2019; Petitioner's medical record, dated [REDACTED], 2019; a Progress Note, dated [REDACTED], 2019; Petitioner's medical record, dated [REDACTED] 2019; Petitioner's medical record, dated [REDACTED], 2019; Petitioner's medical record, dated [REDACTED], 2019; a Physical Therapy Treatment Encounter Note, dated [REDACTED], 2019; Petitioner's medical record, dated [REDACTED], 2019; Petitioner's medical record, dated [REDACTED], 2019; Petitioner's medical record, dated [REDACTED] 2019; Petitioner's medical record, dated [REDACTED] 2019; Petitioner's medical record, dated [REDACTED], 2019; Petitioner's medical record, dated [REDACTED] 2019; an Ultrasound order, dated [REDACTED] 2019; Petitioner's medical record, dated [REDACTED], 2019; Petitioner's medical record, dated [REDACTED], 2019; Petitioner's medical record, dated [REDACTED] 2019; and a Final Report, dated [REDACTED], 2019. Absent an objection from the Respondent, the undersigned admitted the one hundred and seventy-six (176)-page packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a ninety-three (93)-page evidence packet. The evidence packet included: a Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary; an NABD, dated June 18, 2019; a POC, dated June 17, 2020; a POC, dated July 17, 2020; a Florida Department of Elder Affairs 701B

Comprehensive Assessment (“701B”), dated June 17, 2020; a Standard Appeal Acknowledgement, dated June 30, 2020; a Notice of Plan Expedited Appeal Resolution, dated July 2, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09 (“LT.UM.09”); and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner, the undersigned admitted the ninety-three (93)-page packet into evidence as Respondent’s Composite Exhibit 1.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is eighty-nine (89)-years old. Petitioner is diagnosed with Ovarian cancer, fibromyalgia, osteoporosis and suffers from bowel and bladder incontinence. See page 37 of Respondent’s Composite Exhibit 1. Petitioner has a history of chronic pain. See page 94 of Petitioner’s Composite Exhibit 1. ██████████ testified that Petitioner has a history of lumbar stenosis.
3. Petitioner was admitted to the hospital on ██████████ 2020, for diarrhea and vomiting, and was discharged on June 25, 2020. See page 66 88 of Petitioner’s Composite Exhibit 1.
4. In regards to her activities of daily living (“ADLs”): Petitioner needs no assistance with eating and using the bathroom; Petitioner uses an assistive device for transferring and walking/mobility; Petitioner needs supervision or prompting with transferring and walking/mobility; and Petitioner needs assistance (but not total help) with bathing and dressing. See page 35 of Respondent’s Composite Exhibit 1. In regards to her instrumental activities of daily living (“IADLs”): Petitioner needs total assistance (cannot do at all) with heavy chores, light

housekeeping, managing money, preparing meals, and shopping; Petitioner needs assistance (but not total help) with managing medication and using transportation; and Petitioner needs no assistance using the telephone.

*Id.* at 36.

5. Petitioner's plan of care includes eight (8) hours of homemaker services, weekly, and thirty (30) hours of personal care services, weekly. *Id.* at 35. Ms. French testified that Petitioner formerly received thirty (30) hour of adult companion care services, weekly, but it has since been reduced to seventeen (17) hours of adult companion care services. Petitioner is also receiving weekly skilled nursing visits. *Id.* at 38.

6. Petitioner requested seventy (70) hours of personal care services, weekly. Petitioner's request was denied in the NABD dated June 18, 2020. The NABD explained the basis of the denial as follows:

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

...

- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services:
  1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
  2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and
  3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

and one of the following:

1. Enable the enrollee to maintain or regain functional capacity; or

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

The facts that we used to make our decision are: The request for an extra 70 hours per week of Personal Care Services is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care need.

The member's present care plan includes:

- 30 hours per week of Personal Care Services
- 8 hours per week of Homemaker Services
- 30 hours per week of Companion Care Services

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

*Id.* at 4 through 5.

7. Petitioner requested a plan appeal and received an NPAR dated July 2, 2020, upholding the denial. *Id.* at 55 through 61. The NPAR explained as follows:

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the denial of an extra 70 hours/week of Personal Care Services is upheld as not medically needed. The presently provided services are enough to meet the member's care needs. The decision was made with Sunshine Health Policy LT.UM. 09 Long Term Care Ancillary Service Criteria.

*Id.* at 55.

8. On July 28, 2020, Petitioner requested a Fair Hearing to challenge the denial of personal care services. On August 25, 2020, the undersigned issued an Order Scheduling Hearing by Telephone and Prehearing Instructions, setting the hearing for September 1, 2020, at [REDACTED]

9. [REDACTED] is Petitioner's physician. [REDACTED] opined that Petitioner needs more personal care hours than she is currently receiving. [REDACTED] testified that Petitioner is suffering from ongoing diarrhea. Petitioner has incontinent episode between three (3) and four (4) times per

day and one (1) to two (2) time per night. When Petitioner has been able to use the toilet, she has also soiled the floor in the process. ██████ estimated that it should take between fifteen (15) minutes and thirty (30) minutes to bathe Petitioner, and that it takes approximately ten (10) minutes to dress Petitioner.

10. ██████ testified that Petitioner lives by herself. Petitioner's daughter, ██████ ("██████"), recently had knee surgery, and can only provide assistance with tasks such as managing money, managing medication, and providing supervision.

11. ██████ testified that Petitioner has a son that lives nearby, but that he is unsure of how many hours he can provide. At the time of the 701B Assessment, Petitioner's son-in-law, ██████ ("██████"), provided eighty (80) hours of care per week. *Id.* at 46. ██████ indicated that providing care for Petitioner caused "some difficulty" with the relationship with his friends and family, as well as finding time for himself to do the things he enjoyed. *Id.* Further, ██████ indicated that providing care for Petitioner caused "a lot of difficulty" with his physical health. *Id.* ██████ testified that ██████ has a connective tissue disorder.

12. Dr. Amin is a Medical Director for Sunshine. Dr. Amin opined that, based on the 701B, the hours that Petitioner has been approved to receive are reflective of her needs.

13. Ms. French is a Long Term Care Coordinator for Sunshine. Ms. French provided the 701B assessment of Petitioner's needs. *Id.* at 31. As testified to by Ms. French, the following approximates how long it takes to assist Petitioner with ADLs: for bathing, between twenty (20) and twenty-five (25) minutes; and for dressing, between ten (10) and twenty (20) minutes.

14. Ms. Rodriguez is a Long Term Care Supervisor for Sunshine. As testified to by Ms. French, Petitioner receives services Monday through Friday, from 7:30 a.m. until 1:30 p.m. and 5:00 p.m. through 9:00 p.m. The remaining hours of care are provided on the weekend.

### **CONCLUSIONS OF LAW**

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

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

17. Because Petitioner is requesting a new service, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to 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.)

18. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to personal care services:

#### **1.1 Description and Program Goal**

Under the Statewide Medicaid Managed Care Long-Term Care (LTC) program, managed care plans (LTC plans) are required to provide an array of home and community-based services that enable enrollees to live in the community and to avoid institutionalization.

...

#### **1.3.1 Activities of Daily Living (ADLs)**

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)

- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

### **1.3.9 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

### **4.1 General Criteria**

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

- Are determined medically necessary, as defined in this rule
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

#### **4.2.2.6 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.

19. The LTC Policy also addresses medical necessity:

#### **1.3.14 Medically Necessary or Medical Necessity**

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

(a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.

(b) All other LTC supportive services must meet all of the following:

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

And, one of the following:

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

20. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

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 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.

21. LT.UM.09 provides as follows in regards to personal care services:

## 7. Personal Care Services

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders  
The Personal Care Provider cannot administer any medications, but may bring medications to the member and remind the member to take the medications at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required and other incidental services, (i.e. housekeeping chores) essential to the health and welfare of the member
- e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

### Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

...

Exclusions and Limitations for Personal Care services include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort services

*Id.* at 79 through 85.

22. Petitioner requested seventy (70) additional hours of personal care services. In the NABD, dated June 18, 2020, Respondent denied Petitioner's request. See page 4 of Respondent's Composite Exhibit 1. Respondent explained that the previously approved medical supplies were not medically necessary and that "[b]ased on the assessment, the member's currently approved services are adequate to meet the member's care needs." *Id.* at 5.

23. As provided in Respondent's policy, LT.UM.09, personal care services are to "provide assistance with eating, bathing, dressing, and personal hygiene, and other activities of daily living." Further, the policy provides that personal care provides with "preparation of meals" and "housekeeping tasks". As discussed in LT.UM.09, personal care services are determined, in part, based on: the recipient's ADL limitations; the recipient's living situation; the recipient's supervision needs; and the available supports. Moreover, as provided in the LTC Policy, personal care is 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." As provided in the record, Petitioner requires assistance (but not total help) with bathing and dressing and requires assistance (cannot do at all) with all IADLs, except for using the telephone, managing medication, and using transportation. *Id.* at 35 and 36. Petitioner currently receives thirty (30) hours of personal care, seventeen (17) hours of adult companion care, and eight (8) hours of homemaker care.

24. As Petitioner bears the burden of proof, she must show that her request is medically necessary. A component of medical necessity is that services must be "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." Here, ██████████ testified, *supra* ¶ 9, that Petitioner


was not receiving enough personal care hours. ██████ explained that Petitioner needed more hours of personal care due to worsening diarrhea, incontinence, and lack of natural supports. Here, Petitioner has shown that she may need additional care beyond what is being provided, due to increased diarrhea, and nighttime incontinence. Further, Petitioner has shown that her natural supports cannot provide all of the additional care she may need, as ██████'s knee surgery prevents her from assisting much with Petitioner's ADLs, and the 701B shows that providing care has caused "a lot of difficulty" with ██████'s physical health. However, Petitioner has not shown that she needed an additional seventy (70) hours of personal care, weekly. For example, ██████ provided, *supra* ¶ 10, credible testimony as to how long it takes to bathe and dress Petitioner, but this only totaled between twenty-five (25) and forty (40) minutes each day. ██████ was unable to provide estimates of other ADLs and IADLs with which Petitioner may need assistance.

25. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of seventy (70) additional hours of personal care services was incorrect.

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

Respondent's denial of personal care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of personal care services is **DENIED**.

**DONE AND ORDERED** this 9th day of October, 2020, in Tallahassee, Leon County, Florida.

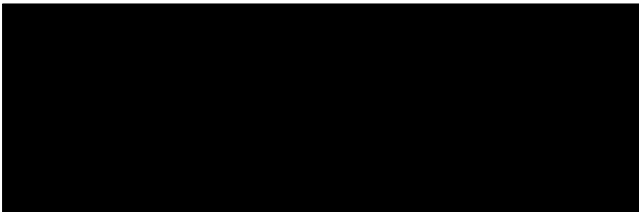
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**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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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