



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

FILED

Nov 02, 2020, 10:21 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]  
Plan ID No.: [REDACTED]

vs.

SIMPLY HEALTH CARE PLANS, INC.  
D/B/A CLEAR HEALTH ALLIANCE,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the above-styled case on September 30, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner: [REDACTED]  
Counsel for Petitioner

For the Respondent: Craig H. Smith  
Counsel for Respondent

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of Adult Companion Care from one hundred and sixty-eight (168) hours weekly to forty-nine (49) hours weekly was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared for the Fair Hearing telephonically. [REDACTED]

[REDACTED] appeared as counsel for Petitioner. [REDACTED] (" [REDACTED]"),

Petitioner's son, appeared as a witness for Petitioner. [REDACTED] ([REDACTED]),  
Petitioner's daughter, appeared as a witness for Petitioner.

Craig H. Smith appeared as counsel for Respondent Simply Health Care Plans, Inc. b/d/a Clear Health Alliance ("Simply"). Dr. Marc Kaprow, Medical Director for Simply, appeared as a witness for Respondent. Susie Poli, UM Long Term Care Manager for Simply, and Robert Frank, Nurse Appeals Associate for Simply, appeared as witnesses for Respondent, but did not testify. Dana Grynuik, in-house Counsel for Simply appeared as an observer for Respondent.

There was no observer present from the Agency for Health Care Administration ("Agency" or "AHCA").

Prior to hearing, Petitioner sent to the Office of Fair Hearings and Respondent a two (2)-page evidence packet. The evidence packet consisted of the following documents: email from [REDACTED], dated September 29, 2020; and letter from [REDACTED], dated September 21, 2020. Absent an objection from Respondent, the undersigned admitted the evidence packet into evidence as Petitioner's Exhibit 1.

Prior to hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eight (208)-page evidence packet. The evidence packet included the following documents: Table of Contents; Sequence of Events; Fax cover sheet, dated July 21, 2020; Simply Healthcare SMMC-LTC Service Request Form, dated July 21, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B Assessment"), dated [REDACTED] 2020; Power of Attorney, dated June 20, 2017; [REDACTED], dated [REDACTED], 2020; Notice of Adverse Benefit Determination ("NABD"), dated July 28, 2020; Authorization Notes, dated July 28, 2020; Letter from Simply, dated July 30, 2020; Expedited Appeal Letter from Simply, dated

July 30, 2020; Fax cover sheet, dated July 13, 2020; [REDACTED], dated [REDACTED], 2020; Post Orientation Outreach, dated [REDACTED] 2020; email from SharePoint with complaint details, dated August 5, 2020; letter from Simply, dated August 5, 2020; Comprehensive Plan of Care (“Plan of Care”) including Member Centric Goals and Plan of Care Summary, dated [REDACTED] 2020; Fax cover sheet, dated August 5, 2020; email from [REDACTED], dated August 5, 2020; Facsimile cover sheet, from [REDACTED], dated August 6, 2020; Request for Fair Hearing, dated August 6, 2020; NABD dated July 28, 2020; Power of Attorney, dated June 20, 2017; Continuation of Benefits Letter, dated August 6, 2020; NPAR, dated August 7, 2020; e-mail from SharePoint, dated August 7, 2020; letter from Simply, dated August 7, 2020; Member Appeal Notes, dated from July 30, 2020, to August 7, 2020; Florida Regulatory Member Complaints - SharePoint Notes, dated August 5, 2020, to August 7, 2020; AHCA Complaint/Grievance Notes, dated August 5, 2020, to August 7, 2020; Fax cover sheet, dated August 14, 2020; Designation of Authorized Representative for Medicaid Fair Hearing Participation, dated August 12, 2020; e-mail from [REDACTED], dated August 17, 2020; Request for Fair Hearing and Motion to Consolidate, dated August 17, 2020; NPAR, dated August 7, 2020; e-mail from [REDACTED], dated August 19, 2020; Designation of Authorized Representation for Managed Care Appeal and Fair Hearing, dated August 17, 2020; Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“SMMC LTC Policy”); Statewide Medicaid Managed Care (SMMC) Policy Transmittal: 2020-15, dated March 18, 2020; Statewide Medicaid Managed Care (SMMC) Policy Transmittal: 2020-16, dated March 20, 2020; Statewide Medicaid Managed Care (SMMC) Policy Transmittal: 2020-35, dated June 12, 2020; and State of Florida, Office of the Governor, Executive Order Number 20-52, dated March 9, 2020. Absent an

objection from Petitioner, the undersigned admitted the evidence packet into the record as Respondent's Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. On [REDACTED] 2020, Petitioner became an enrolled member of Simply's Long-Term Care ("LTC") Program. See Respondent's Composite Exhibit 1 at page 81. Simply is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida. At that time, Simply approved one hundred and sixty-eight (168) hours of Adult Companion Care services weekly through July 30, 2020. *Id.* at 95 and 153. The services were approved without a determination of medical necessity pursuant to the Agency's coronavirus ("COVID-19") Statewide Medicaid Managed Care (SMMC) Policy Transmittal: 2020-15, dated March 18, 2020. *Id.* at 195 – 197.

2. Petitioner is an eighty-two (82) year old woman who resides alone. *Id.* at 8 and 10. Petitioner suffers from the following health conditions: dementia of Alzheimer's type, arthritis, high blood pressure, incontinence, frequent Urinary Tract Infections ("UTI's"), and scabs on her arms and legs. *Id.* at 8, 12, 16, and Petitioner's Exhibit 1 at 2. Petitioner is receiving physical therapy ("PT") and skilled nursing services twice a week relative to the care of scabs on her arms and legs. *Id.* at 16. Petitioner has not had any recent emergency room visits or hospitalizations. *Id.* at 16 and 67.

3. [REDACTED] and [REDACTED], testified that Petitioner's husband was her primary caregiver until he unexpectedly passed away in March 2020. *Id.* at 19. [REDACTED] and [REDACTED] currently take turns visiting their mother, and assisting her paid caregivers, each day for approximately 30 minutes to 1.5 hours at a time. *Id.* at 11, 21, and 26.

4. [REDACTED] was the main source of information for Petitioner's 701B Assessment, which was completed on June 1, 2020 by telephone due to COVID-19 precautions. *Id.* at 11. The 701B Assessment states that Petitioner does not need supervision. *Id.* at 19. Regarding Petitioner's Activities of Daily Living ("ADLs"), Petitioner needs assistance (but not total help) with bathing and dressing, *Id.* at 14; Petitioner needs supervision or prompt with using the bathroom, *Id.*; Petitioner uses assistive devices when transferring and a rolling walker, *Id.*; and Petitioner needs no assistance with eating, *Id.*

5. Regarding Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, shopping, managing medication, and using transportation, *Id.* at 15; Petitioner needs assistance (but not total help) with preparing meals, *Id.*; and Petitioner needs supervision or prompt to use the telephone, *Id.*

6. On June 12, 2020, the Agency issued Statewide Medicaid Managed Care (SMMC) Policy Transmittal: 2020-35 reinstating prior authorization requirements for home health services. *Id.* at 200 - 201. The change became effective for dates of service on or after June 19, 2020, when prior authorization is required for the service. *Id.* at 200.

7. On July 21, 2020, Simply received an authorization request for one hundred and sixty-eight (168) hours of Adult Companion Care services. *Id.* at 4, and 8 - 9. The authorization request stated that Petitioner's "health and memory has declined tremendously in the last couple of months and she needs to be constantly supervised." *Id.* at 9. Petitioner's case manager included a copy of Petitioner's list of medications, the 701B Assessment, and the Plan of Care with the authorization request. *Id.*

8. On July 28, 2020, Simply issued an NABD reducing Petitioner's Adult Companion Care services from one hundred and sixty-eight (168) hours per week to twenty-eight (28) hours per week. *Id.* at 35 – 38. 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 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: We can cover some of the hours of the companion care (APPROVE: S5135 & COMPANION CARE – 28 HOURS PER WEEK). We cannot cover some of the hours of the companion care (DENY: S5135 & COMPANION CARE – 140 HOURS PER WEEK). You have problems with your health. You need some help to bathe. You need some help to get dressed. You are not bed bound. The companion care hours will help you. This help should be able to be arranged for your needs. All of the extra hours that you asked for are not medically needed at this time. This decision was based on the information provided and the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy.

*Id.* at 35 - 36.

9. On July 30, 2020, Petitioner submitted an appeal request. *Id.* at 53. On August 7, 2020, Simply issued an NPAR partially approving appeal request. *Id.* at 126 - 129. The NPAR stated as follows:

On 07/30/2020 we received your timely plan appeal request regarding Simply Healthcare Plans, Inc.'s Notice of Adverse Benefit Determination dated 0-7/28/2020, NABD Number [REDACTED], PARTIALLY DENYING, the Companion Care – 168 hours per week provided to [Petitioner]. We can cover some of the hours of the companion care (APPROVE: S5135 - COMPANION CARE – 28 HOURS PER WEEK). We cannot cover some of the hours of the companion care (DENY: S5135 - COMPANION CARE – 140 HOURS PER WEEK). You have problems with your health. You need some help to bathe. You need some help to get dressed. You are not bed bound. The companion care hours will help you. This help should be able to be arranged for your needs. All of the extra hours that you asked for are not medically needed at this time. This decision was based on the information provided and the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy. A peer to peer reconsideration may be requested by your physician/health care provider within 2 days of the adverse determination. . . .

On 08/07/2020, after consideration of the information you provided to Simply in support of your plan appeal, Simply hereby PARTIALLY APPROVES your plan appeal. We will cover the 28 hours of companion care that were already approved. We will add 21 more hours of companion care weekly. This is a total of 49 hours of companion care. We will add 14 hours of personal care weekly. We will add 7 hours of homemaker care weekly. This is a total of 70 hours of weekly care. This decision is based on the Florida Medicaid Statewide Managed Care Long Term Care Program Coverage Policy. You or your natural support can schedule this to help meet your needs. We know you enrolled in long-term care a few months ago. The hours that were approved when you enrolled were approved because of the virus. We are looking at those hours to be sure they are needed. In looking at our records the case manager has only been able to speak to your caregiver. Based on what they have told us you get confused (oriented to person only). Based on what we were told you are able to speak properly. Based on what we were told you are able to walk using a roller walker. Based on what we were told you are able to feed yourself. Based on what we were told you are able to use the toilet. Based on what we were told you need help when you bathe. Based on what we were told you need help to get dressed. Based on what we were told your family helps you with some of your tasks. Your caregiver told us you do not get lost. Your caregiver told us you do not wander. You are only on a medicine for blood pressure. Your caregiver told us you are able to have help whenever you need it from them. Your caregiver told us you are depressed. You are not taking medicine

for depression. We asked your caregiver to let us speak to you on August 5, 2020. Your caregiver did not let us speak to you. We spoke to your doctor on August 7, 2020. Your doctor told us that you saw a provider from his office (physician's assistant) on May 12, 2020. Your doctor told us that she saw you on April 28, 2020 by a tele-visit. Your doctor told us that before that he saw you in the office in August 2018. At his most recent visit with you he did not speak with you, although he was able to see you. He spoke only with your son. The doctor tells us that you do not speak well. The doctor tells us you cannot make decisions. The doctor tells us that you have skin changes on your legs. The doctor tells us you do not have any wounds. The doctor tells us it has been difficult for you to get around. The doctor told us you have problems using your walker. Your doctor told us you were trying to get a scooter. Your doctor told us he is not sure you can use a scooter safely. The doctor tells us that you are hard to care for. The doctor tells us this is because you refuse things. The doctor tell us that you have family that comes in to care for you. The doctor tells us that your son is concerned that he needs to go to work. The doctor could not tell us why someone is needed while you are sleeping. The personal care we have approved will help with your hands on care needs. The homemaker care we approved will help keep your home clean and safe. The companion care we have approved will help you to have somebody with you when you family is not able to be with you. The companion care and your family can be with you when you are not sleeping. We cannot approve all of the companion care you asked for. The extra hours you asked for are not needed. Your case was looked at by an Internal Medicine, Hospice & Palliative Medicine Provider for Simply.

*Id.* at 126 – 128.

10. Petitioner's primary care physician, [REDACTED] ("[REDACTED]"), submitted two prescriptions for Petitioner's care. The first prescription, dated [REDACTED], 2020, stated, "Request for 24 hours Care." *Id.* at 33. The second prescription, dated [REDACTED], 2020, stated, "stat request – HomeHealth with aide and for companion services from 7/30-10/30/2020." *Id.* at 64.

11. On August 6, 2020, Petitioner requested a Fair Hearing to contest the overall reduction of Petitioner's Adult Companion Care services from one hundred and sixty-eight (168) hours per week to forty-nine (49) hours per week. On August 7, 2020, Dr. Kaprow conducted a peer-to-peer review teleconference with [REDACTED].

12. On August 27, 2020, the undersigned issued the Order Scheduling Fair Hearing by Telephone and Prehearing Instructions setting the matter for hearing on September 1, 2020 at [REDACTED]. The parties stipulated to a continuance at the Fair Hearing convened on September 1, 2020. The Order Rescheduling Fair Hearing by Telephone and Prehearing Instructions rescheduled the matter for hearing on September 30, 2020, at [REDACTED] and all parties were duly notified.

13. On September 21, 2020, [REDACTED] a nurse practitioner from [REDACTED]'s office, wrote a letter stating as follows:

[Petitioner] has been diagnosed with dementia of Alzheimer's Type (ICD10:F02.80). Her dementia has progressed to the point that she is no longer ambulatory or completes activities of daily living (ADL's) on her own. The ADL's that have been affected are following: toileting/continence, grooming/hygiene and dressing.

She requested nursing care to help care for her and to aid in completing these necessary ADL's.

Petitioner's Exhibit 1 at page 2.

14. Petitioner is currently approved for a total of seventy (70) hours per week of paid LTC services as follows: seven (7) hours weekly of Homemaker services, fourteen (14) hours weekly of Personal Care services; and forty-nine (49) hours weekly of Adult Companion Care services. *Id.* at 126 – 128.

15. During his testimony at the Fair Hearing, [REDACTED] asserted that Petitioner needs round-the-clock ("24/7") help with all of her ADLs and IADLs because her dementia has significantly progressed. *Id.* at 9, 40, and 70. He testified that Petitioner is no longer able to stand or walk on her own. He testified that Petitioner is incontinent of bowel and bladder and no longer uses the bathroom. He testified that Petitioner no longer bathes herself and is completely

dependent upon paid caregivers to clean and dress her. ██████████ asserted that Petitioner is unable to stay alone. He testified that Petitioner stays awake during the night. He stated that Petitioner needs prompt to remember to eat and supervision while eating. He also testified that Petitioner experiences confusion most days and hallucinates at times. ██████████ testified that Petitioner has scabs on her arms and legs, and she is totally dependent on her caregivers to treat the scabs with medication.

16. ██████████'s testimony at the Fair Hearing is consistent with the testimony of ██████████. ██████████ also testified that Petitioner's condition is deteriorating. She testified that Petitioner is no longer able to walk on her own, she fell two weeks ago, and she does not realize that her legs can no longer support her. ██████████ stated that Petitioner is incontinent of bowel and bladder, no longer uses the bathroom, and is totally dependent on caregivers to change and clean her. She stated that Petitioner no longer bathes for herself. ██████████ observed that Petitioner is awake most nights and eats late. She indicated that Petitioner needs prompt and assistance with eating.

17. At the hearing, Dr. Kaprow testified that he reviewed Petitioner's supporting documentation and conducted a peer-to-peer review with ██████████ on August 7, 2020. *Id.* at 127 and 159. Based on the documentation submitted with Petitioner's authorization request, *Id.* at 9, and the peer-to-peer review, Dr. Kaprow argued that one hundred and sixty-eight (168) hours of Adult Companion Care services are not medically necessary. He further argued that some of Petitioner's previously approved Adult Companion Care hours were converted to Personal Care and Homemaker services.

18. Dr. Kaprow argued that Petitioner was originally approved for 168 hours of companion care per week beginning [REDACTED] 2020, based on the Agency's COVID-19 waiver and irrespective of medical necessity. He asserted that Sunshine informed Petitioner that the hours were temporary and would end on July 30, 2020. *Id.* at 159. Dr. Kaprow testified that when Simply received Petitioner's authorization request in July 2020, Simply proceeded to review the request for medical necessity because the Agency's COVID-19 waiver was expired. *Id.*

19. Dr. Kaprow testified that, during his review, it became apparent that there was a disparity between the 701B Assessment of Petitioner's needs in June 2020, versus the information supplied by Petitioner's family members. Dr. Kaprow testified that he conducted a peer-to-peer discussion with [REDACTED] to gain more information. Dr. Kaprow testified that he was unable to obtain additional clinical documentation, such as progress notes from in-person doctor examinations, results of strength tests, an assessment of Petitioner's ability to follow commands, or a physician's description of how oriented or disoriented Petitioner currently is. Dr. Kaprow further noted that no documentary evidence was submitted to show a "triggering event," such as a recent fall, an emergency room visit, or hospitalization.

20. Dr. Kaprow asserted that Respondent acted correctly in this case based on all of the information presented at the time of the authorization request. Dr. Kaprow indicated that a new Plan of Care could be created after an in-person assessment of Petitioner's care needs. He further concluded that an approval of more Adult Companion Care hours at this time would not be helpful because the testimony of Petitioner's witnesses and Petitioner's exhibit describe a need for more "hands on" care, such as Personal Care services, rather than a need for more "supervision" or Adult Companion Care.

## CONCLUSIONS OF LAW

21. 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), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

23. 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.

24. Because Respondent reduced an existing service, the burden of proof is on the Respondent. *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.)

25. The Florida Medicaid policy that applies to the requested services is the Statewide Medicaid Managed Care Long-term Care Program Coverage Policy ("LTC Policy") (March 2017). The LTC Policy is incorporated by reference in Fla. Admin. Code R. 59G-4.192. The LTC Coverage 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)**

When necessary for the recipient to function independently, including:

- 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)**

IADLs include:

- 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.

...

## **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 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:

##### **4.2.1.1 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.

...

#### **4.2.2.6 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.

26. In the instant case, Respondent reduced Petitioner's Adult Companion Care services from one hundred and sixty-eight (168) hours per week to forty-nine (49) hours per week. Respondent simultaneously approved seven (7) hours weekly of Homemaker services and fourteen (14) hours weekly of Personal Care services. See supra ¶ 8 and 15. As established by the evidence and testimony, Respondent reduced Petitioner's Adult Companion Care services because "the extra hours [Petitioner] asked for are not needed" based on the documentation provided. See supra ¶ 9 and 19.

27. 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 SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 25. Section 4.2.1.1 of the LTC Policy states that Adult Companion Case 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* ¶ 25.

28. The testimony and evidence presented in this case reflect that Respondent’s reduction of Adult Companion Care services was warranted under the circumstances of this case. Specifically, Petitioner’s request failed to satisfy the medical necessity criteria, which 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* ¶ 25.

29. The record reflects that Petitioner lives alone and suffers from dementia of Alzheimer’s type, arthritis, high blood pressure, incontinence, frequent Urinary Tract Infections (“UTI’s”), and recurring scabs on her legs and arms. *See supra* ¶ 2. Petitioner’s son and daughter take turns visiting and assisting paid caregivers each day for approximately 30 minutes to 1.5 hours at a time. *See supra* ¶ 3. Petitioner’s 701B Assessment completed on June 1, 2020, states that Petitioner needs assistance (but not total help) with bathing and dressing; Petitioner needs supervision or prompt with using the bathroom; Petitioner uses assistive devices when transferring and a rolling walker; and Petitioner needs no assistance with eating. *See supra* ¶ 4.

Petitioner's 701B Assessment reflects that Petitioner needs total assistance (cannot do at all) with many of the IADLs that correspond to homemaker services, such as: heavy chores, light housekeeping, managing money, shopping, managing medication, and using transportation; Petitioner needs assistance (but not total help) with preparing meals; and Petitioner needs supervision or prompt to use the telephone. See supra ¶ 5. The 701B Assessment further states that Petitioner needs no supervision. See supra ¶ 4.

30. Dr. Kaprow argued that a reduction in Adult Companion Care services is medically appropriate based on Petitioner's 701B Assessment, a peer-to-peer review with [REDACTED], and the lack of other supporting documentation, such as such as progress notes from past physician examinations, strength tests, an assessments of Petitioner's ability to follow commands, or a physician's description of how oriented or disoriented Petitioner is. See supra ¶ 19 - 20. Further, there is no documentary evidence in the record of a "triggering event," such as a recent fall, an emergency room visit, or hospitalization, that would support the need for 24/7 supervision. See supra ¶ 19. Finally, although Petitioner's witness testified that Petitioner is awake at night, there is no evidence documenting that Petitioner needs supervision throughout the night and if so, how much supervision she would need. In contrast, the 701B Assessment states that Petitioner needs no supervision. See supra ¶ 4.

31. As Dr. Kaprow testified, the testimony of Petitioner's witnesses and Petitioner's evidence presented at hearing, speak to the possible need for more "hands on" (or Personal Care) services rather than a need for additional "supervision" (or Adult Companion Care) services. For example, [REDACTED] and [REDACTED] testified that Petitioner is unable to stand or walk on her own, incontinent of bowel and bladder and no longer uses the bathroom, completely dependent

upon paid caregivers to clean and dress her, needs prompt to remember to eat and supervision while eating, and totally dependent on her caregivers to treat recurring scabs on her arms and legs. See supra ¶ 15 and 16. Similarly, the letter provided by [REDACTED] of [REDACTED] [REDACTED]'s office, states that Petitioner is "no longer ambulatory or completes activities of daily living (ADL's) on her own. The ADL's that have been affected are following: toileting/continence, grooming/hygiene and dressing." See supra ¶ 13. She requested 24/7 nursing care to help care for [Petitioner] and "to aid in completing these necessary ADL's." See supra ¶ 13. Dr. Kaprow concluded that Petitioner could be approved for additional "hands-on" or Personal Care services, if warranted, after an in-person evaluation of Petitioner's needs. See supra ¶ 20. However, based on the LTC Policy definition of Adult Companion Care services, supra ¶ 25, and the testimony and documentary evidence presented on the record of this case, Respondent established that the reduction of Adult Companion Care services is warranted.

32. Section 1.3.14 of the LTC Policy requires that "LTC supportive 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 ¶ 25. Although Petitioner's Adult Companion Care services were reduced from one hundred and sixty-eight (168) hours weekly to forty-nine (49) hours weekly, Respondent added seven (7) hours weekly of Homemaker services and fourteen (14) hours weekly of Personal Care services for a total of seventy (70) hours per week of paid LTC services. See supra ¶ 14. Considering the LTC Policy's definition of Adult Companion Care services, supra ¶ 25, Respondent demonstrated that Petitioner's aforementioned Adult Companion Care needs, supra ¶ 2, 4, 5, 17, and 19, are sufficiently met by the currently authorized level of Adult Companion Care services. Given that

Respondent established that the requested additional Adult Companion Care services are not warranted in this matter, *supra* ¶ 31, “the extra hours [Petitioner] asked for are not needed.” See *supra* 9.

33. Upon consideration of the testimony provided, Respondent’s Composite Exhibit 1, Petitioner’s Exhibit 1, and the applicable policies, the undersigned concludes that Respondent has shown by a preponderance of the evidence that Respondent’s reduction of Adult Companion Care services was correct.

**DECISION**

Respondent’s reduction of Adult Companion Care services is **AFFIRMED**. Petitioner’s request for relief is hereby is **DENIED**.

**DONE and ORDERED** this 2nd day of November 2020, in Tallahassee, Leon County, Florida.



Laura Gallagher  
20-FH [REDACTED]  
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**LAURA GALLAGHER, 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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