



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

FILED

Nov 05, 2020, 8:20 am  
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

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

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the above-styled case on October 6, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner: [REDACTED]  
Authorized Representative

For the Respondent: Davida Jones  
State Fair Hearing Coordinator  
UnitedHealthcare of Florida, Inc.

**STATEMENT OF ISSUE**

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional ten (10) hours per week of Personal Care services (Plan ID No.: [REDACTED]) was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional twenty-eight (28) hours per week of Personal Care services (Plan ID No.: [REDACTED]) was incorrect.

The third issue, whether Petitioner proved by a preponderance of the evidence that Respondent's denial of two (2) hours per week of Homemaker services (Plan ID No.: [REDACTED]) was incorrect, is withdrawn.

The fourth issue, whether Petitioner proved by a preponderance of the evidence that Respondent's denial of twenty-four (24) hours per week of Personal Care services (Plan ID No.: [REDACTED]) was incorrect, is withdrawn.

#### **PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] ("Petitioner's Authorized Representative" or "[REDACTED]"), appeared for the hearing on behalf of Petitioner to offer testimony and did not call any witnesses. Davida Jones, State Fair Hearing Coordinator for UnitedHealthcare of Florida, Inc. ("United"), appeared for the hearing as a representative for Respondent. Dr. Sloan Karver ("Dr. Karver"), Medical Director for United, appeared for the hearing as a witness for Respondent. Linda Latson, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for the hearing as an observer.

Petitioner's Authorized Representative did not introduce any exhibits at the Fair Hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and sixty-three (363)-page evidence packet. The evidence packet, which was admitted into evidence as Respondent's Composite Exhibit 1 included the following documents: a



(References) Cover Page – Long Term Care; Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1; the Florida Medicaid Definitions Policy (“Definitions Policy”) (August 2017); the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“LTC Policy”) (March 2017); the Florida Medicaid Authorization Requirements Policy (June 2016); the Florida Medicaid Personal Care Services Coverage Policy (November 2016); the Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); the Home Health Visit Services Fee Schedule (January 2017); a Personal Care Services Fee Schedule (January 2017); a Private Duty Nursing Services Fee Schedule (January 2017); AHCA’s Participant Direction Option (PDO) Manual; 42 C.F.R. § 441.480; Florida Medicaid Hospice Services Coverage Policy (“Hospice Policy”) (June 2016); 42 C.F.R. 418 Subpart C – Conditions of Participation: Patient Care; Florida Statute (“Fla. Stat.”) § 400.6105 (2018); Fla. Stat. § 400.609 (2018); Fla. Stat. § 409.910 (2018); Fla. Stat. § 400.462 (2018); and an additional copy of Fla. Admin. Code R. 59G-1.

### **FINDINGS OF FACT**

1. Petitioner receives Medicaid services through United’s Long-term Care (LTC) program. *See* Respondent’s Composite Exhibit 1, page 1. United is a Medicaid Managed Care organization contracted by AHCA to provide services to eligible Medicaid recipients in the State of Florida.
2. Petitioner is a seventy-four (74) year old woman residing in the community with a primary caregiver. *See* Respondent’s Composite Exhibit 1, pages 33. Petitioner is diagnosed with the following health conditions: bed sores; high cholesterol; diabetes; constant bladder incontinence; and constant bowel incontinence. *Id.* at 39-40. Petitioner requires oxygen, insulin assistance, and respiratory therapy several times per day. *Id.* at 40. Petitioner requires tube feeding daily. *Id.* Petitioner requires skilling nursing several times per week. *Id.* Petitioner has

allergies, congestive heart failure, closed head injury, hypertension, seizures, and Tardive dyskinesia. *Id.* at 110. Petitioner is diagnosed with dementia with behavioral disturbance. *Id.* at 163. As testified to by [REDACTED] at the Fair Hearing, Petitioner is nonverbal, uses tube feeding, is transferred every two hours, and Petitioner resides with [REDACTED]. Petitioner has an open wound that is being cared for. As testified to by [REDACTED], Petitioner requires “full assistance” with all tasks and cannot perform any tasks on her own. As testified to by [REDACTED], Petitioner was hit by a motor vehicle and was in a coma for fifteen (15) consecutive years.

3. Petitioner needs total assistance with Activities of Daily Living (“ADLs”) that include bathing, dressing, eating, using the bathroom, transferring, and walking/transferring. *Id.* at 37. Petitioner needs total assistance with Instrumental Activities of Daily Living (“IADLs”) that include heavy chores, light housekeeping, using the telephone, managing money, preparing meals, shopping, managing medication, and using transportation. *Id.* at 38.

4. On April 21, 2020, United issued an NABD (Plan ID No.: [REDACTED]) denying Petitioner’s request for seventy-eight (78) hours per week of Personal Care services and two (2) hours per week of Homemaker services. *Id.* at 97-98. The NABD stated:

UnitedHealthcare Community Plan has reviewed your request for Personal Care 78 hours a week and Homemaker services 2 hours a week, which we received on April 16, 2020. After our review, this service has been:

DENIED as of April 21, 2020.

We made our decision because:  
(Check all boxes that apply)

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

- Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR

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: Your assessment tells us that you need help with bathing, dressing, and using the bathroom. Your assessment tells us that you need some help with cleaning your home, chores, and making meals. You are in a facility where your needs are being met.

*Id.* at 98-100.

5. As testified to by Petitioner's Authorized Representative at the Fair Hearing, Petitioner was released from the nursing home facility after the initial request for Petitioner's request for seventy-eight (78) hours per week of Personal Care services and two (2) hours per week of Homemaker services in preparation for Petitioner's release into the community at her home. Petitioner's Authorized Representative discharged Petitioner from the nursing home facility due to concerns with the level of care Petitioner was receiving. Petitioner's Authorized Representative did not provide a date of the Petitioner's release from the facility.

6. As of May 6, 2020, Petitioner currently receives fifty (50) hours per week of Personal Care services. *Id.* at 176 (this was also reiterated by Dr. Karver and [REDACTED] at hearing).

7. On May 14, 2020, United issued an NPAR (Plan ID No.: [REDACTED]) denying Petitioner's plan appeal. *Id.* at 183-184. The NPAR stated as follows:

You asked for more Personal Care (PC) services. You would like 28 more hours/week, for a total PC 78 hours/week. You need hands-on help with bathing, dressing, toileting, eating, transfers, and ambulation. These are activities of daily living (ADLs). You need total help with heavy chores, light housekeeping, meal prep, and shopping. Based on my professional judgment, we are not approving the extra hours you asked for. They are more hours than you need. You have PC 50 hours/week approved by the health plan. These hours should meet your personal care needs. This is why we cannot approve an extra PC 28 hours/week (for a total PC 78 hours/week), that you asked for.

You asked for help around the house. You asked for homemaker services (HMK) 2 hours/week. Based on my clinical judgment, we are not approving hours. These hours are more hours than you need. You have Personal Care (PC) approved for 50 hours/week. Some of these hours can be used for chores around your home. The requested HMK 2 hours/week is not medically needed. This is why we cannot approve what you asked for. Please talk about this with your doctor.

I have reviewed this case as a Florida licensed physician (MD), board certified in Pediatrics and Neonatology and a Medical Director. I agree with the decision to uphold the denial. I also agree with the rationale that has been utilized for this decision. Meena LaCorte, MD Board Certified in Pediatrics and Neonatology UnitedHealthcare Appeals & Grievance Medical Director

*Id.*

8. On July 31, 2020, United issued an NABD (Plan ID No.: [REDACTED]) denying Petitioner's request for an additional ten (10) hours per week of Personal Care services. *Id.* at 5-6. The NABD stated:

UnitedHealthcare Community Plan has reviewed your request for Personal Care 10 more hours a week, which we received on July 27, 2020. After our review, this service has been:

DENIED as of July 30, 2020.

We made our decision because:  
(Check all boxes that apply)

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

- Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR
- 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:

3. Enable the enrollee to maintain or regain functional capacity; or
4. 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 facts that we used to make our decision are: Your assessment tells us that you need help with bathing, dressing and using the bathroom. You are getting 50 hours a week of personal care to help you. You live with family who helps you. In my clinical opinion, your personal care needs can be met by the approved services and supports. These hours can be split to meet your needs during the day.

*Id.*

9. On August 10, 2020, United issued an NPAR (Plan ID No.: [REDACTED]) denying

Petitioner's plan appeal. *Id.* at 60-61. The NPAR stated as follows:

John Szafranski, MD, UnitedHealthcare Medical Director, who is a Medical Doctor, Board Certified in Family Medicine, reviewed the appeal. This doctor did not make the original decision. The decision was based on Florida Medicaid rules: Florida Administrative Code 59G-1.010 (166).

You asked for personal care. You would like 10 more hours a week. You need help with daily activities. Based on my professional judgment, we are not approving

these extra hours because they are in excess of your needs. You have 50 hours a week of personal care approved by the health plan. You have family who can help some. These should meet your needs. This is why we cannot approve what you asked for. Please talk about this with your doctor.

*Id.*

10. Respondent's Appeal Review notes state the following:

Reviewer: Sloan B. Karver, MD; Medical Director, UHC C&S Florida.

Review type: Member request for: 10 more hours of personal care (total of 60 hours) per week.

Other Relevant Current Services: Personal Care 50 hours a week

Decision: Denied. I reviewed all the information provided for evaluation, including patient specific information, relevant handbooks and approved clinical guidelines as applicable.

- 701B reviewed
- Case reviewed
- Members function is described as: Member needs total assistance with all ADLs and IADLs.
- Member lives with daughter/primary CG. CM advises that there have been no changes with member or CG

Age/diagnosis: 74 year old female with diagnosis of bed sores (coccyx), HTN, HLD, IDDM, incontinence B/B.

- Living situation/supports: member lives with daughter/primary CG. Daughter with exhaustion. Daughter uses current 50 hours to have member receive care while daughter is at her full-time employment
- Appeal information received from member or provider: Member letter from daughter: I am requesting 10 additional hours for Saturday's d/t the fact that during the week. I sometimes have appts for my mother as well as myself and the healthcare person accompany us when it's [REDACTED] appt because of her condition. She is a closed head injury person and is very heavy. I am currently the only person in my household employed and due to my mother's multiple hospital stays in the ICU d/t neglect at the Plaza Health and Rehab. I have exhausted all of my sick leave time. If I take a day off for appt, my employer is kind enough to let me make it up on Saturday. I do have FMLA w/no leave time. I have to work to keep household expenses paid. Please grant me 10 extra hours for my mother.

Summary and Comments: Case information reviewed in nurse's note and agree. This is a 74 year-old woman with bed sores (coccyx), HTN, HLD, IDDM,

incontinence B/B.. The member's daughter feels she needs more help so she can work. The member lives with a daughter. The Florida Medicaid Personal Care Policy was reviewed. The case manager's assessment on 5/26/20 was reviewed. The member needs total help in all. Based on my clinical judgment, the request for an additional 10 hours/week of personal care is not medically necessary and is in excess of the member's need. The Health Plan has approved PC 50 hours a week. She has family who can help some. These should meet her needs. Given the member's need for total help and stress on the family, they might want to consider ALF level of care.

Adverse Determination Letter Language (Word FK 4.2): Your appeal was reviewed by a medical director. He is a medical doctor. He is board certified in family medicine. We looked at your records. We have decided that what you asked for cannot be approved. This does not meet Florida Medicaid rules. You asked for more personal care. You would like 10 more hours a week. You need help with daily activities. Based on my professional judgment, we are not approving these extra hours because they are in excess of your needs. You have 50 hours a week of personal care approved by the health plan. You have family who can help some. These should meet your needs. This is why we cannot approve what you asked for. Please talk about this with your doctor.

(Florida Medicaid rule used: Florida Administrative Code 59G-1.010 (166))

*Id.* at 55-57.

11. On August 13, 2020, Petitioner's Authorized Representative timely requested a Fair Hearing to contest the denial of ten (10) hours per week of Personal Care services (Plan ID No.: [REDACTED]). NPARs regarding the denial of Personal Care Services (10 hours per week) (Plan ID No.: [REDACTED]), the denial of Personal Care services (28 hours per week) (Plan ID No.: [REDACTED]), and the denial of Homemaker services (2 hours per week) (Plan ID No.: [REDACTED]) were submitted in the case. No NPAR regarding the denial of Personal Care Services (24 hours per week) was submitted.

12. On August 27, 2020, the undersigned issued an Order to Show Cause ("Order") why the Fair Hearing request regarding the NABD (Plan ID: [REDACTED]) (dated June 25, 2020) for twenty-four (24) hours per week of Personal Care services should not be dismissed for failure to comply

with Fla. Admin. Code R. 59G-1.100(8)(e). The Order notified Petitioner's Authorized Representative that failure to comply with the rule requirement on or before September 7, 2020, would result in dismissal of the case.

13. At the hearing and under oath, [REDACTED] testified that she is withdrawing the request for a Fair Hearing regarding Respondent's denial of two (2) hours per week of Homemaker services and Respondent's denial of twenty-four (24) hours per week of Personal Care services. [REDACTED] testified that she only desired to discuss Petitioner's requests for 10 hours per week (Plan ID No.: [REDACTED]) and 28 hours per week of Personal Care services (Plan ID No.: [REDACTED]) at the Fair Hearing.

14. [REDACTED] testified that she works forty (40) hours per week, Monday – Friday, 7:30 – 4:00 p.m., with twenty (20) minutes travel time each way. [REDACTED] is the Petitioner's sole caregiver. [REDACTED] argued that Petitioner only needs Personal Care services to meet her needs while [REDACTED] is at work. [REDACTED] testified that she can meet all of the Petitioner's needs when she is not working. [REDACTED] clarified that Petitioner only needs an additional ten (10) hours per week of Personal Care services for a Personal Care home health aide to accompany [REDACTED] and Petitioner for medical appointments and open wound care treatment on Saturdays. [REDACTED] stated that she has a medical background and is skilled in tube feeding, transferring, and medication management; however, [REDACTED] cannot render care for the Petitioner when she is working and Petitioner has no other natural support to meet her needs. [REDACTED] administers Petitioner's current Personal Care services as follows: Monday through Friday, 10 hours per day. [REDACTED] testified that an additional ten (10) hours per week of Personal Care services, if approved, would be used on an "as needed" basis whenever Petitioner

has medical appointments on Saturdays or when [REDACTED] has to work on Saturdays. [REDACTED] stated that an additional ten (10) hours per week of Personal Care services would not be used every week.

15. At the hearing and under oath, Dr. Karver testified that Respondent denied Petitioner's requests for additional Personal Care services because Petitioner's requests were in excess of the Petitioner's needs. Dr. Karver testified that United has physicians who will come to the Petitioner's home and there are Respite Care services available to the Petitioner and her caregiver when Petitioner has medical appointments or [REDACTED] has to make up hours at work.

#### CONCLUSIONS OF LAW

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

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

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

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

(Emphasis added).

19. Because Petitioner requested new services, the burden of proof is on the Petitioner. See Fla. Admin. Code R. 59G-1.100(17)(g). The standard of proof in an administrative hearing is a preponderance of the evidence. *Id.* The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.).

20. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs LTC services available to eligible Medicaid recipients in the State of Florida. See Respondent’s Composite Exhibit 1, pages 227-248. 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.

### **1.3.16 Natural Supports**

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

...

## **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:

##### **4.2.1.9 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.

##### **4.2.1.15 Respite Care**

The provision of services on a short-term basis due to the absence of, or need to relieve, the enrollee’s natural supports on a planned or an emergency basis.

...

#### **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.

*Id.*

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

**Respondent’s Denial of Twenty-Four (24) Hours Per Week of Personal Care Services and Respondent’s Denial of Two (2) Hours Per Week of Homemaker Services**

22. A Hearing Officer may deny or dismiss a Fair Hearing request if the Recipient files a written withdrawal of the request. A Hearing Officer may also deny or dismiss a Fair Hearing request if the Recipient testifies on the record that he or she wishes to withdraw the request. See Fla. Admin. Code R. 59G-1.100(9)(b)(5)(a).

23. At the hearing and under oath, [REDACTED] testified that she is withdrawing the request for a Fair Hearing regarding Respondent's denial of two (2) hours per week of Homemaker services and Respondent's denial of twenty-four (24) hours per week of Personal Care services. See supra ¶ 13. [REDACTED] testified that she only desired to discuss Petitioner's requests for 10 hours per week (Plan ID No.: [REDACTED]) and 28 hours per week of Personal Care services (Plan ID No.: [REDACTED]) at the Fair Hearing. See supra ¶ 13.

24. Based on the foregoing, Petitioner's Fair Hearing request regarding Respondent's denial of twenty-four (24) hours per week of Personal Care services and Respondent's denial of two (2) hours per week of Homemaker services is hereby deemed withdrawn.

**Respondent's Denial of an Additional Ten (10) Hours Per Week of Personal Care Services (Plan ID No.: [REDACTED]) and Respondent's Denial of an Additional Twenty-Eight (28) Hours Per Week of Personal Care Services (Plan ID No.: [REDACTED])**

25. Petitioner is a 74-year-old woman residing in the community with her primary caregiver, [REDACTED]. See supra ¶ 2. Petitioner requires tube feeding, transferring frequently, and open wound care. See supra ¶ 2. Petitioner is hemiplegic (paralyzed on one side of her body). See supra ¶ 2. Petitioner requires total assistance with all ADLs and all IADLS. See supra ¶ 3. Petitioner currently receives fifty (50) hours per week of Personal Care services. See supra ¶ 6. Respondent denied Petitioner's request for an additional ten (10) hours per week of Personal Care services and Petitioner's request for an additional twenty-eight (28) hours per week of Personal Care services based on medical necessity. See supra ¶ 4, 7-9.

26. The LTC Policy covers Personal Care services if they are deemed to be medically necessary. See supra ¶ 20. Because Personal Care services are classified as "mixed services," Petitioner must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. See supra ¶ 20. To

be medically necessary, a service must meet the criteria set forth in section 2.83 of the Definitions Policy. *See supra* ¶ 21. Based on Dr. Karver's testimony, Respondent denied Petitioner's requests for additional Personal Care services for not meeting the following medical necessity standard: 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. *See supra* ¶ 15. This criterion is expressly outlined in section 2.83 of the Definitions Policy. *See supra* ¶ 21.

27. Personal Care services provide "provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee." *See supra* ¶ 20. On behalf of Petitioner, ██████████ requested ten (10) hours per week of Personal Care services and twenty-eight (28) hours per week of Personal Care services. Thus, in order to be medically necessary, these Personal Care services, and the quantity of hours for each request, must be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the Petitioner's needs. In regards to Petitioner's request for an additional twenty-eight (28) hours per week of personal care services, ██████████ testimony centered on Petitioner's need for an additional ten (10) hours per week of Personal Care services, stating that an additional ten (10) hours per week of Personal Care services would meet the Petitioner's needs on Saturdays. ██████████ did not present any evidence or testimony regarding Petitioner's need for a total of seventy-eight (78) hours per week of Personal Care services or that Petitioner needs the additional twenty-eight (28) hours per week of personal care services requested. The evidence introduced by both parties indicate that Petitioner does not have an unmet need for a total of seventy-eight (78) hours per week of "assistance with ADLs

and IADLs.” The undersigned considered: [REDACTED] testimony that Petitioner needs ten (10) more hours per week of Personal Care services, in addition to the current fifty (50) hours per week of Personal Care services; Petitioner’s current Personal Care services in place; Petitioner’s living situation with [REDACTED]; [REDACTED] natural support provided to the Petitioner; and [REDACTED] testimony that the requested Personal Care services, if approved, would be used on an “as needed” basis and not on a weekly basis. Thus, the record does not show that this request is 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.

28. With respect to Petitioner’s request for an additional ten (10) hours per week of Personal Care services, [REDACTED] testified that Petitioner only needs an additional ten (10) hours per week of Personal Care services for a Personal Care home health aide to accompany [REDACTED] and Petitioner for medical appointments and open wound care treatment on Saturdays. *See supra* ¶ 14. [REDACTED] testified that she is capable of rendering Personal Care for Petitioner when she is not working, and [REDACTED] works Monday – Friday, 7:30 – 4:00 p.m. with twenty (20) minutes travel time each way, for a total of approximately forty-three (43) hours, twenty (20) minutes per week. *See supra* ¶ 14. Petitioner currently receives fifty (50) hours per week of Personal Care services, which is currently allocated to cover [REDACTED] work schedule. In addition, [REDACTED] argued that Petitioner needs the additional ten (10) hours per week of Personal Care services for Saturdays when Petitioner has medical appointments or [REDACTED] has to work on the weekend. *See supra* ¶ 14. These services will not be used every Saturday and will applied on an “as needed basis”. Thus, Petitioner does not need ten (10) hours per week of Personal Care services every week. Dr. Karver argued that Petitioner should consider Respite Care

services when events such as medical appointments or [REDACTED] working on the weekend occurs. The LTC Policy defines Respite Care services as, “services on a short-term basis due to the absence of, or need to relieve, the enrollee’s natural supports on a planned or an emergency basis.” See supra ¶ 20. The record indicates that, based on Petitioner’s and [REDACTED] needs, Respite Care services may be the more appropriate service rather than Personal Care services. [REDACTED] provided insufficient evidence and testimony as it relates to Petitioner’s additional need for ten (10) hours per week of assistance with ADLs and IADLS. The record does not indicate that the Petitioner has an unmet need of ten (10) hours per week of Personal Care services. Thus, the Petitioner did not meet the second criterion for medical necessity under § 2.83 of the Definitions Policy, which is at issue for the denial of services.

29. Accordingly, in light of the both parties’ sworn testimony, Respondent’s Composite Exhibit 1, the LTC Policy, and the cited rules and regulations, the undersigned Hearing Officer finds that Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of ten (10) hours per week of Personal Care services and Respondent’s denial of twenty-eight (28) hours per week of Personal Care services was incorrect. Thus, Petitioner’s Authorized Representative failed to show that Petitioner’s request for ten (10) hours per week of Personal Care services is medically necessary or that Petitioner’s request for twenty-eight (28) hours per week of Personal Care services is medically necessary.

#### **DECISION**

Respondent’s denial of ten (10) hours per week of Personal Care services (Plan ID No.:

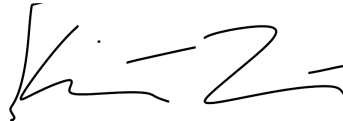
[REDACTED]) is **AFFIRMED**. Petitioner’s request for relief is hereby is **DENIED**.

Respondent's denial of twenty-eight (28) hours per week of Personal Care services (Plan ID No.: [REDACTED]) is **AFFIRMED**. Petitioner's request for relief is hereby is **DENIED**.

Petitioner's Medicaid Fair Hearing request regarding Respondent's denial of two (2) hours per week of Homemaker services (Plan ID No.: [REDACTED]) is **hereby deemed withdrawn, and this matter is now closed**.

Petitioner's Medicaid Fair Hearing request regarding Respondent's denial of twenty-four (24) hours per week of Personal Care services (Plan ID No.: [REDACTED]) is **hereby deemed withdrawn, and this matter is now closed**.

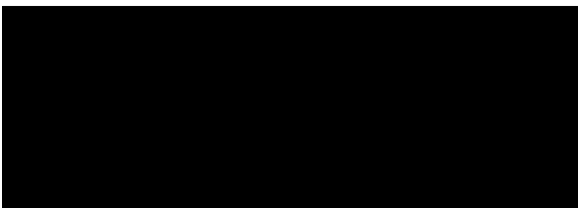
**DONE and ORDERED** this 5th day of November, 2020, in Tallahassee, Leon County, Florida.

  
Digitally signed by Kristopher León  
Reason: 20-FH [REDACTED]  
Date: 2020.11.05 07:51:49 -05'00'

---

**KRISTOPHER LEÓN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
**Office: (850) 412-3649**  
**Fax: (850) 487-1423**  
**Email: OfficeOfFairHearings@ahca.myflorida.com**

**COPIES FURNISHED TO:**



**United**  
**UHC\_Hearings@uhc.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com.**