



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

FILED

Nov 12, 2020, 9:39 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

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

vs.

WELLCARE OF FLORIDA, INC.  
D/B/A STAYWELL HEALTH PLAN OF FLORIDA,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Medicaid Fair Hearing in the above styled case on October 2, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner: [REDACTED]  
Petitioner's Authorized Representative

For the Respondent: Michelle Burgos  
Regulatory Research Coordinator  
Wellcare of Florida, Inc.  
d/b/a Staywell Health Plan of Florida

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of homemaker services from twenty (20) hours per week to ten (10) hours per week was correct.

**PRELIMINARY STATEMENT**

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and son, appeared at the Fair Hearing and provided testimony on Petitioner’s behalf. Petitioner also appeared and provided testimony.

Michelle Burgos, Regulatory Research Coordinator for Wellcare of Florida, Inc. d/b/a Staywell Health Plan of Florida (“Staywell”), represented Respondent at the hearing. Dr. Allen Smith (“Dr. Smith”), Chief Medical Officer for Staywell, provided testimony for Respondent. The following individuals also provided testimony for on Respondent: [REDACTED], Region 3 Supervisor for Staywell; Carol Farrant, Operations Supervisor for Staywell; and Teresa Martinez, Care Specialist for Staywell. Nicole Vega, Regulatory Research Coordinator for Staywell, and Miranda Longdon, Manager for Staywell, appeared at the hearing but did not testify.

Chrissie Simmons, Medical Healthcare Program Analyst for the Agency for Health Care Administration (“Agency”) appeared for observational purposes.

Prior to the hearing, Petitioner sent a one hundred and sixty-eight (168)-page evidence packet to the Office of Fair Hearings. The packet included the following documents: an email from [REDACTED] and Petitioner, dated September 22, 2020; letter from [REDACTED] and Petitioner dated September 22, 2020; email from [REDACTED], dated September 19, 2019; Summary of Estimated LTC Service Plan PDO Hours; Personal Care Services; Homemaker Services; Estimates of Adult Companion Care Services PDO Hours; FL Blue – 110 Claims in last year; Katz Index of Independence in Activities of Daily Living, dated September 14, 2019; The Lawton Instrumental Activities of Daily Living Scale, dated September 14, 2020; handwritten notes from Petitioner, dated September 16, 2020; Further Information: Version #2, dated September 16, 2020; Petitioner’s handwritten notes regarding her caregiver, dated September 16, 2020; email

from [REDACTED], dated September 4, 2019; notes from [REDACTED] and Petitioner regarding complaints, dated August 30, 2019; letter from Staywell, dated August 22, 2019; email from [REDACTED], dated August 21, 2019; email from [REDACTED], dated August 21, 2019; Complaint Detail, dated August 29, 2019; two emails from [REDACTED], dated August 20, 2019; fax from [REDACTED]; Service Plan, dated August 6, 2019; letter from Staywell, dated August 6, 2019; Service Plan, dated August 6, 2019; email from [REDACTED], dated March 13, 2020; Service Plan, revision date March 13, 2020; email from [REDACTED], dated August 14, 2020; email from [REDACTED], dated August 4, 2020; excerpts from Florida Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017); excerpts from Participant Direction Option Manual; excerpts from AHCA Contract No. ###, Attachment II, Exhibit II-B, Update 07/02/20; FL MLCT Supplemental Caregiver Assessment, dated May 6, 2020; Prior Authorization # [REDACTED], denied August 3 2020; Notice of Adverse Benefit Determination (“NABD”), dated August 4, 2020; letter from [REDACTED] and Petitioner, dated August 4, 2020; Letter from Petitioner, dated August 4, 2020; Case Notes; Clinical Notes; letter from Staywell, dated July 30, 2020; excerpts from Petitioner’s 701B Assessment, dated July 30, 2020; excerpts from Petitioner’s Plan of Care; Pending Service Authorizations and Schedule; Notice of Plan Appeal Resolution (“NPAR”) dated, August 12, 2020; Staywell Policy Number: HS-500, dated July 30, 2019; excerpts from Staywell member manual; letter from Staywell, dated July 30, 2020; Service Plan, revised July 30, 2020; Comprehensive Assessment; email from [REDACTED], dated August 20, 2019; and email from [REDACTED], dated August 14, 2019. Absent an objection from Respondent, the undersigned admitted Petitioner’s evidence packet into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and fifty-one (151)-page evidence packet. The packet included the following documents: the Summary; the list of Supporting Documents; the Eligibility Verification documents; the Prior Authorization screen; an NABD, dated August 4, 2020; the Appeal Request, dated August 4, 2020; letter from [REDACTED], dated August 4, 2020; Respondent's Case Notes; Respondent's Clinical Notes; a letter from Staywell, dated July 30, 2020; LT MLTC Supplemental Caregiver Assessment, dated May 6, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B Assessment"), dated July 30, 2020; Service Plan, with a revision date of July 30, 2020; Comprehensive Assessment, dated August 10, 2020; copies of photographs; Homemaker Services; Summary of Estimated PTC Service Plan, dated August 10, 2020; Estimates of Adult Companion Care Services; Fl Blue - 110 Claims in last year; NPAR, dated August 12, 2020; Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010; Respondent's Policy Number HS-500; the Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("LTC Policy"); Medical Assistance ("MMA") Contract, section V.D.3.a.(1).(2).(3).(4).(5); and excerpts from the Staywell Member Handbook. Absent an objection from Petitioner, the undersigned admitted Respondent's evidence packet into evidence as Respondent's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a thirty (30)-page Addendum to Evidence packet. The packet consisted of the following documents: summary; supporting documents; and Participant Direction Option ("PDO") guidelines. Absent an objection from the Petitioner, the undersigned admitted Respondent evidence packet into evidence as Respondent's Composite Exhibit 2.

## FINDINGS OF FACT

1. Petitioner is an enrolled member of Staywell's LTC plan. *See* Respondent's Composite Exhibit 1 at page 5. Staywell is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is an eighty-one (81) year old female who resides in a private residence with her son, [REDACTED], who does not work outside the home. *Id.* at 33, 40 and 43. Petitioner suffers from rheumatoid arthritis, high cholesterol, dizziness, heart problems, osteoporosis, hypothyroidism, anemia, edema and chronic pain. *Id.* at 49 – 50. Petitioner also has eczema. *See* Petitioner's Composite Exhibit 1 at page 22. Petitioner does not have a mental health diagnosis indicating mental health concerns. *See* Respondent's Composite Exhibit 1 at page 53. [REDACTED] [REDACTED] is willing to continue to provide natural support to Petitioner. *Id.* at 41.
3. Regarding Petitioner's Activities of Daily Living ("ADLs"), Petitioner needs no assistance with eating. *Id.* at 47. Petitioner needs assistance (but not total help) with bathing and dressing. *Id.* and Petitioner's Composite Exhibit 1 at page 23 and 26. Petitioner uses assistive devices for toileting, dressing, transferring, and walking/mobility. *See* Respondent's Composite Exhibit 1 at page 47. Petitioner can be left alone for approximately two hours at a time. *Id.* at 33.
4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, and using transportation. *Id.* at 48. Petitioner is unable to drive. *See* Petitioner's Composite Exhibit 1 at page 25. Petitioner needs assistance (but not total help) with managing money, shopping, and managing medication. *See* Respondent's Composite Exhibit 1 at page 48. Petitioner needs no assistance with using the telephone. *Id.*

5. Petitioner is currently authorized to receive the following home and community-based services: twenty (20) hours per week of Participant Direct Option (“PDO”) personal care services; and ten (10) hours per week of PDO homemaker services. *Id.* at 1 – 2, 9 - 10, and 151 – 152, and Respondent’s Composite Exhibit 2 at pages 1 – 2.

6. The letter from Petitioner and [REDACTED], dated August 4, 2020, states as follows:

“If anything my medical condition and needs have only worsened/increased over the last year as [REDACTED] knows so there is absolutely no justification for this reduction in hours.

...

The service plan created by you, dated 7/30/20 indicated Mom’s status is **Total Dependence** for meal preparation, ordinary housework and shopping. Furthermore, she requested **Maximum Assistance** for transportation and managing her finances. This is all correct however, it is not consistent with Director Smith’s comments in the 8/4/20 letter which states “... you do need help with some light housekeeping tasks.” Director Smith goes on to indicate “[t]he number of in-home hours for light housekeeping tasks has been decreased to 10. This is sufficient to meet your needs[.]”

...

For the record, although the Personal Care hours are not being reduced from 20 hours per week, Director Smith incorrectly states that that [sic] Mom is able to use the toilet, transfer and walk without help from another person. The Service Plan clearly and correctly indicated that Mom needs Maximum Assistance walking, locomotion and bed motility as well as limited assistance with transferring to the toilet and toilet use.

*Id.* at 22 - 23 [emphasis in original].

7. On March 4, 2020, Respondent issued an NABD reducing Petitioner’s homemaker services. *Id.* at 9 – 13. The NABD states as follows:

We made our decision because:

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

\* Meet all of the following criteria for all extended state plan services use 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.

WellCare received your request for [sic] to continue 20 hours of homemaking services each week. This request was denied because the information provided does not support that it is required to manage your medical condition(s). You do not live alone. You are able to use the toilet, transfer, and walk without help from another person. You do need help with bathing and dressing, as well as some light housekeeping tasks. You are able to communicate with others to express your needs. The number of in-home hours for light housekeeping tasks has been decreased to 10. This is sufficient to meet your needs. Your hours needed for bathing and dressing will continue, unchanged. Criteria: WellCare Clinical Coverage Guideline, Long term Services and Supports (LTSS) – Florida[.]

*Id.* at 9 – 10.

8. On August 10, 2020, Petitioner requested an appeal of Respondent's reduction of homemaker services from twenty (20) hours per week to ten (10) hours per week. *Id.* at 2. On August 12, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 104 - 106. The NPAR stated as follows:

On 08/12/2020, after consideration of the information you provided to Staywell in support of your plan appeal, Staywell hereby Denies your plan appeal. As a result, you will not receive service, effective 08/17/2020.

The facts that we used to make our decision are: You live with your son who takes total care [of] you. Also, you can be left alone to f two hours. The reasons for this decision are based on a set of standards. This included Wellcare Clinical Coverage Guidelines for Long Term Service and Supports (LTSS) – Florida HS-500.

*Id.* at 104.

9. On August 14, 2020, Petitioner requested a Fair Hearing due to the reduction of homemaker services. After granting Petitioner's request for a continuance, on September 11, 2020, the undersigned scheduled the Fair Hearing for October 2, 2020, at [REDACTED] and all parties were duly notified.

10. [REDACTED] asserted that he was not provided with Petitioner's entire case file. However, Ms. Burgos testified that Respondent's Composite Exhibit 1 and Respondent's Composite Exhibit 2 contain all of the documentation Staywell relied upon in making its decision to reduce Petitioner's homemaker services. She argued that Staywell reduced the services because the underlying documentation did not support the continuation of twenty (20) hours per week. Ms. Burgos argued that ten (10) hours per week are sufficient to meet Petitioner's homemaker needs, especially since her son lives with her and does not work outside the home.

11. Dr. Smith is Staywell's Chief Medical Officer. He argued that twenty (20) hours weekly of homemaker services are in excess of Petitioner's needs. He asserted that, based on the information Staywell had at the time they made the decision, the reduction in Personal Care services is correct. Dr. Smith testified that in making the decision, Staywell looked at the information that came from the case manager, Petitioner's 701B Assessment, and the Petitioner's circumstances of having son who lives with her and does not work outside the home. He argued that ten (10) hours are sufficient to supplement the natural support given by Petitioner's son.

12. Teresa Martinez testified that Petitioner's annual 701B Assessment was completed telephonically in July 2020. She testified that she conducted the 701B Assessment, and it was submitted to the Medical Director for review pursuant to Staywell's procedure.

13. Tera Finkley testified that the information contained in Petitioner's 701B Assessment was provided by [REDACTED] and Petitioner. She further testified that Dr. Andrew reviewed the 701B Assessment and made the final decision regarding the reduction of homemaker services. She testified that she explained to [REDACTED] and Petitioner that the 701B Assessment, and request for homemaker hours, were subject to review by the medical director.

14. [REDACTED] is Petitioner's son and primary caregiver. [REDACTED] believes that Petitioner needs more homemaker services because her health is declining. He testified that she is unable to do any housekeeping, cooking, or grocery shopping. He argued that Staywell is reducing the homemaker hours in spite of the fact that Petitioner needs more assistance with her ADLs and IADLs. Finally, [REDACTED] asserted that Petitioner has submitted a number of grievances against Staywell that he believes have influenced Staywell's decision to reduce Petitioner's homemaker services. See Petitioner Composite Exhibit 1 at pages 2 -4.

15. Petitioner testified that her medical condition is getting worse. She stated that she has arthritis and balance issues. *Id.* at 22 and 25. Petitioner testified that [REDACTED] manages all of her medications. *Id.* She stated that she needs assistance with showering, and she uses a shower chair and grab bars. *Id.* at 24. She testified that she uses assistive devices when toileting. *Id.* She testified that she walks with the assistance of a walker, is a fall risk, and experiences occasional incontinence. She testified that she needs assistance with dressing and uses a grabber. *Id.* at 23

and 26. She testified that her son prepares all her meals, and he performs all the housework because she is unable to do so.

### CONCLUSIONS OF LAW

16. 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. This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

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.

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

20. The Florida Medicaid policy that applies to the requested services is the LTC Policy. The Agency's LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The LTC Policy provides as follows:

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

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

...

### **1.3 Definitions**

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

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

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

...

#### **1.3.5 701-B Comprehensive Assessment**

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

...

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

When necessary for the recipient to function independently, including:

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

...

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

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

- (a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
  
- (b) All other LTC supportive services must meet all of the following:
  - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
  - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
  - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

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

...

**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 LTC plans cover services that meet all of the following:

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

### **4.2 Specific Criteria**

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

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee’s authorized plan of care
- Provided in accordance with a goal in the enrollee’s plan of care
- Intended to enable the enrollee to reside in the most appropriate and least.

...

**4.2.1.9 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.

LTC Policy, pages 1-8.

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

**2.83 Medically Necessary or Medical Necessity**

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs

- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

22. In the instant case, Respondent reduced homemaker services from twenty (20) hours per week to ten (10) hours per week. *See supra* ¶¶ 7 and 8. As established on the record by the evidence and testimony, Respondent reduced the services because the documentation submitted in support of Petitioner's request failed to establish that the services were medically necessary. *See supra* ¶¶ 7, 8, 10, and 11.

23. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the LTC Policy; do not duplicate another service; and meet the criteria as specified in the LTC Policy. *See supra* ¶ 20. Section 4.2.1.9 of the LTC Policy defines homemaker services as 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*" [emphasis added]. *See supra* ¶ 20.

24. The evidence presented in this case reflects that Respondent's reduction of homemaker services is warranted under the circumstances of this case. Specifically, regarding ADLs, Petitioner needs no assistance with eating. *See supra* ¶¶ 3 and 15. Petitioner needs assistance (but not total help) with bathing and dressing. *See supra* ¶¶ 3 and 15. Petitioner uses assistive

devices for using the bathroom, transferring, and walking/mobility. *See supra* ¶ 3, 6 and 15. She can be left alone for approximately two hours at a time. *See supra* ¶ 3. Regarding IADLs, Petitioner needs: total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, and transportation. *See supra* ¶ 4, 6, and 15. Petitioner needs assistance (but not total help) with managing money, shopping, and managing medication. *See supra* ¶ 4. Petitioner needs no assistance with using the telephone. *See supra* ¶ 4. Petitioner resides in the home with [REDACTED], who manages Petitioner’s medications, prepares all of Petitioner’s meals, and performs all the housework. *See supra* ¶ 2, 8, and 15. [REDACTED] is Petitioner’s primary caregiver, does not work outside the home, and is willing to provide care for Petitioner. *See supra* ¶ 2 and 8. Petitioner can stay in the home alone for short periods, and she able to communicate with others to express her needs. *See supra* ¶ 2 and 7. Based upon the evidence presented by both parties, Respondent established that the reduction of homemaker services from twenty (20) hours per week to ten (10) hours per week is warranted in this case.

25. Additionally, 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* ¶ 21. Petitioner is currently authorized to receive the following supportive services: twenty (20) hours per week of personal care services and ten (10) hours per week of homemaker services. *See supra* ¶ 5. Considering the LTC Policy’s definitions for homemaker services and personal care services, *supra* ¶ 21, Respondent demonstrated that Petitioner’s aforementioned homemaker service needs, *supra* ¶ 2 - 4, 6, and 14 - 15, are sufficiently met by her currently authorized services. Further, given that Respondent established that the requested level of homemaker services are

not warranted in this matter, *supra* ¶ 24, the previously authorized amount of homemaker services are in excess of Petitioner's needs. See *supra* ¶ 7, 10 and 11.

26. Appurtenant to this matter, section 1.3.14 of the LTC Policy provides that natural supports are "[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports." See *supra* ¶ 21. The record reflects that Petitioner resides in the home with [REDACTED]. See *supra* ¶ 2. [REDACTED] is Petitioner's primary caregiver and he does not work outside the home. Further, he is willing to continue to provide natural support. See *supra* ¶ 2. Therefore, Petitioner has natural supports available to assist with her care and needs.

27. In light of the both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent demonstrated that Petitioner's previously authorized amount homemaker services is not medically necessary.

28. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent's reduction of homemaker services from twenty (20) hours per week to ten (10) hours per week was correct.

#### **DECISION**

Respondent's reduction of homemaker services from twenty (20) hours per week to ten (10) hours per week is **AFFIRMED**.

Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

**DONE AND ORDERED** this 12<sup>th</sup> day of November, 2020, in Tallahassee, Leon County, Florida.



Laura Gallagher

20-FH [REDACTED]

2020.11.12

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**LAURA GALLAGHER, Hearing Officer**  
**Agency for Health Care Administration**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**COPIES FURNISHED TO:**



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