

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's homemaker services was correct. The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Petitioner's respite care services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner appeared on his own behalf.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following appeared as witnesses for the Respondent: Dr. Sapnalaxmi Amin ("Dr. Amin") Medical Director for Sunshine; Melissa Layne, Senior Manager for Member Appeals for Sunshine; Samantha DeAndrade, Supervisor of Case Management for Sunshine; and Charles Hill, Case Manager for Sunshine.

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and seventeen (117)-page evidence packet. The evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination ("NABD"), dated July 7, 2020; a Plan of Care ("POC"), dated June 30, 2020; a POC, dated July 6, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated June 30, 2020; a 701B, dated July 7, 2020; a Standard Appeal Acknowledgment, dated August 28, 2020; an Expedited Appeal Request Decision, dated July 15, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated August 14,

2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner, the undersigned admitted the one hundred and seventeen (117)-page packet into evidence as Respondent’s Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is seventy-seven (77)-years old. *See* page 31 of Respondent’s Composite Exhibit

1. Petitioner lives with his wife, who also acts as his caregiver. *Id.* at 32. Petitioner’s left leg has been amputated. *Id.* at 35. Petitioner is diagnosed with the following: osteoarthritis; high blood pressure; high cholesterol; diabetes; dizziness; partial paralysis; and has a history of strokes. *Id.* at 37 – 38. Moreover, Petitioner’s “physical limitations require for supervision in order to prevent falls.” *Id.* at 58.

3. Petitioner’s activities of daily living (“ADLs”) are as follows: for bathing and dressing, Petitioner needs total assistance (cannot do at all); for eating, Petitioner needs supervision or prompt; and for using the bathroom, transferring, and walking/mobility, Petitioner uses an assistive device. *Id.* at 35. Petitioner’s instrumental activities of daily living (“IADLs”) are as follows: for heavy chores and light housekeeping, Petitioner needs total assistance (cannot do at all); for using the telephone, Petitioner needs no assistance; and for managing money, shopping, managing medication, and using transportation, Petitioner uses an assistive device. *Id.* at 54. Petitioner’s spouse prepares all of his meals. *Id.* at 60.

4. Petitioner's wife is his caregiver. *Id.* at 54. Petitioner's caregiver provides forty (40) hours of care for Petitioner each week. *Id.* at 64. Petitioner's wife has "some difficulty" with caring for Petitioner and finding "time for yourself to do the things you enjoy." *Id.* at 64.

5. In the NABD dated July 7, 2020, Respondent reduced Petitioner's homemaker services from nineteen (19) hours per week to fourteen (14) hours per week, and reduced Petitioner's respite care services from five (5) hours per week to three (3) hours per week. *Id.* at 4 – 12. The NABD explained the basis of the reduction as follows:

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

...

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

and one of the following:

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

...

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services. The member's present care plan includes 19 hours/weeks of Homemaker Services + 5 hours/week of in-home Respite Care Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Homemaker Services from 19 hours/week to 14 hours/week (which is a reduction of 5 hours/week of Homemaker Services), and will reduce the in-home Respite Care Services from 5 hours/week to 3 hours/week (which is a reduction of 2

hours/week of in-home Respite Care Services). This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 4 – 5.

6. Petitioner requested a plan appeal and received an NPAR dated August 14, 2020, upholding the reduction. *Id.* at 79 - 85. The NPAR explained as follows:

The reason for our decision: The appeal to overturn (approve) the reduction of 5 hours per week of Homemaker Services (the person who cleans for you) and 2 hours per week of In Home Respite Care Services (the care given at your home to give your caregiver a break), is denied for lack of medical necessity (medical need). Based on the assessment, the member's currently approved services are adequate (enough) to meet the member's care needs. The member's present care plan includes 13 hours per week of Personal Care Services, 14 hours per week of Homemaker Services and 3 hours per week of In Home Respite Care Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 79.

7. On August 24, 2020, Petitioner requested a Fair Hearing to challenge the reduction of homemaker and respite care services. On August 27, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 21, 2020, at [REDACTED]

8. Petitioner's current plan of care includes the following services: thirteen (13) hours of personal care services, weekly; fourteen (14) hours of homemaker services, weekly; and three (3) hours of respite care services, weekly. *Id.* at 29.

9. Dr. Amin is a Medical Director at Sunshine. Dr. Amin testified that based on the 701B and the fact that Petitioner lives his wife, it was felt that the reduced services were sufficient to meet Petitioner's needs.

10. Petitioner weighs 138 pounds. *Id.* at 42. Petitioner testified that Petitioner’s wife weighs 90 pounds, and has difficulty transferring him. Petitioner testified that his respite care aide provides his bathing and grooming. Petitioner testified that no other family members or friends provide care.

CONCLUSIONS OF LAW

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

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

13. Respondent bears the burden of proof because Respondent is reducing previously approved services. Fla. Admin Code R. 59G-1.100(17)(g). 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.)

14. The Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to homemaker care and respite care services:

1.1 Description and Program Goal

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

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

...

4.1 General Criteria

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

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

...

4.2.1.9 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.

15. The LTC Policy also addresses medical necessity:

1.3.14 Medically Necessary or Medical Necessity

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

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

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

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

And, one of the following:

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

16. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care,

goods or services medically necessary or a medical necessity or a covered service.

17. LT.UM.09 provides as follows in regards to homemaker care services:

6. Homemaker Services

Homemaker provides assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to member's who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activities of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available supports

18. LT.UM.09 provides as follows in regards to respite care services:

9. Respite Care

In-home Respite Care services are to provide short-term, temporary relief to the informal, unpaid caregiver in order to support and preserve the primary caregiving relationship. The service provides general supervision, meal preparation, and hands-on assistance with personal care that are incidental to supervision during the period of service delivery. Respite services can be provided on a planned or emergency basis and shall only be furnished in the member's home. The provider must be awake during the provision of respite services and the services shall not be provided overnight. Member must reside in a non-facility based setting with his or her informal, unpaid primary caregiver.

Approval Criteria

To be considered for In-Home Respite Services, a member must have a primary caregiver as defined below, have a qualifying trigger diagnosis, and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

- a) A primary caregiver is defined as any person who lives with the member and regularly provides or arranges help as needed with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). This person may or may not be related by birth or marriage.

b) Trigger diagnosis include:

1. Advanced Alzheimer's disease & dementia
2. Advanced Parkinson's disease
3. Multiple Sclerosis
4. ALS
5. Congestive Heart Failure
6. COPD
7. Cancer
8. End Stage Renal disease
9. TBI
10. Other diagnosis as deemed medically necessary by Medical Director

c) Four (4) Dimensions of Determination

1. Level of functioning for safety reasons
 - Independent
 - Supervision
 - Minimal Assistance – ADL's require one of the following:
 - Moderate Assistance – ADL's require two of the following:
 - Total Assistance – ADL's require total hands on assistanceSee Section C.1.c for more details
2. Caregiver Stress – defined by responses for caregiver assessment questions on the 701B
 - Minimal Stress
 - Moderate Stress
 - Major Stress
 - Sudden Absence
 - a. Defined by documented absence of caregiver due to medical emergency
3. Informal Supports
 - Alone
 - Lives with caregiver
 - Lives with caregiver and others
 - Lives with 2 caregivers
4. Services In Place
 - Sunshine Health provided
 - Provided by other provider/insurance

Exclusions and Limitations for In-Home Respite Services include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. Member resides with his or her informal, unpaid primary caregiver.

4. In-home Respite Care services provides short-term, temporary relief to the informal, unpaid caregiver.
5. In-home Respite Care provides relief to member's primary caregiver when member care is causing stress for caregiver.
6. Service is provided when caregiver is absent.
7. The service is not provided when other family members resides in the home who are able to provide care.
8. Respite services can be provided on a planned or emergency basis.
9. The provider must be awake during the provision of respite services, and the services shall not be provided overnight.
10. In-home Respite Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
11. Services are to substitute the care that is provided by the caregiver, independent of the other services being provided to the member.
12. Provision of services provided during the respite period are within the respite provider's scope of practice.

A. Homemaker Care Services

19. In the NABD, dated July 7, 2020, Respondent reduced Petitioner's homemaker services from nineteen (19) hours per week to fourteen (14) hours per week. See page 4 – 12 of Respondent's Composite Exhibit 1. In the NABD, Respondent explained that nineteen (19) hours per week of homemaker services were not medically necessary, and that the reduction in homemaker services was "[b]ased on the assessment of the member's care needs and household and caregiver status" *Id.* at 4-5.

20. As provided in Respondent's policy, LT.UM.09, homemaker services are to provide "assistance with essential shopping, light housework, laundry, and meal preparation." As discussed in LT.UM.09, homemaker services are determined, in part, based on: IADL limitations; the recipient's living situation; supervision needs; and available supports. Moreover, as provided in the LTC Policy, homemaker services is 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.”

21. As provided in the record, Petitioner lives with his wife, who is his primary caregiver. *Id.* at 54. Petitioner requires total assistance with the IADLs homemaker services were intended to address, such as heavy chores and light housekeeping. Further, Petitioner’s caregiver provides for all of his meals. *Id.* at 60. Here, the Respondent argued that the 701B and the availability of the Petitioner’s caregiver indicate that the approved services are sufficient to meet his needs. *Supra* ¶ 9. However, Respondent did not provide evidence of how it arrived at that conclusion, such as by providing evidence of how long it takes to provide care for Petitioner’s ADLs and IADLs, or by showing how much time Petitioner’s caregiver has to provide assistance to the Petitioner. As shown by the record, Petitioner’s wife provide forty (40) hours per week of care. *Id.* at 46. However, Petitioner is only approved to receive thirty-two (32) hours of services. Thus, Petitioner requires more hours of care than is approved by Respondent. Respondent may still show that the additional hours are not necessary if there are sufficient natural supports to assist Petitioner. Although it was established that Petitioner lives with his caregiver, it was not established by Respondent that Petitioner’s wife is available to provide care as a natural support.

22. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent’s reduction of Petitioner’s homemaker services was correct.

B. Respite Care Services

23. In the NABD, dated July 7, 2020, Respondent reduced Petitioner’s respite care services from five (5) hours per week to three (3) hours per week. *Id.* 4 – 12. In the NABD, Respondent

explained that five (5) hours of respite care services were not medically necessary, and that the reduction was “[b]ased on the assessment of the member’s care needs and household and caregiver status” *Id.* at 4 -5.

24. As provided in Respondent’s policy, LT.UM.09, respite care services are to “short-term, temporary relief to the informal, unpaid caregiver in order to support and preserve the primary caregiving relationship.” Further, the “service provides general supervision, meal preparation, and hands-on assistance with personal care” As discussed in LT.UM.09, respite care services are determined, in part, based on: the level of functioning for safety reasons; caregiver stress; the recipient’s informal supports; and the services in place for the recipient. Moreover, as provided in the LTC Policy, respite care is “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 emergency basis.” Thus the focus of a respite care analysis includes how providing care affects the caregiver as well as on the needs of the recipient.

25. Respondent argued that the 701B and the availability of the Petitioner’s caregiver indicate that three (3) hours of respite care services are sufficient to meet his needs. However, as provided by the record, Petitioner’s caregiver already provides forty (40) hours per week of care, which does not factor in the three (3) hours of respite care that is provided by the home health aide. Moreover, providing forty (40) hours per week of care to the Petitioner has provided “some strain” on Petitioner’s wife, and has provided “some difficulty” in leaving time for her to do things she enjoys. *Id.* at 46. This is notable as respite care is to help relieve a caregiver. Further, Petitioner testified that the respite care aide provides for his bathing and grooming three (3)


times per week. *Supra* ¶ 10. However, it was not shown that Petitioner's caregiver has the availability to assist with these ADLs.

26. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent's reduction of Petitioner's respite care services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's reduction of homemaker care services is **REVERSED**. Petitioner's appeal based on Respondent's reduction is **GRANTED**. Respondent's reduction of respite care services is **REVERSED**. Petitioner's appeal based on Respondent's reduction is **GRANTED**.

DONE and **ORDERED** this 19th day of October, 2020, in Tallahassee, Leon County, Florida.

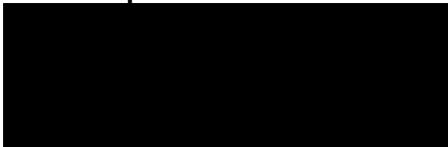
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.

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