



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

FILED

Nov 12, 2020, 9:41 am  
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 15, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

David Jones  
State Fair Hearing Coordinator  
UnitedHealthcare of Florida, Inc.

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Petitioner's request for seven (7) hours per week of homemaker services was incorrect.

**PRELIMINARY STATEMENT**

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

David Jones (“Ms. Jones”), State Fair Hearing Coordinator for UnitedHealthcare of Florida, Inc. (“United” or “Respondent”), represented Respondent at the hearing. Dr. Albena Bahareiva (“Dr. Bahareiva”), Medical Director for United, appeared as a witness for Respondent.

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

Interpreter Anna, translator number 254988 with Language Line Solutions, provided translation services for Petitioner.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-three (273)-page evidence packet. The packet included the following documents: a Medicaid Fair Hearing Statement of Matters; an address page; a blank page; two copies of a Notice of Adverse Benefit Determination (“NABD”), dated January 9, 2020; Progress Notes, dated [REDACTED], 2020; an address page; a blank page; Respondent’s letter to Petitioner, dated March 20, 2020; iCare screenshots; Concatenated Comments, dated April 2, 2020; Respondent’s mail tracking documentation; a three page fax from Petitioner with appointment representative form, dated March 27, 2020; an address page; a blank page; letter from Respondent, dated April 13, 2020; email from [REDACTED], dated March 20, 2020; email from [REDACTED], dated March 26, 2020; Respondent’s Print HSC History – HSR Production Environment; the Florida Department of Elder Affairs: 701B Comprehensive Assessment (“701B Assessment”), reflecting an assessment date of January 6, 2020; Respondent’s Appeal Review

notes; an address page; a blank page; a Notice of Plan Appeal Resolution (“NPAR”), dated April 23, 2020 (English and Spanish versions); Exhibit 2 (References) Cover Page – Long Term Care; Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1; the Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”); Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“LTC Policy”); Florida Medicaid Authorization Requirements Policy (June 2016); Florida Medicaid Personal Care Services Coverage Policy (November 2016) (“PC Policy”); Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); Home Health Visit Services Fee Schedule (January 1, 2017); Personal Care Services Fee Schedule (January 1, 2017); Private Duty Nursing Services Fee Schedule; the Agency’s Participant Direction Option Manual; 42 C.F.R. 441.480; Florida Medicaid Hospice Services Coverage Policy (June 2016); 42 C.F.R. 418 Subpart C – Conditions of Participation: Patient Care; section 400.6105, Florida Statutes (“Fla. Stat.”) (2018); Fla. Stat. § 400.609 (2018); Fla. Stat. § 409.910 (2018); Fla. Stat. § 400.462 (2018); and a second copy of Fla. Admin. Code R. 59G-1. Absent an objection from Petitioner, the undersigned admitted Respondent’s two hundred and seventy-three (273)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of United. See Respondent’s Composite Exhibit 1 at page 29. United is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is 86-years old and lives in a one bedroom apartment with her oldest daughter, [REDACTED], who is also her caregiver. *Id.* at 47 - 48, 50 - 51. Petitioner suffers from dementia,

depression, osteoarthritis, high blood pressure, occasional dizziness, glaucoma, sciatic neuritis, and is legally blind in her left eye. *Id.* at 20, 47, 57 - 58. [REDACTED] has a part time job and is willing to continue to care for Petitioner. *Id.* at 48 and 73.

3. Regarding activities of daily living (“ADLs”), Petitioner needs no assistance with bathing, eating, using the bathroom, transferring, and walking/mobility. *Id.* at 47 and 54. Petitioner needs assistance (but not total help) with dressing. *Id.*

4. Regarding instrumental activities of daily living (“IADLs”), Petitioner needs assistance (but not total help) with heavy chores, shopping, managing medication, and using transportation. *Id.* at 47 and 55. Petitioner needs no assistance with light housekeeping, using the telephone, managing money, and preparing meals. *Id.* In addition to [REDACTED], Petitioner has a son and another daughter who assist with her IADLs, and they live in Petitioner’s apartment complex. *Id.* at 48. Petitioner always has assistance with her IADLs when needed. *Id.* at 55.

5. In the 701B Assessment, the box “[n]ot at all” was checked for the following behaviors: gets lost or wanders off; intentionally injures or harms herself; expresses suicidal feelings or plans; or hallucinates, hears/sees things that are not there. *Id.* at 59. Petitioner is forgetful or easily confused “several days” per month. *Id.* The 701B Assessment further indicates that Petitioner is alert and oriented to time, place and location, and she “does not need supervision.” *Id.* at 52 and 59. Petitioner has had no recent emergency room visits or hospitalizations. *Id.* at 20 and 53. She has normal tone and strength in all extremities. *Id.* at 20.

6. Petitioner requested seven (7) hours per week of homemaker services. *Id.* at 2 – 4. On January 9, 2020, Respondent issued an NABD approving two (2) hours weekly and denying (5) five hours weekly of homemaker services. The NABD stated the reason as follows:

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

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

...

Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services.

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

and one of the following:

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

...

The facts that we used to make our decision are: A Long Term Care doctor reviewed your requests for 7 hours of personal care per week and 7 hours of homemaker services per week.

You need personal care to help with picking your clothes out.

You are able to help with your hands on personal care.

You live with caregivers.

The health plan will give you 3 hours per week to meet your needs for personal care.

The other 4 hours per week you asked for are denied.

You are able to help with some of your homemaker care.

You have not had a change in the need for your homemaker care.

The health plan will give you 2 hours per week to meet your needs for homemaker care.

The other 5 hours per week you asked for are denied.

*Id.* at 4 – 5.

7. Petitioner requested a plan appeal and received an NPAR dated April 23, 2020. The NPAR upheld United's decision regarding Petitioner's request for homemaker services. *Id.* at 79 - 80.

The NPAR explained as follows:

On March 27, 2020, we received your timely plan appeal request regarding UnitedHealthcare Community Plan's Notice of Adverse Benefit Determination dated January 9, 2020, [REDACTED], partially denying the Personal Care (7 hours/week) and Homemaker Services (7 hours/week) provided to [Petitioner]

On April 22, 2020, after consideration of the information you provided to UnitedHealthcare in support of your plan appeal, UnitedHealthcare hereby denies your plan appeal.

As part of our review we look at information you or your provider gave us. We also look at your benefits. Based on our review of your appeal, we have determined that the service you requested will not be approved.

Lisa Herbert 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: Rule 59G-1.010(166)(a)3., Florida Administrative Code (F.A.C.).

Part 1 of 2 You asked for personal care. You would like 7 hours a week. You need help with dressing. You are independent with all your other activities of daily living. Based on your assessment three hours can meet your needs. We cannot approve 7 hours because it is not medically necessary. Based on my professional judgment, these hours are in excess of your need. Three hours a week can meet your needs and is approved by the health plan. This is why we cannot approve what you asked for. Please talk about this with your doctor.

Part 2 of 2 You asked for homemaker services. You would like 7 hours a week. You need help with dressing. You are independent with all your other activities of daily living. Based on your assessment three hours can meet your needs. We cannot approve 7 hours because it is not medically necessary. Based on my professional judgment, these hours are in excess of your need. Two hours a week can meet your needs and is approved by the health plan. 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, board certified in Family Medicine and I agree with this decision.

John A. Szafranski, MD

Appeals and Grievances Medical Director  
Board Certified in Family Medicine  
FL-ME111486  
4/22/20

*Id.* at 79 - 80.

8. Petitioner is currently approved for two (2) hours per week of homemaker services, and three (3) hours per week of personal care services. *Id.* at 71.

9. ██████████ asserted that Petitioner is getting worse by the day. She argued that Petitioner can barely see, needs assistance with walking, and suffers from depression. She testified that Petitioner's uterus has become detached and may require surgery in the future. ██████████ expressed concern regarding Petitioner's forgetfulness.

10. Dr. Baharieva argued that two (2) hours of homemaker services are sufficient based on Petitioner's 701B Assessment, the availability of natural supports, and the lack of any clinical data to show that Petitioner's condition is worsening. Dr. Baharieva argued that, according to Petitioner's 701B Assessment, Petitioner needs some assistance with heavy chores, shopping, managing medication, and using transportation; however, Petitioner needs no assistance with light housekeeping, using the telephone, managing money, and preparing meals. She further argued that Petitioner has the natural supports of a daughter who lives with her, and she has a son and another daughter who live nearby and assist with her IADLs. Dr. Baharieva argued that two (2) hours of homemaker services, when combined with the three (3) hours of personal care services that were simultaneously approved by United, are sufficient to meet Petitioner's needs.

**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 section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of the Agency under section 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. Because Petitioner is requesting new services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence.” (Black’s Law Dictionary at 1201, 7th Ed.)

14. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs Long-Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to adult companion care and homemaker 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)

...

### **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 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

...

#### **4.2.1.1. Adult Companion Care**

The provision of non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired enrollee. This includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.

...

#### **4.2.1.9 Homemaker Services**

The provision of general household activities (such as meal preparation) and routine household care (including laundry and pest control) by a trained homemaker, when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities.

...

#### **4.2.2 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.

...

### **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 at pages 1 - 8.

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.

LTC Policy at pages 2 – 3.

16. In the instant case, Petitioner requested a total of seven (7) homemaker hours per week.

As established on the record by the evidence and testimony, Respondent partially denied the

request because two (2) hours per week of homemaker services are adequate to meet the Petitioner's homemaker needs. *See supra* ¶ 6, 7, and 10.

17. Section 4.1 of the LTC Policy provides that Florida Medicaid LTC plans cover services that: (a) are determined medically necessary, as defined in the SMMC LTC Policy; (b) do not duplicate another service; and (c) meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 15.

18. The testimony and evidence presented reflect that Respondent's partial denial of Petitioner's request for homemaker services was warranted under the circumstances of this case. Specifically, Petitioner's request for homemaker services failed to satisfy the medical necessity criteria which requires that the requested services must "[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." *See supra* ¶ 16.

19. As stated in the LTC Policy, homemaker services provide for general household activities and routine household care when the individual regularly responsible for these activities is temporarily absent or unable to manage these activities. *See supra* ¶ 15. The record indicates that Petitioner currently always has assistance, when needed, with her IADLs. *See supra* ¶ 4. Her primary caregiver, [REDACTED], lives with her in a one bedroom apartment, and she is willing to continue to assist Petitioner. *See supra* ¶ 2, 4, and 6. Petitioner has a son and an additional daughter who live nearby and provide assistance with her IADLs. *See supra* ¶ 4.

20. As Dr. Baharieva testified and Petitioner's 701B Assessment indicates, Petitioner only needs some assistance with heavy chores, shopping, managing medication, and using transportation; however, Petitioner needs no assistance with light housekeeping, using the telephone, managing money, and preparing meals. *See supra* ¶ 4 and 10. Although the 701B

Assessment mentions that Petitioner experiences forgetfulness several days a month, Petitioner is alert and oriented to time, place, and location, and she does not require supervision. *See supra* ¶ 5. Petitioner also has normal tone and strength in all extremities. *See supra* ¶ 5.

21. The clinical notes submitted by Petitioner's physician mention diagnoses of dementia, anxiety and depression, and a recent diagnosis of Type 2 diabetes. *See supra* ¶ 4. However, the clinical notes do not mention that Petitioner's condition is worsening or, if so, to what degree Petitioner's condition is worsening and impacting her need for homemaker services. Petitioner is described as alert and oriented with normal tone and strength in her extremities. *See supra* ¶ 5. There are no recent emergency room visits or hospitalizations. *See supra* ¶ 5. Further, Petitioner was approved for three (3) hours per week of personal care services for meet her needs for hands on care. *See supra* ¶ 8.

22. In light of the fact that Petitioner's primary caregiver lives with her, two other children assist with Petitioner's IADLs, Petitioner's 701B Assessment states that Petitioner currently has no unmet needs for her IADLs, and United approved three (3) hours per week of personal care, Dr. Baharieva's testimony that two (2) hours weekly of homemaker services are sufficient for Petitioner is credible. *See supra* ¶ 10. Based on the foregoing, the record demonstrates that Petitioner's requested level of homemaker services are in excess of the Petitioner's needs. As such, Petitioner has not shown that the requested seven (7) hours per week of homemaker services are medically necessary.


23. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of

the evidence that Respondent's denial of Petitioner's request for seven (7) hours per week of homemaker services was incorrect.

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

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

**DONE and ORDERED** this 12th day of November, 2020, in Tallahassee, Leon County, Florida.

  
Laura Gallagher  
20-FH [REDACTED]  
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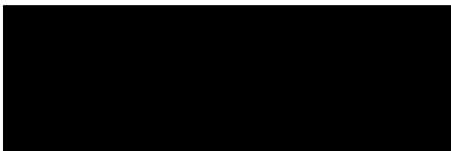
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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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