



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

FILED

Sep 18, 2020, 8:20 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the above-styled case on September 15, 2020, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]

Authorized Representative

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Homemaker services was incorrect.

The second issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Adult Companion Care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the Fair Hearing telephonically. [REDACTED] ("Petitioner's Authorized Representative" or "[REDACTED]") appeared for the Fair Hearing to provide testimony and did not call any witnesses.

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. ("Sunshine Health"), appeared as a representative for Respondent. The following persons appeared as witnesses for Respondent: Louise Jeanty, Supervisor of Quality Improvement for Sunshine Health; Katherine Calonje, LTC Supervisor for Sunshine Health; Dr. Andrew Russell, Medical Director for Sunshine Health; Izara Salzedo, Care Coordinator for Sunshine Health; and Eric Colon, Director of Case Management for Sunshine Health.

Linda Latson, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Petitioner's Authorized Representative did not introduce any exhibits at the Fair Hearing. Respondent introduced an evidence packet containing one hundred and thirty-seven (137) pages, which was admitted into evidence as Respondent's Composite Exhibit 1. Respondent's Composite Exhibit 1 included the following: Table of Contents; Medicaid Fair Hearing Summary (dated September 11, 2020); Notice of Adverse Benefit Determination ("NABD") (dated June 18,

2020); Long Term Care Person-Centered Plan (“Previous Plan of Care”) (signed May 8, 2020); Long Term Care Person-Centered Plan (“Present Plan of Care”) (signed September 4, 2020); Florida Department of Elder Affairs: 701B Comprehensive Assessment (“Previous 701B Comprehensive Assessment”) (dated May 5, 2020); Florida Department of Elder Affairs: 701B Comprehensive Assessment (“Current 701B Comprehensive Assessment”) (dated August 3, 2020); Request for an Appeal of Grievance Form (dated July 4, 2020); Fax cover sheet (dated July 28, 2020); Medical records from [REDACTED] (dated [REDACTED] 2020, [REDACTED] 2020, and [REDACTED] 2020); Standard Appeal Acknowledgment letter (dated July 13, 2020); Notice of Plan Appeal Resolution (“NPAR”) (dated August 5, 2020); Sunshine Health Policy and Procedure: LTC (Long Term Care) Ancillary Service Criteria (LT.UM.09) (“LTC Ancillary Service Criteria”); Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010 (166); and an Authorization letter (dated September 3, 2020).

FINDINGS OF FACT

1. As of [REDACTED] 2018, Petitioner is an enrolled member of Sunshine Health’s Long-Term Care (“LTC”) Program. *See* Respondent’s Composite Exhibit 1, page 2. Sunshine is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.
2. Petitioner is an eighty-eight (88) year old woman residing in the community with her spouse. *Id.* at 51. Petitioner has a daughter who lives across the street from her. *Id.* Petitioner’s Authorized Representative is one of the Petitioner’s daughters. *Id.* Petitioner experiences the following health conditions: Acid Reflux/GERD; Allergies; Arthritis; Cancer; Diabetes; Occasional Dizziness; Fibromyalgia; Frequent Bowel and Bladder Incontinence; COPD; Multiple Sclerosis

(MS); Right Side Paralysis; Sleep Apnea; and Insomnia. *Id.* at 56-57. Petitioner does not have a primary caregiver. *Id.* at 64. Petitioner is alert, oriented, cooperative, and her cognitive function is intact. *Id.* at 72, 75. Petitioner has not been diagnosed with a mental condition or psychiatric disorder by a health professional. *Id.* at 58.

3. On March 3, 2020, Petitioner underwent an Annual Depression Screening (Code: G0444) at [REDACTED]. *Id.* at 78. The provider reported a score of 0 on the Depression Screening. *Id.* The provider stated, "Depression screening. . .was negative with no intervention warranted at this time." *Id.* at 83.

4. Petitioner has not fallen in the last 12 months. *Id.* at 78. Petitioner uses a manual wheel chair and a motorized scooter. *Id.* at 78. Petitioner has safety rails in the bathtub/shower. *Id.* at 78. As testified to by [REDACTED] at the Fair Hearing in this matter, Petitioner's husband is in the home after visiting the hospital due to his poor health conditions and is no longer able to be the Petitioner's primary caregiver with respect to hands on care.. As testified to by [REDACTED], [REDACTED] lives 45 minutes away from the Petitioner. Petitioner's other daughter lives nearby, but is a cancer survivor.

5. Petitioner requires assistance (but not total help) with Activities of Daily Living ("ADLs") including bathing, dressing, using the bathroom, transferring, and walking/mobility. *Id.* at 54. Petitioner needs supervision or prompt with eating. *Id.* Petitioner uses an assistive device for using the bathroom, transferring, and walking/mobility. *Id.* Petitioner requires total assistance with Instrumental Activities of Daily Living ("IADLs") including heavy chores, light housekeeping, managing money, preparing meals, and shopping. *Id.* at 55. Petitioner requires assistance (but not total help) with managing medication and using transportation. *Id.* As testified to by [REDACTED]

██████, Petitioner is relatively independent, but needs someone to prepare her meals and address her incontinence. Petitioner's needs assistance with ADLs and IADLs was reiterated by Dr. Rullell at the hearing.

6. Petitioner's present care plan is as follows:

- 19 hours a week of Personal Care Services until 6/30/2020 then to resume
- 15 hours a week of Personal Care Services on 7/1/2020
- 22 hours a week of Homemaker Services until 6/30/2020 then to resume
- 20 hours a week of Homemaker Services on 7/1/2020
- 5 meals a week of Home Delivered Meals
- Monthly PERS (Personal Emergency Response System)

Id. at 2, 26.

7. On June 11, 2020, Sunshine Health received Petitioner's request for an additional four (4) hours per week of Personal Care services, an additional two (2) hours per week of Homemaker services, and an additional six (6) hours per week of Adult Companion Care services. *Id.* at 4.

8. On June 18, 2020, Sunshine Health issued an NABD denying Petitioner's request based on medical necessity. *Id.* at 4-5. The NABD stated as follows:

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

- We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (*See Rule*)
- Meet all of the following criteria for all extended state plan services used for the purposes of maintenance therapy and all other home and community-based services.
 1. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
 2. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide; and

3. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;
and one of the following:
 1. Enable the enrollee to maintain or regain functional capacity; or
 2. Enable an enrollee receiving long-term services and supports to have access to the benefits of community living, to achieve person-centered goals, and live and work in the setting of their choice

...

The facts that we used to make our decision are: The request for an extra four (4) hours per week of Personal Care services, an extra two (2) hours per week of Homemaker services, and the addition of six (6) hours per week of Adult Companion Care services is denied for lack of medical necessity. Based on the assessment, the members currently approved services are adequate to meet the member's care needs.

The member's present care plan includes:

- 19 hours a week of Personal Care Services until 6/30/2020 then to resume
- 15 hours a week of Personal Care Services on 7/1/2020
- 22 hours a week of Homemaker Services until 6/30/2020 then to resume
- 20 hours a week of Homemaker Services on 7/1/2020
- 5 meals a week of Home Delivered Meals
- Monthly PERS (Personal Emergency Response System)

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Id. at 4-5.

9. On August 5, 2020, Sunshine Health issued an NPAR partially approving Petitioner's plan appeal. *Id.* at 97-98. The NPAR approved Petitioner's request for additional Personal Care services. *Id.* The NPAR explained as follows:

On July 6, 2020, we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated June 18, 2020, Notice of Adverse Benefit Determination Number [REDACTED], denying the extra 4 hours per week of personal care services (the person who helps bathes and dress you), and the extra 2 hours per week of homemaker services (the person who cleans for you), and the additional 6 hours per week of companion care (the person who helps watches over you) provided to [Petitioner].

On August 4, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby partially approves your plan appeal. As a result, [Petitioner] will receive the extra 4 hours per week of personal care services, will not receive the extra 2 hours per week of homemaker services, and the additional 6 hours per week of companion care, effective August 4, 2020.

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the denial of extra services is now partially overturned. Sunshine Health will now approve the extra 4 hours/week of Personal Care Services, and will continue to deny the remaining requested extra 2 hours/week of Homemaker Services, and will continue to deny the 6 hours/week of Companion Care Services.

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. This decision was made by a Sunshine Health's Medical Director who is Board Certified in Internal Medicine, Geriatric Medicine, and Hospice & Palliative Care.

Id. (Emphasis added).

10. On September 2, 2020, Petitioner's Authorized Representative timely requested a Fair Hearing to contest Respondent's denial of Homemaker services and Respondent's denial of Adult Companion Care services.

11. On September 3, 2020, Sunshine Health issued an Authorization letter approving Petitioner's request for additional Homemaker services. *Id.* at 135-137. Petitioner is receiving twenty-two (22) hours per week of Homemaker services for the certification period September 2, 2020, through October 31, 2020. *Id.*

12. On September 11, 2020, the undersigned issued an Order Consolidating and Scheduling Consolidated Fair Hearing by Telephone and Prehearing Instructions, scheduling the instant Fair Hearing to be conducted by telephone on September 15, 2020, at [REDACTED]

13. At the hearing, [REDACTED] acknowledged that Sunshine Health approved Petitioner's request for additional Homemaker services prior to the Fair Hearing. Ms. Mojica confirmed that

Sunshine Health approved Petitioner's request for additional Homemaker services prior to the Fair Hearing.

14. At the hearing and under oath, [REDACTED] argued that Petitioner's mental health is at risk based on her interactions with the Petitioner. [REDACTED] testified that Petitioner's current services are allocated Monday through Friday, and argued that Petitioner needs companionship on the weekends. [REDACTED] argued that Petitioner's hands-on care needs are sufficiently met with the approved 19 hours per week of Personal Care Services and 22 hours per week of Homemaker services, but Petitioner's needs socialization on the weekends. As testified to by [REDACTED], she observed Petitioner's forgetfulness and depressive state and argued that Petitioner would benefit from a companion. [REDACTED] describes Petitioner's mental state as "depressive" from her observations.

At the hearing, Dr. Russell testified that Adult Companion Care services were denied because Sunshine Health determined that Petitioner is not at-risk of social isolation and Petitioner is not living alone. Sunshine Health considered Petitioner's natural support, including Petitioner's husband living in the home and Petitioner's other daughter living across the street to provide companionship. He argued that Petitioner's current services and natural support are sufficient to meet Petitioner's need for supervision and socialization.

CONCLUSIONS OF LAW

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

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

17. 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).

18. 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.).

19. The Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (“LTC Policy”) (March 2017), incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs LTC services available to eligible Medicaid recipients in the State of Florida.

20. The 701B Comprehensive Assessment is, “an individualized, complete assessment of an individual’s medical, developmental, behavioral, social, financial, and environmental status. . . . to determine eligibility for the LTC program based on the need for a nursing facility level of care.” § 1.3.5 of the LTC Policy.

21. Natural Supports are, “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” § 1.3.16 of the LTC Policy.

22. The LTC Coverage Policy defines ADLs and IADLs as follows:

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
- 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)

23. The LTC Policy states the following regarding coverage criteria:

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary;
- Do not duplicate another service; and
- Meet the criteria as specified in the policy.

4.2 Specific Criteria

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

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

4.2.1 Home and Community-Based Supportive Services

The LTC program benefit includes coverage of the following home and community-based supportive services:

4.2.1.1 Adult Companion Care

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

...

4.2.1.9 Homemaker Services

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

...

4.2.2 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.

24. The LTC Policy defines “Medically Necessary” or “Medical Necessity” as follows:

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.

(Emphasis added).

25. Respondent relied upon their LTC Ancillary Service Criteria to make its Medical Necessity determination. See Respondent's Composite Exhibit 1, pages 87-117. The LTC Ancillary Service Criteria states as follows regarding Adult Companion Care services:

1. Determinants for Services

When considering the level of support the member requires and which of the ancillary services may support the member's cognitive, functional, environmental, and social needs, several elements are to be considered. The review for the medical necessity of the ancillary services includes consideration of the member's support needed due to ADL deficits, living situation, and supervision needs.

a) Activities of Daily Living (ADL's)/Instrumental Activities of Daily Living (IADL's)

- Independent where member is able to provide the task without support, with or without assistive devices
- Minimal functional impairment where the ADL's require one of the following:
 - Supervision
 - At least minimum assistance
 - Member ambulates with assistance of a person or a device
 - Member transfers require at least minimum assistance
- Moderate functional impairment where two of the follow apply
 - Member has ADLs requiring at least minimal assistance
 - Member ambulates with assistance of a person or device
 - Member transfers require at least minimum assistance
- Maximum and persistent functional impairment without available caregiver support where all of the following exist:
 - Member has ADLs requiring total assistance
 - Member is non-ambulatory
 - Member transfers require one (1) to two (2) person assist
 - Member's treating physician has certified that member meets Maximum unctional impairment.

b) Living situation consideration

- Lives alone.
- Lives with family (with consideration of the number of days and hours that family members are not available to assist the member). Lives with non-family (with consideration of the number of days and hours that nonfamily members are not available to assist the member).

c) Supervision needs, including:

- Wandering risk: Member has already been found to leave their home unsafely and/or is unable to find their way back.
- Confused/disoriented and at risk to themselves: Member is confused and/or disoriented to the point that they are unable to perform functional activities, and if they do are at risk of harm to themselves.
- Member has a cognitive impairment that prevents them from knowing when or how to carry out personal care tasks and caregivers are not able to provide the services. The member is incapable of learning despite efforts to train in the care tasks. The member has memory deficits, which prevent them from managing care tasks.
- Member is unable to call for help, even with a personal emergency response unit. Member's medical status will not permit the member to all for help, even with assistance of a personal emergency response unit.

d) Available Supports

- No assistance needed or Always has assistance
- Has assistance most of the time
- Rarely has assistance
- Never has assistance

Services in Place

- Provided by Sunshine Health
- Provided by other Provider insurance

The criteria for each ancillary service is described below:

2. Adult Companion Care

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks include Adult Companion Care to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

a) Trigger diagnosis include:

- Advanced Alzheimer's disease & dementia
- Mental Illness requiring supervision
- Parkinson's disease
- Multiple Sclerosis
- ALS
- Congestive Heart Failure
- COPD
- Cancer
- End Stage Renal disease
- TBI
- Other diagnosis as deemed medically necessary by Medical Director

b) Four (4) Dimensions of Determination

- Need for Supervision – safety risk if left without supervision
 - See Section C.1.c. for more details
- Informal Supports
 - None
 - Few friends/family in area
 - Family nearby
- Living Situation
 - Lives alone
 - Lives with others but is alone for extended periods of time due to the necessary absence of a caregiver
 - Lives with caregiver and others
- Services in Place
 - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations for Adult Companion Care 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 alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.

5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal care tasks.
6. The member has memory deficits, which prevent him or her from managing care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in and comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

Respondent's Composite Exhibit 1, pages 104-134.

Respondent's Denial of Adult Companion Care services

26. Petitioner is an eighty-eight (88) year old woman residing in the community with her husband. *See supra* ¶ 2. Petitioner is alert, oriented, cooperative, and with her cognitive function intact. *See supra* ¶ 2. Petitioner has not been diagnosed with a mental condition or psychiatric disorder by a health professional and has not fallen in the last 12 months. *See supra* ¶ 2. Petitioner's daughter lives across the street from the Petitioner and Petitioner's Authorized Representative lives 45 minutes away from the Petitioner's residence. *See supra* ¶ 2. Respondent denied Adult Companion Care services because Respondent determined that Petitioner is not at-risk of social isolation and Petitioner is not living alone. *See supra* ¶ 15. Respondent considered Petitioner's natural support of her husband and her daughter, who lives across the street. *See supra* ¶ 15. Respondent argued that Petitioner's current services and natural support are sufficient to meet Petitioner's need for supervision and socialization. *See supra* ¶ 15.

27. As for the LTC Ancillary Service Criteria criteria at issue, Dr. Russell argued that Petitioner does not live alone and is not at-risk for social isolation. *See supra* ¶ 15. The LTC Ancillary Service Criteria for Adult Companion Care services weighs two factors: Trigger diagnosis; and Four (4) Dimensions of Determination (Need for supervision; Informal supports; Living Situation; and Services in place). *See supra* ¶ 26. Petitioner is diagnosed with a trigger diagnosis (Multiple Sclerosis, COPD). *See supra* ¶ 2. However, the current 701B Comprehensive Assessment and medical records submitted from [REDACTED] does not indicate that Petitioner's safety is at risk if left without supervision. Petitioner's informal supports include her husband, [REDACTED] who lives 45 minutes away, and Petitioner's other daughter who lives across the street from Petitioner's residence. *See supra* ¶ 2. Petitioner lives with her husband. *See supra* ¶ 2. Petitioner's current LTC services in place are as follows: 19 hours per week of Personal Care Services; 22 hours per week of Homemaker services; 5 Home-Delivered Meals per week; and month Personal Emergency Response System. *See supra* ¶ 4. The undersigned considered Petitioner's Authorized Representative's testimony with respect to Sunshine's internal criteria, the Definitions Policy criteria for Medical necessity, and the LTC Policy criteria for Medical Necessity with respect to Adult Companion Care services.

28. The LTC Policy covers Adult Companion Care services if they are determined to be medically necessary. *See supra* ¶ 24. To be medically necessary under the LTC Policy, nursing facility services and mixed services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. *See supra* ¶ 25. All other LTC supportive services must meet all of the criteria in 1.3.14(b). *See supra* ¶ 25. The LTC Policy classifies Adult Companion Care services as Home and Community-Based Supportive Services. *See supra* ¶ 24.

29. The LTC Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, requires three criteria and one of two other criterion, to be met in order for services to be medically necessary. *See supra* ¶ 24. Based on the NABD, the NPAR, and Dr. Russell’s testimony, Respondent denied Petitioner’s request for six (6) hours per week of Adult Companion Care services for not meeting the following medical necessity standard: must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient’s needs. *See supra* ¶ 8, 9, 15. Sunshine Health defines Adult Companion Care services as, “non-medical care, supervision, and socialization to a functionally impaired adult.” *See supra* ¶ 26. The LTC Policy defines Adult Companion Care services as, “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.” *See supra* ¶ 24. Adult Companion Care includes assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the Petitioner. *See supra* ¶ 24. Thus, Petitioner must prove that there is an unmet need of six (6) hours per week of non-medical care, supervision when necessary to protect the health, safety, and well-being of the Petitioner, or to provide social enrichment of the functionally impaired Petitioner.

30. To be medically necessary, the LTC Policy requires that the six (6) hours per week of Adult Companion Care services at issue 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.” The record indicates that six (6) hours per week of Adult Companion Care services are not individualized and specific to any symptoms, diagnosis, or injury, and in excess of the Petitioner’s needs. ██████████ asserts that she has observed the Petitioner in a depressive state,

but the record does not indicate that the Petitioner has been diagnosed with depression. Further, Petitioner lives with her husband who is no longer able to provide hands on care with the Petitioner, but the record does not indicate that the Petitioner's husband is not able to provide supervision or social enrichment while living in the same home as the Petitioner. Again, Adult Companion Care is non-medical care. In addition, the record indicates that the Petitioner's daughter is a cancer survivor and lives across the street from the Petitioner's residence. However, the undersigned found insufficient evidence that the Petitioner's daughter is unable to provide supervision or social enrichment while living in close proximity to the Petitioner. Petitioner also receives a combined forty-one (41) hours per week of LTC services (Personal Care services and Homemaker services) rendered by a home health aide coming into Petitioner's home. ■■■■■ ■■■■■ did not present sufficient evidence that Petitioner's needs for assistance with meal preparation, laundry, and light housekeeping tasks are not appropriately met with the currently approved 19 hours per week of Personal Care Services and 22 hours per week of Homemaker services. Thus, the record indicates that the Petitioner's current plan of care is sufficient to meet the Petitioner's Long-term care needs.

31. Based on the record, Petitioner has not demonstrated by a preponderance of the evidence that the Adult Companion Care services at issue are not in excess of the Petitioner's needs at this time. Thus, Petitioner has not established that six (6) hours per week of Adult Companion Care services are medically necessary.

32. Accordingly, upon consideration of Respondent's Composite Exhibits 1, the parties' sworn testimony, the LTC Policy, and the Definitions Policy, and Sunshine Health's LTC Ancillary Service Criteria, , the undersigned concludes that Petitioner has not shown by a preponderance of the

evidence that Respondent's denial of Petitioner's request for six (6) hours per week of Adult Companion Care services was incorrect.

Respondent's Denial of Homemaker services

33. Pursuant to Fla. Admin. Code R. 59G-1.100(9)(b)(6), the Hearing Officer is authorized to dismiss a request for a Fair Hearing because it is moot. The Florida Supreme Court explained in *Godwin v. State*, 593 So.2d 211 (1992) (citing *Dehoff v. Imeson*, 153 Fla. 553 (1943)) that “[a]n issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect. . . . A case is ‘moot’ when it presents no actual controversy or when the issues have ceased to exist.” See also *J.W. v. Agency for Health Care Admin.*, 178 So. 3d 542, 544–45 (Fla. 1st DCA 2015) (explaining that because J.W. received the requested treatment, “DCF was correct to dismiss J.W.'s fair hearing request under these circumstances because, once he received the continued psychiatric treatment he'd asked for, *he* no longer needed agency review of Magellan's decision not to authorize the treatment. Rather, the issue at that point became whether Flagler Hospital could be paid by Medicaid for the services it had rendered *without prior authorization.*”) (Emphasis in original).

34. In this case, Petitioner requested an additional two (2) hours per week of Homemaker services. See supra ¶ 7. Prior to the hearing, Respondent approved an additional two (2) hours per week of Homemaker services, effective immediately. See supra ¶ 11. At the hearing, Petitioner's Authorized Representative acknowledged Respondent's approval of Homemaker services. See supra ¶ 13. Petitioner's Authorized Representative did not present any evidence or testimony indicating that there are any additional issues that the Office of Fair Hearings has jurisdiction to address regarding this specific request for Homemaker services. Accordingly, the

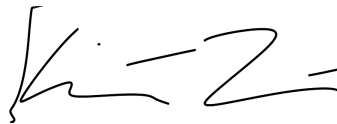
undersigned concludes that there is no relief that can be granted at a Fair Hearing at this time regarding Petitioner's request for Homemaker services.

DECISION

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

This case regarding Petitioner's request for an additional two (2) hours per week of Homemaker services is dismissed as moot, and is now closed.

DONE AND ORDERED this 18th day of September, 2020, in Tallahassee, Leon County, Florida.



Digitally signed by Kristopher León
Reason: 20-FH[REDACTED]; 20-FH[REDACTED]
Date: 2020.09.18 07:41:35 -04'00'

KRISTOPHER LEÓN, Hearing Officer
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

COPIES FURNISHED TO:



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