



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

FILED

Nov 12, 2020, 8:50 am
OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 20-FH █████

Plan ID No.: █████

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

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████

PETITIONER,

AHCA Case No.: 20-FH █████

Plan ID No.: █████

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

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PETITIONER,

AHCA Case No.: 20-FH █████

Plan ID No.: █████

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

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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 Medicaid Fair Hearing in the above styled case on October 13, 2020, at [REDACTED]

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner's Authorized Representative

For the Respondent:

Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of homemaker services, from 8 hours per week to 3 hours per week, was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 10 hours per week of adult companion care services was correct.

The third issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 7 home delivered meals per week was correct.

The fourth issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 1 pack of wipes per month was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and daughter, appeared at the Fair Hearing and provided testimony on Petitioner’s behalf. Petitioner did not appear at the Fair Hearing.

Maria Mojica (“Ms. Mojica”), Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine” or “Respondent”) represented Respondent at the hearing. The following individuals appeared on behalf of Respondent: Dr. John Carter (“Dr. Carter”), Long Term Care (“LTC”) Medical Director for Sunshine; Portia Donnellan, Care Coordinator for Sunshine; Louise Jeanty, Supervisor of Quality Improvement for Sunshine; Jacqueline Seaton, Manager for Case Management for Sunshine; Andrea Hoffman, LTC Care Coordinator for Sunshine; and Pamela Williams, Supervisor of Case Management for Sunshine.

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

Prior to the hearing, Petitioner did not send an evidence packet to the Office of Fair Hearings and Respondent, nor did Petitioner introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 129-page evidence packet regarding homemaker services. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated September 17, 2020; a Notice of Adverse Benefit Determination (“NABD”), dated June 29, 2020; Sunshine’s care plan, signed June 18, 2020 and January 24, 2020; the care plan, signed September 4, 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of June 18, 2020 (the “6/18/20 701B”); the 701B with an assessment date of

August 19, 2020 (the "8/19/20 701B"); the email transactions between Sunshine and [REDACTED]; the completed Request for an Appeal or Grievance Form, dated July 15, 2020; a letter from Sunshine to Petitioner, dated July 28, 2020; the Revised Notice of Plan Expedited Appeal Resolution, dated September 19, 2020; the Sunshine Health Policy and Procedure LT.UM.09; the Sunshine Health Policy and Procedure LT.UM.10; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent's 129-page 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 129-page evidence packet regarding adult companion services, home delivered meals and wipes. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated September 17, 2020; a Notice of Adverse Benefit Determination ("NABD"), dated June 29, 2020; Sunshine's care plan, signed June 18, 2020 and January 24, 2020; the care plan, signed September 4, 2020; the 6/18/20 701B; the 8/19/20 701B; the email transactions between Sunshine and [REDACTED]; the completed Request for an Appeal or Grievance Form, dated July 15, 2020; a letter from Sunshine to Petitioner, dated July 28, 2020; the Revised Notice of Plan Expedited Appeal Resolution, dated September 19, 2020; the Sunshine Health Policy and Procedure LT.UM.09; the Sunshine Health Policy and Procedure LT.UM.10; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent's 129-page evidence packet into evidence as Respondent's Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine's LTC plan. See Respondent's Composite Exhibit 1, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is a married, 86-year-old female who resides in a private residence. See Respondent's Composite Exhibit 1, pages 49-50. The 8/19/20 701B, which is the most recent 701B, reflects that Petitioner has the following health conditions: allergies (Sulfa, Cipro); arthritis (rheumatoid, osteo); high blood pressure; high cholesterol; insulin dependent diabetes mellitus ("IDDM"); gallbladder removal (past); frequent incontinence of bowel and bladder; lung problems (pneumonia, past); urinary tract infection (past); and "DVT, drop foot, aspiration (episodes of unresponsiveness), constipation." See Respondent's Composite Exhibit 1, pages 55 – 56.
3. The 8/19/20 701B reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner uses assistive devices for walking/mobility. See Respondent's Composite Exhibit 1, page 53. Petitioner needs assistance (but not total help) with bathing, eating, and using the bathroom. *Id.* Petitioner needs total assistance (cannot do at all) for dressing, transferring, walking/mobility. *Id.*
4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the 8/19/20 701B reflects that Petitioner needs assistance (but not total help) with using the phone. See Respondent's Composite Exhibit 1, page 54. Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. *Id.* The 8/19/20 701B states "[h]usband assists with transportation and managing money and daughter/caregiver assists as needed with all IADL's."

Id. at 55. Petitioner “wears pull ups, but needs assistance getting them on and off, once she is helped to the bathroom she can use the toilet, but needs assistance wiping. . . .” *Id.* Petitioner “uses walker around the home but uses wheelchair when leaving home.” *Id.*

5. Aside from the services and medical supplies at issue, Petitioner is currently authorized to receive the following home and community-based services: 10 hours per week of personal care services; and 1 case of pull ups per month. *See* Respondent’s Composite Exhibit 1, page 29.

6. Petitioner’s personal care services, adult companion care services, and homemaker services are provided under the Patient Directed Option delivery model of the Florida Medicaid Program.

7. On June 29, 2020, Respondent issued an NABD reducing Petitioner’s homemaker services from 8 hours weekly to 3 hours weekly. *See* Respondent’s Composite Exhibit 1, page 4. The NABD stated the reason for Respondent’s determination as follows:

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

...

Meet all of the 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 has looked at the member's present care needs and provided home services. The member's present care plan includes 10 hours per week of Personal Care Services and 8 hours per week of Homemaker Services.

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce Homemaker Services from 8 hours per week to 3 hours per week, a reduction of 5 hours per week of Homemaker Services.

The updated care plan approved by Sunshine Health will include 10 hours per week of Personal Care Services and 3 hours per week of Homemaker Services.

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

Respondent's Composite Exhibit 1, pages 4 – 5.

8. Petitioner requested an appeal of Respondent's reduction. See Respondent's Composite Exhibit 1, page 74. On September 19, 2020, Respondent sent Petitioner a Revised Notice of Plan Expedited Appeal Resolution, denying Petitioner's plan appeal. *Id.* at 81. The Revised Notice of Plan Expedited Appeal Resolution stated as follows:

On July 28, 2020 we received your timely plan expedited appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated June 29, 2020 Notice of Adverse Benefit Determination Number [REDACTED] reducing the home maker hours from 8 hours per week to 3 hours per week (which is a reduction of 5 hours/ week of homemaker service) provided to [Petitioner].

On July 29, 2020 after consideration of the information you provided to Sunshine Health in support of your expedited plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [Petitioner] will not the 5 hours per week of homemaker service effective July 29, 2020.

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the reduction of Homemaker Services from 8 hours/week to 3 hours/week (which is a reduction of 5 hours/week of Homemaker Services) is upheld. **The presently approved home services are enough to meet the member's care needs.** 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.

Respondent's Composite Exhibit 1, page 81. (Emphasis added.)

9. On June 29, 2020, Respondent issued an NABD terminating Petitioner's 10 hours per week of adult companion care services, 7 meals per week of home delivered meals, and 1 pack per month of wipes. See Respondent's Composite Exhibit 2, page 4. The NABD stated the reason for Respondent's determination as follows:

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

...

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

4. 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;
5. 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
6. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider;

And one of the following:

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

...

The facts that we used to make our decision are: Sunshine Health has looked at the member's present care needs and provided home services. The member's present care plan includes:

- 10 hours per week of Personal Care Services
- 3 hours per week of Homemaker Services
- 10 hours per week of Companion Care Services

- 7 meals per week of Home Delivered Meals
- 1 box per month of Gloves
- 1 case per month of Pull-Ups
- 1 packs per month of Wipes
- 1 visit per month of Pest Control

Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the Companion Care Services. Companion Care is provided to prevent social isolation. **The member does not live alone and there is a low risk of social isolation.**

Sunshine Health will terminate the 7 meals per week of Home Delivered Meals. **The member has Homemaker Services, which can assist with meal preparation.**

Sunshine Health will terminate Pest Control 1 visit/month as this service is not meant to be provided on an ongoing basis.

Sunshine Health will terminate the 1 pack/month of wipes based on member's reported incontinence type/level.

The updated care plan approved by Sunshine Health will include:

- 10 hours per week of Personal Care Services
- 3 hours per week of Homemaker Services
- Gloves: 1 box/month
- Pull-Ups: 1 case/month

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Respondent's Composite Exhibit 2, pages 4 – 6. (Emphasis added.)

10. Petitioner requested an appeal of Respondent's terminations. See Respondent's Composite Exhibit 2, page 75. On September 19, 2020, Respondent sent Petitioner a Revised Notice of Plan Expedited Appeal Resolution, denying Petitioner's plan appeal. *Id.* at 82. The Revised Notice of Plan Expedited Appeal Resolution stated as follows:

Health's Notice of Adverse Benefit Determination dated June 29, 2020 Notice of Adverse Benefit Determination Number [REDACTED] terminating 7 hours/week of Companion Care Services, 7 meals/week of Home Delivered Meals, monthly Pest Control Services and 1 pack/month of Wipes provided to [Petitioner].

On July 29, 2020 after consideration of the information you provided to Sunshine Health in support of your expedited plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [Petitioner] will not receive 7 hours/week of

Companion Care Services ,7 meals/week of Home Delivered Meals, monthly Pest Control Services and 1 pack/month of Wipes, effective July 29, 2020.

The reason for our decision was: Based on the assessment of the member's care needs and household and caregiver status, the terminations of services and supplies are upheld (remains denied). The termination of the 7 hours/week of Companion Care Services is upheld, and the termination of the 7 meals/week of Home Delivered Meals is upheld, and the termination of the monthly Pest Control Services is upheld, and the termination of the 1 pack/month of Wipes is upheld. **The presently approved services and supplies are enough to meet the member's care needs.** This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) 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.

Respondent's Composite Exhibit 2, page 82. (Emphasis added.)

11. On September 1, 2020, ██████████ requested a Fair Hearing due to the reduction of homemaker services and the termination of adult companion services, home delivered meals, and wipes. On September 11, 2020, the undersigned scheduled the Fair Hearing for October 13, 2020, at ██████████ and all parties were duly notified.

12. Dr. Carver personally reviewed all documentation submitted to Respondent for this case, including all documents admitted in evidence. Dr. Carver testified that the reduction and terminations in this case are medically appropriate. In making a determination in this case, Respondent considered the amount of assistance Petitioner needs with ADLs and IADs, the number of adults living in the home, and Petitioner's incontinence level. Dr. Carver explained that homemaker services were reduced, as Petitioner lives with a spouse and daughter and Petitioner's family members do not work outside the home. Dr. Carver explained that adult companion care services were terminated, because there is more than one family member in the

household. Dr. Carver explained that the 7 home delivered meals were terminated, because more than one family member lives in the home and Petitioner is getting personal care services. Dr. Carver testified that personal care services are for hands-on care, and can encompass non-hands-on care such as homemaker services, companion services, and light duties. Addressing the termination of Petitioner's wipes, Dr. Carver testified that one pack of wipes per month is more of a convenience item, since Petitioner's incontinence can be taken care of by general hygiene measures, such as using a washcloth and soap. Dr. Carver testified that Petitioner is getting pullups, and they are adequate dot meet her incontinence needs.

13. Respondent's representative, Maria Mojica, explained on the record that the Notice of Plan Appeal Resolution, dated July 30, 2020, contains a typographical error, as it states that Respondent terminated 7 hours per week of adult companion care services, but it *should* reflect that Respondent terminated 10 hours per week of adult companion care services. The parties agreed on the record that Respondent terminated 10 hours per week of adult companion care services.

14. [REDACTED] is Petitioner's daughter, primary caregiver, and direct service worker. As Petitioner's direct service worker, [REDACTED] provides Petitioner's personal care services, homemaker services and adult companion care services. Two adults reside in the home with Petitioner, [REDACTED] and Petitioner's husband. Neither [REDACTED] nor Petitioner's husband work outside the home. [REDACTED] explained that "cutting" the hours has made it hard for her.

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 Statute § 409.285(2). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

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.

18. Because Respondent is reducing existing services and terminating 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.).

19. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) ("SMMC LTC Policy"). The Agency's SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC 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.

...

1.3.18 Plan of Care A description of the enrollee’s goals for long-term care, the services and supports needed to meet those goals, and the specific service needs of each enrollee, showing the projected duration, desired frequency, and type of provider furnishing each service, and the scope of the services to be provided.

...

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.

...

4.2.1.1 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.

...

4.2.1.8 Home Delivered Meals

The provision of nutritionally sound meals delivered to an enrollee’s home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake. The meals must meet the current Dietary Guidelines for Americans, the United States Department of Agriculture My Pyramid Food Intake Pattern and reflect the predominant statewide demographic.

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:

...

4.2.2.5 Medical Equipment and Supplies

In accordance with Rule 59G-4.070, F.A.C. This service includes the provision of medical equipment and supplies specified in the plan of care, including: devices, controls, or appliances that enable the enrollee to increase the ability to perform activities of daily living; devices, controls, or appliances that enable the enrollee to perceive, control, or communicate with the environment in which he or she

lives; items necessary for life support or to address an enrollee’s physical conditions, along with ancillary supplies and equipment necessary to the proper functioning of such items; such other durable and non-durable medical equipment not available under the State Plan that is necessary to address enrollee needs, including consumable medical supplies, such as adult diapers; and repair of such items or replacement parts.

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.

See SMMC LTC Policy, pages 1-8.

20. 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.

Medically necessary or medical necessity for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

21. In the instant case, Respondent: reduced homemaker services hours from 8 hours per week to 3 hours per week; terminated 10 hours per week of adult companion care services; terminated 7 meals per week of home delivered meals; and terminated 1 pack per month of wipes. *See supra* ¶ 7, 8, 9, and 10. As established on the record by the evidence and testimony, Respondent reduced homemaker services and terminated adult companion care services, home delivered meals, and wipes, because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. *Id.*

22. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 19.

23. Regarding ADL's, Petitioner uses assistive devices for walking/mobility and needs: assistance (but not total help) with bathing, eating, and using the bathroom; and total assistance (cannot do at all) for dressing, transferring, walking/mobility. *See supra* ¶ 3. Regarding IALs, Petitioner needs: assistance (but not total help) with using the phone; and total assistance

(cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. *See supra* ¶ 4.

24. Aside from the services and medical supplies at issue, Petitioner is currently authorized to receive the following home and community-based services: 10 hours per week of personal care services; and 1 case of pull ups per month. *See supra* ¶ 5. Petitioner is also authorized to receive 1 box of gloves per month. *See supra* ¶ 9.

Homemaker Services

25. The evidence presented in this case reflects that Respondent's reduction of homemaker services from 8 hours per week to 3 hours per week is warranted under the circumstances of this case. As stated above, Petitioner requires assistance with ADLs and IADs. *See supra* ¶ 23. Although ██████████ explained that "cutting" the hours has made it hard for her, *supra* ¶ 14, section 1.3.14 of the SMMC LTC Policy mandates that "[t]he medical or allied care, goods, or services furnished or ordered must . . . [b]e furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." *See supra* ¶ 19.

26. The record reflects that Petitioner resides in the home with her husband and ██████████. *See supra* ¶ 2 and 14. Neither Petitioner's husband nor ██████████ works outside the home. *See supra* ¶ 14. Petitioner's [h]usband assists with transportation and managing money and daughter/caregiver assists as needed with all IADL's." *See supra* ¶ 4. 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* ¶ 19. Therefore, Petitioner has natural supports available to assist with her care and needs. Furthermore, the record is devoid of any evidence (i.e., a daily schedule, a schedule of ADLs

and IADLs, the amount of time needed for *each* ADL and IADL) to justify the approval of 8 hours per week of homemaker services. Based upon the evidence presented by both parties, Respondent established that the requested homemaker services are not warranted in this case.

27. Section 1.3.14 of the SMMC LTC Policy mandates that “[t]he medical or allied care, goods, or services furnished or ordered 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* ¶ 19. Petitioner is currently authorized to receive the following home and community-based services: 10 hours per week of personal care services; 1 case of pull ups per month; and 1 box of gloves per month. See *supra* ¶ 5 and 9. It should be noted that the SMMC LTC Policy’s definition of personal care services includes “assistance with preparation of meals, and housekeeping chores.” See *supra* ¶ 19. Considering the SMMC LTC Policy’s definitions for homemaker services, home delivered meals, and personal care services, *supra* ¶ 19, Respondent demonstrated that Petitioner’s aforementioned needs, are sufficiently met by her currently authorized services. Further, given that Respondent established that the requested homemaker services are not warranted in this matter, *supra* ¶ 25 and 26, the requested 8 hours per week of homemaker services is “in excess of [Petitioner’s] needs.” See *supra* ¶ 19.

Adult Companion Care Services

28. Respondent’s termination of Petitioner’s 10 hours per week of adult companion care services is warranted under the circumstances of this case. Section 4.2.1.1 of the SMMC LTC Policy reflects that adult companion care services are “[t]he 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.” See supra ¶ 19.

29. As stated above, Petitioner requires assistance with ADLs and IADs. See supra ¶ 3, 4 and 23. However, Petitioner has natural supports available to assist with her care and needs, supra ¶ 18, as Petitioner resides in the home with her husband and her daughter, [REDACTED]. See supra ¶ 14. Neither Petitioner’s husband, nor [REDACTED], work outside the home. *Id.* Petitioner also receives other home and community-based services. See supra ¶ 5. Although Petitioner has multiple medical conditions, *supra* ¶ 2, Petitioner “uses walker around the home but uses wheelchair when leaving home.” See supra ¶ 4. The evidence does not demonstrate a need for adult companion care services (e.g., a daily schedule, a schedule of non-medical care, a need for social enrichment, or the amount of time needed for non-medical care, supervision and social enrichment). Although [REDACTED] explained that “cutting” the hours has made it hard for her, *supra* ¶ 14, section 1.3.14 of the SMMC LTC Policy mandates that “[t]he medical or allied care, goods, or services furnished or ordered must . . . [b]e furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” See supra ¶ 19.

30. Section 1.3.14 of the SMMC LTC Policy 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 ¶ 19. As noted above, Petitioner is currently authorized to receive the following home and Petitioner also receives other home and community-based services. See supra ¶ 5. The Revised Notice of Plan

Expedited Appeal Resolution explains that Petitioner’s “presently approved services and supplies are enough to meet the member's care needs.” *See supra* ¶ 10. Considering the SMMC LTC Policy’s definitions for natural supports, adult companion care services, homemaking services, home delivered meals, and personal care services, *supra* ¶ 19, Respondent demonstrated that Petitioner’s aforementioned needs, *supra* ¶ 2, 3 and 4, are sufficiently met by her currently authorized services. Given that Respondent established that the adult companion care services are not warranted in this matter, *supra* ¶ 29, the requested adult companion care services are “in excess of [Petitioner’s] needs.” *See supra* ¶ 19.

Home Delivered Meals

31. Respondent’s termination of 7 home delivered meals per week are warranted under the circumstances of this case. Section 4.2.1.8 of the SMMC LTC Policy defines home delivered meals as “[t]he provision of nutritionally sound meals delivered to an enrollee’s home when an enrollee has difficulty shopping for, or preparing food, without assistance. All meals must provide a minimum of 33 1/3% of the current Dietary Reference Intake.” *See supra* ¶ 19.

32. The record reflects that Petitioner requires total assistance with meal preparation. *See supra* ¶ 4. However, Petitioner resides in the home with 2 adults, her husband and [REDACTED]. *See supra* ¶ 14. It appears that the adults who reside in the home with Petitioner can prepare food for Petitioner when they prepare food for themselves. Petitioner offered no testimony to refute this notation. Thus, Petitioner has natural supports available to assist with her care and needs. *See supra* ¶ 19. Additionally, the record reflects that “daughter/caregiver assists as needed with all IADL’s.” *See supra* ¶ 4. Further, Petitioner is currently authorized to receive 10 hours per week of personal care services. *See supra* ¶ 5. The SMMC Policy’s definition of

personal care services includes “assistance with preparation of meals.” *See supra* ¶ 19. Dr. Carver explained that the 7 home delivered meals were terminated, because more than one family member lives in the home and Petitioner is getting personal care services. *See supra* ¶ 12. Considering the totality of Petitioner’s circumstances – including the fact that Petitioner resides with her husband and [REDACTED], and receives other home and community-based services – Respondent established that the termination of the 7 home delivered meals weekly was correct. Based upon the evidence presented by both parties, the termination of home delivered meals was warranted in this case.

Wipes

33. Respondent terminated 1 pack per month of wipes. *See supra* ¶ 21. Section 1.3.14 of the SMMC LTC Policy mandates that “[t]he medical or allied care, goods, or services furnished or ordered 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* ¶ 19. Dr. Carver testified that Petitioner is getting pullups, and they are adequate to meet her incontinence needs. *See supra* ¶ 12. Dr. Carver testified that one pack of wipes per month is more of a convenience item, since Petitioner’s incontinence can be taken care of by general hygiene measures, such as using a washcloth and soap. *See supra* ¶ 12. However, Petitioner has frequent incontinence of bowel and bladder. *See supra* ¶ 2. Although Petitioner receives personal care services, 1 case of pull-ups per month, and 1 box of gloves per month, *supra* ¶ 5 and 9, these services do not appear to be duplicative of the requested wipes. The record reflects that Petitioner “wears pull ups, but needs assistance getting them on and off, once she is helped to the bathroom she can use the toilet, but needs assistance wiping. . . .” *See supra* ¶ 4. Given

Petitioner's frequent incontinence of bowel and bladder, Respondent failed to establish that the requested wipes are in "excess" of Petitioner's needs. Therefore, the termination of the 1 pack of wipes per month was not warranted under the circumstances of this case.

Conclusion

34. In light of the both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the SMMC LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent demonstrated that Petitioner's previously authorized amount of homemaker services, adult companion care services, home delivered meals, and wipes are not medically necessary. The undersigned Hearing Officer finds that Respondent failed to demonstrate that Petitioner's previously authorized amount of wipes are not medically necessary.

35. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent's reduction of homemaker services and termination of adult companion care services, home delivered meals, and wipes was correct. The undersigned Hearing Officer finds that Respondent failed to prove by a preponderance of the evidence that Respondent's termination of wipes was correct.

DECISION

Respondent's reduction of homemaker services from 8 hours per week to 3 hours per week is **AFFIRMED**.

Respondent's termination of 10 hours per week of adult companion care services is **AFFIRMED**.

Respondent's termination of 7 meals per week of home delivered meals is **AFFIRMED**.

Respondent's termination of 1 pack per month of wipes is **REVERSED**.

Petitioner's appeal based on Respondent's reduction of homemaker services, termination of adult companion care services, and termination of home delivered meals in this matter is **DENIED**.

Petitioner's appeal based on Respondent's termination of wipes is **GRANTED**.

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



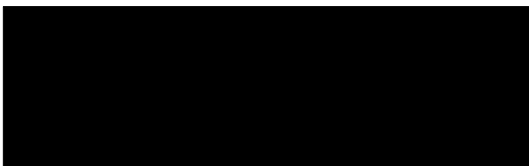
Tracie Hardin
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TRACIE HARDIN, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649
Fax: (850) 487-1423
E-mail: OfficeOfFairHearings@ahca.myflorida.com

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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Sunshine State Health Plan, Inc.
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com