



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

FILED

Nov 13, 2020, 1:55 pm

OFFICE OF FAIR HEARINGS

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PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

█

PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 14, 2020, at █

APPEARANCES

For the Petitioner:

█.
Petitioner

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 decision to reduce Petitioner’s homemaker services was correct. The second issue is whether Respondent proved by a preponderance of the evidence that Respondent’s termination of Petitioner’s adult companion care services was correct.

PRELIMINARY STATEMENT

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

Maria Mojica, Compliance Specialist for Sunshine State Health Plan, Inc. (“Sunshine”) appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. John Carter (“Dr. Carter”), Long Term Care Medical Director for Sunshine; Melissa Layne, Senior Manager for Member Appeals for Sunshine; Geraldine Chechette-Porter, Long Term Care Coordinator for Sunshine; Vanessa DeAndreda, Supervisor of Case Management for Sunshine; Alicia Schwartz, Manager for Case Management, for Sunshine; Melissa McKay, Case Manager Supervisor for Sunshine; and Siyad Shakur Felder, Long Term Care Coordinator for Sunshine.

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

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a forty-two (42)-page evidence packet. The evidence packet included: an e-mail from Petitioner, dated October 12, 2020; a letter from [REDACTED], dated September 8, 2020; a letter from [REDACTED], dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020;

Petitioner medical record, dated [REDACTED] 2019; [REDACTED] Result, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Clinical Report, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2020; Petitioner medical record, dated [REDACTED] 2019. Absent an objection from Respondent, the undersigned admitted the forty-two (42)-page evidence packet as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner two (2) one hundred and seventeen (117)-page evidence packets. The first evidence packet included: a table of contents; a Medicaid Fair Hearing Summary; a Notice of Adverse Benefit Determination ("NABD"), dated July 23, 2020; a Long Term Care Person-Centered Care Plan ("POC"), dated July 15, 2020; a POC, dated September 1, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated July 15, 2020; a letter from Petitioner, dated July 31, 2020; a Request for an Appeal or Grievance Form, dated July 31, 2020; a letter from Petitioner, dated July 30, 2020; a letter from Petitioner, dated August 3, 2020; a letter from Petitioner, undated; a Standard Appeal Acknowledgement, dated August 7, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated August 19, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.10; and Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.010. Absent an objection from Petitioner, the undersigned admitted the first one hundred and seventeen (117)-page evidence packet as Respondent's Composite Exhibit 1. The second packet included: a table of contents; a Medicaid Fair Hearing Summary; an NABD, dated July 23, 2020; a POC, dated July 15, 2020; a POC, dated September 1, 2020; a 701B, dated July 15, 2020; a letter

from Petitioner, dated July 31, 2020; a Request for an Appeal or Grievance Form, dated July 31, 2020; a letter from Petitioner, dated July 30, 2020; a letter from Petitioner, dated August 3, 2020; a letter from Petitioner, undated; a Standard Appeal Acknowledgement, dated August 7, 2020; an NPAR, dated August 19, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.10; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted the second evidence packet as Respondent's Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is fifty-eight (58)-years old. *See* page 13 of Respondent's Composite Exhibit 1. Petitioner is diagnosed with: acid reflux/GERD, rheumatoid arthritis, low blood pressure, occasional dizziness, fibromyalgia, constant bladder incontinence, hypothyroid problems, osteopenia, sjogrens syndrome, and a pulmonary embolism. *Id.* at 42 – 43. Petitioner does not need supervision. *Id.* at 45.
3. For several days each week, Petitioner has "little interest or pleasure in doing things", "feel[s] down, depressed, or hopeless", has "trouble falling or staying asleep, or sleeping too much", "feel[s] tired or [has] little energy." *Id.* at 44.
4. Petitioner's husband, [REDACTED] ("[REDACTED]") provides care for her. *Id.* at 50. Petitioner's husband provided eighty-four (84) hours of care for Petitioner when the 701B assessment was made. *Id.* at 51. At the time [REDACTED] was providing 84 hours of care, he was working part-time. *Id.* at 50. Providing care for Petitioner provides "a lot of [mental or emotional

strain” on [REDACTED]. *Id.* at 51. As testified to by Petitioner, [REDACTED] works three (3) jobs currently. As testified to by Petitioner, [REDACTED] works one job from 7:30 a.m. until 4:00 p.m., Monday through Friday. As testified to by Petitioner, [REDACTED] works a second job from 7:00 p.m. until 10:00 p.m., three (3) nights per week. As testified to by Petitioner, [REDACTED] works a third job on Saturday from 11:00 p.m. until 8:00 a.m. the following morning. As testified to by Petitioner, there are no other family members that provide care.

5. Petitioner’s activities of daily living are as follows: for bathing, dressing, using the bathroom, and transferring, Petitioner needs total assistance (cannot do at all); and for eating and walking/mobility, Petitioner needs assistance (but not total help). *Id.* at 40. Petitioner’s instrumental activities of daily living (“IADLs”) are as follows: for heavy chores, light housekeeping, preparing meals, and managing medication, Petitioner needs total assistance (cannot do at all); for shopping and using transportation, Petitioner needs assistance (but not total help); and for using the telephone and managing money, Petitioner needs no assistance. *Id.* at 41.

6. Petitioner’s former plan of care included the following: twenty-seven (27) hours of personal care services, weekly, seventeen (17) hours of homemaker services, weekly, and twelve (12) hours of adult companion care services, weekly. *Id.* at 26 – 27.

7. In an NABD, dated July 23, 2020, Respondent reduced Petitioner’s homemaker services from seventeen (17) hours, weekly, to eight (8) hours, weekly. *Id.* at 4 - 12. The NABD explained the basis of the reduction as follows:

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

...

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

and one of the following:

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

...

The facts that we used to make our decision are: Sunshine Health looked at the member's present care needs and provided home services. The member's present care plan includes 17 hours/week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Homemaker Services from 17 hours/week to 8 hours/week. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Pages 4 – 5 of Respondent's Composite Exhibit 1.

8. In an NABD, dated July 23, 2020, Respondent terminated Petitioner's twelve (12) hours, weekly, of adult companion care services. See pages 4 – 12 of Respondent's Composite Exhibit 2.

The NABD explained the basis of the termination as follows:

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

...

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

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 looked at the member's present care needs and provided home services and supplies. The member's present care plan includes 12 hours/week of Companion Care Services + 1 case/month of Liners. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 12 hours/week of Companion Care Services, and will terminate the 1 case/month of Liners. 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.

Pages 4 – 5 of Respondent's Composite Exhibit 2.

9. Petitioner requested a plan appeal of the reduction of homemaker services and termination of adult companion care. In support of her plan appeal, Petitioner's physician, [REDACTED]

[REDACTED], submitted a letter that states as follows:

[Petitioner] has been a patient under my care for Rheumatoid arthritis (RA) Fibromyalgia, and Lymphadema since 2017. She experiences RA and Fibromyalgia flares periodically which cause severe fatigue, limit hand dexterity, and cause severe joint pain and swelling. Due to this and her disease severity, it is medically necessary that she receives 17 hours homemaker assistance and 12 hours companion care weekly.

Page 3 of Petitioner's Composite Exhibit 1.

10. Petitioner received an NPAR dated August 19, 2020, upholding the reduction of nine (9) hours, weekly, of homemaker services. The NPAR explained as follows:

The reason for our decision was the appeal to overturn the reduction (decrease) of 9 hours per week of Homemaker Services (the person who helps you around the house) is denied for lack of medical necessity (not needed). Based on the assessment, the member's currently approved services are adequate (enough) to meet the member's care needs. The member's present care plan includes 27 hours per week of Personal Care Services (the person who helps bathe and dress you) and 8 hours per week of Homemaker Services (the person who helps you around the house). This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Pages 70 – 76 of Respondent's Composite Exhibit 1.

11. Petitioner received an NPAR dated August 19, 2020, upholding the termination of twelve (12) hours, weekly, of adult companion care services. The NPAR explained as follows:

The reason for our decision was the appeal to overturn the termination of 12 hours per week of Companion Care Services (the person who helps and watches over you) is denied for lack of medical necessity (not needed). Based on the assessment, the member's currently approved services are adequate (enough) to meet the member's care needs. Companion Care is provided to prevent social isolation (being alone). The member lives with family, has aide services, and there is low risk of social isolation. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

Pages 70 – 76 of Respondent's Composite Exhibit 2.

12. On September 3, 2020, Petitioner requested a Fair Hearing to challenge the reduction of homemaker services and termination of adult companion care.

13. On September 8, 2020, Petitioner's physician, [REDACTED], wrote a letter in support of Petitioner's Fair Hearing. The letter stated as follows:

The patient suffers from rheumatoid arthritis, as well as fibromyalgia and is in constant chronic pain. The patient has pain in the neck, shoulders, hands, low back and knees that is constant on a daily basis. The patient has significant and severe physical deformities with ulnar deviation of all 10 fingers on both hands, as well

as both knees. The patient has been managed with steroid injection in her knees, her neck and has been medically managed for pain with both immediate release narcotic pain medications, as well as gabapentin for nerve pain and fentanyl for extended release control of her pain. The patient has recently been showing signs of rapid deterioration in her ability to care for herself with basic activities of daily living. Her pain is difficult to control and the physical limitations of her hands and knees has made it increasingly more difficult for her to take care of herself. The patient has reached a point where her pain is 8/10 on a visual analog scale and interferes with basic daily activity. The patient is no longer, due to both pain and the physical deformities of her hands and knees, able to perform activities such as bathing, clothing, feeding herself and cleaning her home without significant assistance. The patient also has shown signs from a mental health standpoint of responding extremely well to having companion hours where she has an aide for the expressed purpose of improved mental health and socialization. These hours have been extremely helpful in avoiding the need for additional chronic medications from a mental health standpoint and have been a very stabilizing force in her multifaceted treatment plan in recent years. I highly recommend that the patient receive maximum daily aide and companion care hours in order to stabilize her treatment.

Page 2 of Petitioner's Composite Exhibit 1.

14. On September 15, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 14, 2020, at [REDACTED]

15. As testified to by Petitioner, the care aide formerly provided care 9:00 a.m. until 6:00 p.m. each day. As testified to by Petitioner, the care aide currently provides care from 11:00 a.m. until 5:00 p.m. every day except for Thursday and Sunday, and from 11:00 a.m. until 4:00 p.m. on Thursday.

16. As testified to by Petitioner, the care aide spends approximately five (5) hours each week grocery shopping for Petitioner.

17. Dr. Carter is a Medical Director at Sunshine. Dr. Carter testified that Petitioner's homemaker services were reduced because they were considered excessive based on her needs,

and because she lives with her spouse. Dr. Carter testified that Petitioner’s adult companion care was terminated because it was considered unnecessary.

CONCLUSIONS OF LAW

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

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

20. Because Respondent is reducing and terminating previously approved services, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to 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.)

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

1.1 Description and Program Goal

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

...

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

...

4.1 General Criteria

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

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

...

4.2.1.1 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.

22. 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.

23. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R.

59G-1.010, defines "Medically Necessary" or "Medical Necessity" as follows:

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

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

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

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

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

6. Homemaker Services

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

Approval Criteria

Homemaker Service reviews include four (4) criteria:

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

25. LT.UM.09 provides as follows in regards to adult companion care:

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 incidental 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 State 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 other 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 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 tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal 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 an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work

13. Escort Services

A. Homemaker Services

26. In the NABD, dated July 23, 2020, Respondent reduced Petitioner's homemaker services from seventeen (17) hours per week to eight (8) hours per week. See page 4 – 12 of Respondent's Composite Exhibit 1. In the NABD, Respondent explained that seventeen (17) hours per week of homemaker services were not medically necessary, and that the reduction in homemaker services was "[b]ased on the assessment of the member's care needs and household and caregiver status" *Id.* at 4-5.

27. As provided in Respondent's policy, LT.UM.09, homemaker services are to provide "assistance with essential shopping, light housework, laundry, and meal preparation." As discussed in LT.UM.09, homemaker services are determined, in part, based on: IADL limitations; the recipient's living situation; supervision needs; and available supports. Moreover, as provided in the LTC Policy, homemaker services are for 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." Additionally, as provided in the LTC policy, personal care services may be used to provide assistance with ADLs and IADLs. Petitioner currently is approved to receive twenty-seven (27) hours of personal care services and eight (8) hours of homemaker services.

28. In support of its reduction of Petitioner's homemaker services, Respondent argued that the 701B and the availability of the Petitioner's caregiver indicate that the approved services are sufficient to meet her needs. *Id.* at 4. However, Respondent did not provide evidence of how it

arrived at that conclusion, such as by providing evidence of how long it takes to provide care for Petitioner's ADLs and IADLs, or by showing how much time Petitioner's caregiver has to provide assistance to the Petitioner. As shown by the record, Petitioner needs total assistance with heavy chores, light housekeeping, managing medication, and meal preparation, as well as assistance (but not total help) with shopping and managing money. *Id.* at 41. As testified to by Petitioner, the care aide spends five (5) hours each week on grocery shopping alone. *Supra* ¶ 16. Although Petitioner has personal care services, which can also be used to help with her IADLs, Petitioner's ADL needs are substantial. For example, for bathing, dressing, using the bathroom, and transferring, Petitioner needs total assistance (cannot do at all); and for eating and walking/mobility, Petitioner needs assistance (but not total help). *Id.* at 40. Thus, it is unclear how many personal care hours are available to assist with IADLs, after providing for Petitioner's ADLs. Further, Petitioner's lives with her husband. Although [REDACTED] was formerly available to provide eighty-four (84) hours of care, he was working a part-time job then. *Id.* at 51. However, as shown by the record, Petitioner's husband works approximately sixty (60) hours per week. *Supra* ¶ 4.

29. Here, Respondent bears the burden of proof in showing that it is not medically necessary for Petitioner to have more than eight (8) hours of homemaker services each week. Respondent did not state which prong of medical necessity it used to make its decision. As discussed, *supra* ¶ 28, Petitioner has substantial needs for her ADLs and IADLs, and it was not properly established as to how many hours were necessary to provide such assistance. Moreover, Petitioner does live with a caregiver, however, his work schedule is approximately sixty (60) hours and his availability to assist with care has been reduced. Lastly, two of Petitioner's providers supplied letters

supporting the medical necessity of her receiving the entirety of the seventeen (17) hours of homemaker services. See pages 2 – 3 of Petitioner’s Composite Exhibit 1. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent did not prove by a preponderance of the evidence that Respondent’s reduction of Petitioner’s homemaker services was correct.

B. Adult Companion Care Services

30. In the NABD, dated July 23, 2020, Respondent terminated Petitioner’s adult companion care services – twelve (12) hours weekly. See pages 4 – 12 of Respondent’s Composite Exhibit 2. In the NABD, Respondent explained that adult companion care services were not medically necessary, and that the termination was “[b]ased on the assessment of the member’s care needs and household and caregiver status” *Id.* at 4 through 5.

31. As provided in Respondent’s policy, LT.UM.09, adult companion care services are to “provide non-medical care, supervision, and socialization to a functionally impaired adult.” As discussed in LT.UM.09, adult companion care services are determined, in part, based on: the recipient’s need for supervision; the recipient’s informal supports; the recipient’s living situation; and the services in place for the recipient. Moreover, as provided in the LTC Policy, adult companion care is to provide “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.” As provided in the record, Petitioner lives with her husband, and is provided with thirty-five (35) hours of combined services, which allow for Petitioner to socialize with her care aide. Moreover, Petitioner does not need supervision. *Id.* at 45. Thus, the record shows that Petitioner has frequent opportunities to socialize, and does not need supervision.


32. However, adult companion care may also provide for “assistance with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.” As provided in the record, Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing medication, and meal preparation, as well as assistance (but not total help) with shopping and managing money. *Id.* at 41.

33. Respondent bears the burden of proof in showing that it is not medically necessary for Petitioner to have twelve (12) hours of adult companion care each week. Respondent did not state which prong of medical necessity it used to make its decision. Here, as discussed *supra* ¶ 31, it was shown that Petitioner opportunities to socialize with her husband and her care aide. However, Respondent failed to demonstrate that the approved services available to Petitioner were sufficient to address the light housekeeping, meal preparation, and other areas that adult companion care services may also address. Additionally, two of Petitioner’s physicians submitted letters in support of her receiving twelve (12) hours of adult companion care services, weekly. See pages 2 – 3 of Petitioner’s Composite Exhibit 1. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Respondent did not prove by a preponderance of the evidence that Respondent’s termination of twelve (12) hours of adult companion care was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent’s reduction of Petitioner’s homemaker services is **REVERSED**. Petitioner’s appeal based on Respondent’s reduction of homemaker services is **GRANTED**. Respondent’s termination of Petitioner’s adult companion care is **REVERSED**. Petitioner’s appeal based on Respondent’s termination of adult companion care is **GRANTED**.

DONE AND ORDERED this 13th day of November, 2020, in Tallahassee, Leon County, Florida.

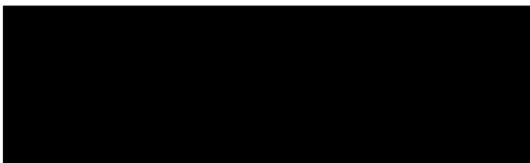
 Joseph Mabry
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FH [REDACTED]
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JOSEPH MABRY, Hearing Officer
Agency for Health Care Administration
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Email: OfficeOfFairHearings@ahca.myflorida.com

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.

Copies Furnished To:



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