



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

FILED

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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,

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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 21, 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 Petitioner proved by a preponderance of the evidence that Respondent's denial of 6 units of one-time reusable underpads/chux was incorrect.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of gloves from 3 boxes per month to 2 boxes per month was correct.

The third issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of wipes from 8 packs per month to 6 packs per month was correct.

The fourth issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of disposable underpads from 2 cases per month to 1 case per month was correct.

The fifth issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of personal care services from 40 hours per week to 32 hours per week was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and wife, 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; Scarleth Lazo, Case Coordinator for Sunshine; Christian Pacheco, Senior Director of Quality Improvement for Sunshine; Renato Quijaza, Manager for Case Management for Sunshine; and Consuelo Suarez, Supervisor for LTC for Sunshine.

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

Mr. Thareek, translator number 351291 with Cyacom International, appeared for the Fair Hearing and provided translation services for Petitioner’s Authorized Representative.

Prior to the hearing, Petitioner did not send an evidence packet to the Office of Fair Hearings or 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 102-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated September 23, 2020; the Notice of Adverse Benefit Determination (“NABD”), dated July 9, 2020 (for the denial of 6 units of one time reusable underpads/chux); Sunshine’s Long Term Care Person-Centered Care Plan (“care plan”), signed July 1, 2020; Sunshine’s care plan, signed September 10, 2020 (the “9/10/20 care plan”); the

Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of July 1, 2020 (the “7/1/20 701B”); the 701B with an assessment date of September 10, 2020 (the “9/10/20 701B”); a letter from Petitioner, dated July 20, 2020; the completed copy of Sunshine’s Request for an Appeal or Grievance Form, dated July 20, 2020; a second copy of the letter from Petitioner, dated July 20, 2020; the completed copy of Sunshine’s authorized representative form, dated July 20, 2020; a letter from [REDACTED] (“[REDACTED]”), dated July 24, 2020; a second copy of the completed copy of Sunshine’s Request for an Appeal or Grievance Form, dated July 20, 2020; a second copy of the letter from [REDACTED] (“[REDACTED]”), dated July 24, 2020; a second copy of the completed copy of Sunshine’s authorized representative form, dated July 20, 2020; Sunshine’s Standard Appeal Acknowledgment, dated July 31, 2020; Sunshine’s Notice of Plan Appeal Resolution (“NPAR”), dated August 26, 2020; 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 102-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

Prior to the hearing, Respondent also sent to the Office of Fair Hearings and Petitioner a 135-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated September 23, 2020; the Notice of Adverse Benefit Determination (“NABD”), dated July 9, 2020 (for the reduction of gloves, wipes, disposable underpads, and personal care services); Sunshine’s Long Term Care Person-Centered Care Plan (“care plan”), signed July 1, 2020; Sunshine’s care plan, signed September 10, 2020; the 7/1/20 701B; the 9/10/20 701B; a letter from Petitioner, dated July 20,

2020; the completed copy of Sunshine’s Request for an Appeal or Grievance Form, dated July 20, 2020; a second copy of the letter from Petitioner, dated July 20, 2020; the completed copy of Sunshine’s authorized representative form, dated July 20, 2020; a letter from [REDACTED] [REDACTED] (“[REDACTED]”), dated July 24, 2020; a second copy of the completed copy of Sunshine’s Request for an Appeal or Grievance Form, dated July 20, 2020; a second copy of the letter from [REDACTED] (“[REDACTED]”), dated July 24, 2020; a second copy of the completed copy of Sunshine’s authorized representative form, dated July 20, 2020; Sunshine’s Standard Appeal Acknowledgment, dated July 31, 2020; Sunshine’s Notice of Plan Appeal Resolution (“NPAR”), dated August 26, 2020; the Sunshine Health Policy and Procedure LT.UM.9; 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 135-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 adult male who resides in a condominium with his wife. *See* Respondent’s Composite Exhibit 1, page 54. The 9/10/20 701B, which is the most recent 701B, reflects that Petitioner has the following health conditions: acid reflux; amputation (prosthesis right eye glass implant since 2018); severe anemia; generalized arthritis (past and present); high blood pressure; past and present broken bones/fractures (left ankle since 1995); past and present cancer (colon cancer since 1999 and “came back 2016”); high cholesterol; past

dehydration; past and present insulin dependent diabetes mellitus; occasional dizziness; past gallbladder removal; past and present heart problems (congestive heart failure); constant bladder incontinence; occasional bowel incontinence; past and present kidney problems; past and present lung problems (chronic obstructive pulmonary disease); partial paralysis (left side); seizure disorder (“mini seizures 2-3x a day occurring more”); past shingles; past stroke/cerebrovascular accident; past and present thyroid problems (hypo); past stomach ulcers; past urinary tract infection; and “Gullian Barre Syndrome, Peripheral artery diseases, Seborrhic dermatitis”. See Respondent’s Composite Exhibit 1, pages 60 – 61. The 9/10/20 701B also states the following:

Other Diagnosis: diverticulitises, Gullian Barre Syndrome, Peripheral artery diseases, Seborrhic dermatitis, sleep apnea, Spondylosis, Myelopathy, blind on right eye has prosthesis in place, Depression, anxiety, memory problems, constipation, 2 stents in heart.

Primary Diagnosis -mini seizures occurring daily, Colon Cancer and memory problems CG manages and administers insulin daily as needed.

Lantus over 300 ML - 5 units AM and 5 units PM; Novolin 70/30: 2xday 60units
Albuterol Nebulizer Machine - PRN

MBR not getting therapy at this moment only specialty care through Hospice of oxygen and wound care. Seasons Hospice: Daily PCA in bed, hospital bed,oxygen mask,creams, CPAPSleep Apnea/PM,weekly nurs Provider: Humana provides white and black filters, mask and tube replacement, cpap water g filter.

Respondent’s Composite Exhibit 1, page 61.

3. The 9/10/20 701B reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”). Petitioner needs assistance (but not total help) with eating. See Respondent’s Composite Exhibit 1, page 58. Petitioner needs total assistance with bathing, dressing, using the bathroom, transferring, and walking/mobility. *Id.*

4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), 9/10/20 701B reflects that Petitioner needs assistance (but not total help) with managing medication. See Respondent's Composite Exhibit 1, page 59. Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, using the telephone, managing money, preparing meals, shopping, and using transportation. *Id.* The "Service of Item Details" column next to "Wipes" in the 9/10/20 care plan, reads "MBR is constant incontinence and needs extra protection. 2 cases a mo. . . ." See Respondent's Composite Exhibit 2, page 29.

5. Petitioner is currently authorized to receive the following home and community-based services (not including the personal care services and medical supplies that are the subject of this case): 2 cases per month of pull ups; 2 cases per month of diapers; and 2 tubes per month of zinc ointment. See Respondent's Composite Exhibit 1, page 26. Petitioner's personal care services are provided under the Patient Directed Option delivery model of the Florida Medicaid Program.

6. The letter from [REDACTED], dated July 24, 2020, states in pertinent part, as follows:

This letter serves to certify that my patient [Petitioner] with history of CHF, COPD, DM, GBS, Hypoxemic respiratory failure, CKD requires 24-hour supervision and care as he is currently homebound.

Respondent's Composite Exhibit 1, page 76.

7. The letter from Petitioner, dated July 20, 2020, states in pertinent part, as follows:

I am writing to you to present an Appeal of the Resolution about my supplies and Caregiver services. As you should know my health are getting poor and poor, as you can see in the Certification my Primary Doctor, [REDACTED] from [REDACTED], extended to me to present with this appeal.

I am a little bit disappointed due to your decision, I have many concerns on my health, Since June 2019 I **cannot walk at all, stand** or be sit. I am on bed 24/7. Due to my situation on to avoid the sores that I have on my back, I **have to b [sic] changed every two hours, to mbe [sic] moved to one side to another every 2 hours and my hands are not working as normally.** I need complete help. I received

help for Season Hospice that consist in a bath every day at 7 am and the visit of a Nurse once a week, she takes the vital, After that I depend of my caregiver, you pay her around 6 hours a day, as I told I need a lot of help to live the best I can the last days or month of my life. Also I have Colon cancer.

Respondent's Composite Exhibit 1, page 72. (Emphasis added.)

8. On July 9, 2020, Respondent issued an NABD denying Petitioner's request for "6 units/one time reusable underpads/chux," and explaining that the "requested services are not medically necessary." See Respondent's Composite Exhibit 1, page 4. The NABD stated "[t]he request for 6 reusable underpads is denied as not medically needed. The member receives 1 case monthly of disposable underpads, which is enough to meet the member's care needs." See Respondent's Composite Exhibit 1, page 5.

9. On July 9, 2020, Respondent issued an NABD reducing gloves from 3 boxes per month to 2 boxes per month, reducing wipes from 8 packs per month to 6 packs per month, reducing disposable underpads from 2 cases per month to 1 case per month, and reducing personal care services from 40 hours per week to 32 hours per week. See Respondent's Composite Exhibit 2, pages 4 and 5. The NABD explained that the "requested services are not medically necessary." *Id.* at 5. The NABD stated "[b]ased on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce" the gloves, wipes, disposable underpads, and personal care services. See Respondent's Composite Exhibit 2, page 5.

10. Petitioner requested an appeal of Respondent's denial of 6 units of one-time reusable underpads/chux. See Respondent's Composite Exhibit 1, page 80. On August 26, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 86. The NPAR stated as follows:

The reason for our decision was:

The reconsideration request for 6 reusable underpads (one time delivery) is denied as not medically needed. You receive 1 case monthly of disposable underpads, which is sufficient to meet your care needs. This decision was made with 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 Medical Director who is Board Certified Physician in Family Medicine.

Respondent's Composite Exhibit 1, page 86.

11. Petitioner requested an appeal of Respondent's reduction of gloves, wipes, disposable underpads, and personal care services. See Respondent's Composite Exhibit 2, page 81. On August 26, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 88.

The NPAR stated as follows:

The reason for our decision was:

Appeal for the reduction of 8 hrs/wk Personal Care Services, reduction of 1 box/month Gloves, reduction of 2 packs/month Wipes, and reduction of 1 case/month Disposable Underpads is denied as not medically needed. Your current Care Plan includes: Personal Care 32 hrs/wk, 6 packs/month wipes, 1 case/month disposable pads, and 2 boxes/month gloves. Sunshine Health further assessed your care needs and household and determined that your current Service Hours and supplies are adequate to meet your health care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria and LT.UM.10 (Long Term Care) DME/Supplies/Orthotics & Prosthetics Criteria.

This decision was made by a Medical Director who is Board Certified Physician in Family Medicine.

Respondent's Composite Exhibit 2, page 88.

12. On September 8, 2020, Petitioner requested a Fair Hearing due to the denial of one time reusable underpads/chux and the reduction of gloves, wipes, disposable underpads and personal care services. On September 18, 2020, the undersigned scheduled the Fair Hearing for October 21, 2020, at [REDACTED] and all parties were duly notified.

13. Dr. Carter is the LTC Medical Director for Sunshine. During the Fair Hearing, Dr. Carter testified that personal care services were reduced from 40 hours per week to 32 hours per week, because Petitioner lives with his wife who is his primary caregiver, has many medical problems, and needs total assistance with almost all ADL'S. Dr. Carter testified that wipes were reduced, as they are generally for bowel incontinence, and otherwise a convenience. Dr. Carter explained that most general cleaning for urinary incontinence can be taken care of with soap and water. Dr. Carter explained that even with the reduction in wipes, Petitioner still has enough wipes to use for 9 occasions per day. Dr. Carter testified that gloves were reduced, because 3 boxes are excessive. Dr. Carter explained that gloves need to be used for bowel incontinence, otherwise they are considered to be a convenience. Dr. Carter testified that Petitioner is receiving hospice services, and the hospice workers are required to bring their own gloves. Regarding the reduction of disposable underpads, Dr. Carter testified 2 cases are excessive because: each case has 100 units of disposable underpads, which would provide over 6 pads per day for every day of month; and Petitioner already receives diapers. Regarding the denial of 6 units of one-time reusable underpads/chux, Dr. Carter testified that they were denied because 1 case per month of the disposable underpads are sufficient to meet Petitioner's needs. Dr. Carter explained that a "unit" is 1 pad, so 6 units is 6 reuseable pads. Dr. Carter testified that he reviewed all documentation submitted to Respondent for this case, including all documents admitted in evidence, and he agrees with the denial and the reductions in this case.

14. [REDACTED] is Petitioner's wife, direct service worker, and primary caregiver. Petitioner and [REDACTED] are the only 2 persons residing in the home. [REDACTED] does not work outside the home. Petitioner's adult daughter resides in the [REDACTED] area. Petitioner receives hospice

services in the home for bathing 7 days per week for 30-45 minutes per day. Petitioner is legally blind and bedridden. Petitioner has diarrhea 2-3 times per week, requiring the use of many diapers.

15. ██████████ testified that she is no longer contesting the reduction of gloves and the reduction of the disposable underpads. ██████████ confirmed that she agrees with the reduction of gloves and the reduction of the disposable underpads.

CONCLUSIONS OF LAW

16. 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).

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

18. 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.

19. Because Petitioner is requesting a new service with regards to the 6 units of one-time reusable underpads/chux, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the Petitioner. Because Respondent is reducing existing services with regard to the gloves, wipes, underpads, and personal care 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.).

20. 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.

...

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 Home and Community-Based Supportive Services

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

...

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.

SMMC LTC Policy, pages 1-8.

21. 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.

22. In the instant case, Respondent denied 6 units of one time reusable underpads/chux, reduced gloves from 3 boxes per month to 2 boxes per month, reduced wipes from 8 packs per month to 6 packs per month, reduced disposable underpads from 2 cases per month to 1 case per month, and reduced personal care services from 40 hours per week to 32 hours per week. See supra ¶ 8 and 9. As established on the record by the evidence and testimony, Respondent denied one time reusable underpads/chux, and reduced wipes, disposable underpads, and personal care services, because the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. See supra ¶ 8 -11.

23. 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 ¶ 20.

Personal Care Services

24. Section 4.2.2.6 of the LTC Policy reflects that personal care services are “[t]o 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.” See supra ¶ 20.

25. The evidence presented in this case reflects that the reduction of personal care services from 40 hours per week to 32 hours per week is warranted under the circumstances of this case. Specifically, the record reflects that Petitioner needs: total assistance with bathing, dressing, using the bathroom, transferring, and walking/mobility; and needs assistance (but not total help) with eating. See supra ¶ 3. Regarding IADLs, Petitioner needs: total assistance (cannot do at all) with heavy chores, light housekeeping, using the telephone, managing money, preparing meals,

shopping, and using transportation; and assistance (but not total help) with managing medication. See supra ¶ 4. Petitioner is legally blind, has multiple medical conditions, and cannot walk or stand. See supra ¶ 2, 6, 7 and 14. Petitioner must “be changed every two hours” and “moved to one side to another every 2 hours.” See supra ¶ 7. Petitioner “requires 24-hour supervision and care as he is currently homebound.” See supra ¶ 6. However, Petitioner resides in the home with [REDACTED] who is his wife, direct service worker, and primary caregiver. See supra ¶ 14. [REDACTED] does not work outside the home, and Petitioner has an adult daughter who resides in the [REDACTED] area. *Id.* Additionally, Petitioner receives hospice services in the home for bathing 7 days per week for 30-45 minutes per day.

26. Further, the record reflects that Respondent assessed Petitioner’s “care needs and household” and determined that Petitioner’s current Service Hours are “adequate” to meet his health care needs. See supra ¶ 11. Appurtenant to this matter, section 1.3.14 of the SMMC 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 ¶ 20. Petitioner resides in the home with his wife, [REDACTED]. See supra ¶ 14. [REDACTED] does not work outside the home, and Petitioner has an adult daughter who resides in the [REDACTED] area. *Id.* Therefore, Petitioner has natural supports available to assist with his care and needs.

27. The letter from [REDACTED] reflects that Petitioner “requires 24-hour supervision and care as he is currently homebound.” See supra ¶ 6. The document offers little insight into how [REDACTED] determined the severity of Petitioner’s medical condition, nor does it prescribe the type, amount, or length of services warranted to address Petitioner’s medical condition. Further, section 2.83 of the Definitions Policy mandates that “[t]he 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.” *See supra* ¶ 21. Therefore, the letter from [REDACTED] does not, in itself, make the requested personal care services and medical supplies medically necessary.

28. Based upon the evidence presented by both parties, Respondent established that the reduction of personal care services is warranted in this case.

6 Units of One-Time Reusable Underpads/Chux

29. Section 4.2.2.5 of the SMMC LTC Policy provides that medical equipment and supplies “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.” *See supra* ¶ 20.

30. The evidence presented in this case reflects that Respondent correctly denied Petitioner’s request for 6 units of one-time reusable underpads/chux. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that do not duplicate another service. *See supra* ¶ 20. In this case, Petitioner has constant bladder incontinence, occasional bowel incontinence, and diarrhea 2-3 times per week. *See supra* ¶ 2 and 14. Although the

record reflects that Petitioner has diarrhea 2-3 times per week, requiring the use of many diapers, *supra* ¶ 14, Petitioner failed to explain why or how his currently authorized diapers and pull ups are insufficient to meet his incontinence needs. Additionally, Petitioner is already authorized to receive 2 cases per month of pull ups and 2 cases per month of diapers. *See supra* ¶ 5. The record is devoid of any evidence that the requested 6 units of one-time reusable underpads/chux will serve a different purpose than the currently approved diapers and pull ups – and there is nothing in the record to indicate that the requested 6 units of one-time reusable underpads/chux would not be duplicative of the currently approved diapers and pull ups. As such, Petitioner’s request for 6 units of one-time reusable underpads/chux fails to comply with the limitations set forth by the SMMC LTC Policy, as the evidence indicates they are duplicative of Petitioner’s currently authorized diapers and disposable underpads. Therefore, Petitioner failed to establish that the requested 6 units of one-time reusable underpads/chux are warranted under the circumstances of this case.

Wipes

31. Section 4.2.2.5 of the SMMC LTC Policy provides that medical equipment and supplies “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.” See supra ¶ 20.

32. The evidence presented in this case reflects that the reduction of wipes from 8 packs per month to 6 packs per month was not warranted under the circumstances of this case. Specifically, Petitioner has constant bladder incontinence, occasional bowel incontinence, and diarrhea 2-3 times per week. See supra ¶ 2 and 14. Section 1.3.14 of the SMMC LTC Policy requires that “LTC supportive services 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 ¶ 20. Dr. Carter testified that wipes are generally for bowel incontinence, and otherwise a convenience. See supra ¶ 13. The record reflects that “MBR is constant incontinence and needs extra protection. 2 cases a mo. . . .” See supra ¶ 4. However, the record is unclear as to whether Petitioner is using the wipes solely for urinary incontinence. Additionally, Dr. Carter explained that even with the reduction in wipes, Petitioner still has enough wipes to use for 9 occasions per day. See supra ¶ 13. However, it is unclear as to whether enough wipes to use for 9 occasions per day will be sufficient to meet Petitioner’s needs. Therefore, Respondent failed to establish that reduction of wipes was correct.

33. Section 1.3.14 of the SMMC LTC Policy requires that “LTC supportive services must [b]e 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.” See supra ¶ 20. Dr. Carter explained that most general cleaning for urinary incontinence can be taken care of with soap and water. See supra ¶ 13. However, even if true, as stated above, supra ¶ 33, the record is unclear as to whether Petitioner is using the wipes solely for urinary incontinence. As

such, Respondent did not establish that Petitioner's previously authorized amount of wipes failed to satisfy the medical necessity requirement that "no equally effective and more conservative or less costly treatment is available statewide." See supra ¶ 20. Accordingly, Respondent did not prove by a preponderance of the evidence that reduction of wipes was correct.

Gloves and Disposable Underpads

34. Pursuant to Rule 59G-1.100(9)(b)(6), Florida Administrative Code, 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."

35. In the instant case, ██████████ testified that she is no longer contesting the reduction of gloves and the reduction of the disposable underpads. See supra ¶ 15. Further, ██████████ confirmed on the record during the Fair Hearing that she agrees with the reduction of gloves and the reduction of the disposable underpads. *Id.* Given that ██████████ is no longer contesting the reduction of gloves and the reduction of the disposable underpads, the undersigned concludes that there is no relief that can be granted at a Fair Hearing at this time with regards to the issue of the reduction of gloves and the reduction of the disposable underpads.

Conclusion

36. Section 1.3.14 of the SMMC LTC Policy requires that "LTC supportive 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 ¶ 20. Petitioner is currently authorized to receive the following home and community-based services (not including the personal care services and medical supplies that are the subject of this case): 2 cases per month of pull ups; 2 cases per month of diapers; and 2 tubes per month of zinc ointment. See supra ¶ 5. Considering the SMMC LTC Policy's definitions for personal care services and medical supplies, and the fact that Petitioner is currently authorized to receive home and community-based services, Respondent demonstrated that Petitioner's aforementioned needs with regards to personal care services, supra ¶ 2, 3, 4, 5, 6 and 14, are sufficiently met by his currently authorized services. Further, given that Petitioner failed to establish that the requested 6 units of one-time reusable underpads/chux are warranted in this matter, supra ¶ 27, Petitioner failed to demonstrate that his needs with regards to the one-time reusable underpads/chux are not sufficiently met by his currently authorized services. Therefore, the requested personal care services and medical supplies (the 6 units of one-time reusable underpads/chux) are "in excess of [Petitioner's] needs." See supra ¶ 21.

37. In light of the both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit2, the SMMC LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Petitioner failed to demonstrate that Respondent's denial of 6 units of one-time reusable underpads/chux was incorrect. The undersigned Hearing Officer finds that Respondent demonstrated that Petitioner's previously authorized amount of personal care services are not medically necessary. The undersigned Hearing Officer finds that Respondent failed to demonstrate that Petitioner's previously authorized amount of wipes is not medically necessary.

The undersigned Hearing Officer finds that Petitioner's request for a Medicaid Fair Hearing regarding Respondent's reduction of gloves and disposable underpads is moot.

38. Accordingly, the undersigned Hearing Officer finds that Petitioner proved by a preponderance of the evidence that Respondent's denial of 6 units of one-time reusable underpads/chux was correct. The undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent's reduction of personal care services was correct. The undersigned Hearing Officer finds that Respondent failed to prove by a preponderance of the evidence that Respondent's reduction of wipes was correct.

DECISION


Respondent's denial of 6 units of one-time reusable underpads/chux is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of one-time reusable underpads/chux is **DENIED**.

Respondent's reduction of wipes from 8 packs per month to 6 packs per month is **REVERSED**. Petitioner's appeal based on Respondent's reduction of wipes from 8 packs per month to 6 packs per month is **GRANTED**.

Respondent's reduction of personal care services from 40 hours per week to 32 hours per week is **AFFIRMED**. Petitioner's appeal based on Respondent's reduction of personal care services from 40 hours per week to 32 hours per week is **DENIED**.

Petitioner's request for a Fair Hearing regarding the reduction of gloves from 3 boxes per month to 2 boxes per month and the reduction of disposable underpads from 2 cases per month to 1 case per month is dismissed as **MOOT**, and is now **CLOSED**.

DONE AND ORDERED this 2nd day of December, 2020, in Tallahassee, Leon County, Florida.

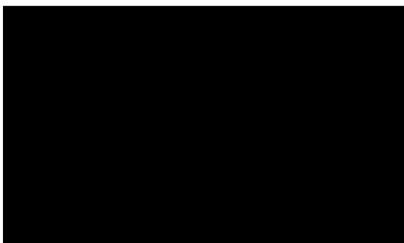

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TRACIE HARDIN, Hearing Officer
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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.

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