



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

FILED

Nov 25, 2020, 3:32 pm  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

UNITEDHEALTHCARE OF FLORIDA,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 28, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

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

**STATEMENT OF ISSUE**

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for homemaker services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and daughter,

[REDACTED] (" [REDACTED]"), appeared on behalf of the Petitioner.

David Jones, State Fair Hearing Coordinator for UnitedHealthcare of Florida, Inc. (“United”) appeared on behalf of Respondent. Dr. Alben Baharieba (“Dr. Baharieba”), Medical Director for United, attended as a witness for Respondent.

Sheila Gonzalez, 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 nine (9)-page evidence packet. The evidence packet included: an e-mail from ██████████, dated October 21, 2020; a letter from ██████████, dated October 19, 2020; a second e-mail from ██████████, dated October 21, 2020; and Petitioner’s hospital record, dated ██████████ 2020. Absent an objection from the Respondent, the undersigned admitted the nine (9)-page evidence packet into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and fifty-three (253)-page evidence packet. The evidence packet included: a summary of the instant case; a Notice of Adverse Benefit Determination (“NABD”), dated August 5, 2020; a fax cover sheet and four (4) pages of documents; an e-mail from Donna Eden, dated August 22, 2020; an e-mail from Lakisha Lee, dated August 22, 2020; a letter from Respondent, dated August 24, 2020; a letter from Respondent, dated June 3, 2020; a fax cover sheet and fourteen (14) pages of documents; Print HSC History; a Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated July 20, 2020; an Appeal Review; a Notice of Plan Appeal Resolution (“NPAR”), dated September 5, 2020; Exhibit 2 (References) Cover Page–Long Term Care; Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1 in its entirety; the Florida Medicaid Definitions Policy (August 2017); the Florida Medicaid Statewide Medicaid Managed Long-term

Care Program Coverage Policy (March 2017) (“LTC Policy”); the Florida Medicaid Authorization Requirements Policy (June 2016); the Florida Medicaid Personal Care Services Coverage Policy (November 2016); the Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016); the Home Health Visit Fee Schedule (January 1, 2017); the Personal Care Services Fee Schedule (January 1, 2017); the Private Duty Nursing Services fee Schedule (January 1, 2017); the Participant Direction Option Manual; 42 C.F.R. § 441.480; the Florida Medicaid Hospice Services Coverage Policy (June 2016); 42 C.F.R. Part 418, Subpart C (Conditions of Participants: Patient Care); section 400.6105 of the Florida Statutes (2018); Fla. Stat. § 400.609; Fla. Stat. § 409.910; and Fla. Stat. § 400.462. Absent an objection from the Petitioner undersigned admitted the two-hundred and fifty-three (253)-page packet into evidence as Respondent’s Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of United. United is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is [REDACTED] years old. *See* page 47 of Respondent’s Composite Exhibit 1. Petitioner lives in Winterhaven, FL. *Id.* at 47. Petitioner lives with her husband, who is [REDACTED] years old. *Id.* at 69. Petitioner’s husband recently received a pacemaker and is no longer able to provide care for the Petitioner. *Id.* at 69. As testified to by [REDACTED], Petitioner’s husband can no longer drive.
3. Petitioner is diagnosed with acid reflux, osteoarthritis, high blood pressure, occasional dizziness, constant bladder incontinence, osteoporosis, and macular degeneration. *Id.* at 55. Petitioner was hospitalized in [REDACTED] 2020 for a UTI. *See* page 7 of Petitioner’s Composite Exhibit 1.

4. In regards to her activities of daily living (“ADLs”): Petitioner needs assistance (but not total help) with bathing, dressing, and eating; and Petitioner needs supervision or prompting with using the bathroom, transferring, and walking/mobility. *Id.* at 52. As testified to by [REDACTED], it takes approximately fifteen (15) minutes to bathe Petitioner. Petitioner needs total assistance (cannot do at all) with all of her instrumental activities of daily living. *Id.* at 52.

5. Petitioner requested six (6) additional hours of homemaker services. Petitioner’s request was denied in the NABD dated August 5, 2020. *Id.* at 5 – 12. The NABD explained the basis of the denial 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:

Your assessment tells us you need help with cleaning, laundry, shopping and meals.

You are getting 3 hours a week of personal care to help you.

You are getting 6 hours a week of homemaker services to help you.

You have an emergency button.  
You live with your family who helps you.  
The personal care aide can also clean the bedroom and bathroom after bathing.

Pages 5 – 6 of Respondent’s Composite Exhibit 1.

6. Petitioner’s provider, [REDACTED] (“[REDACTED]”), submitted a letter, dated August 13, 2020, that stated as follows:

The aforementioned patient receives primary medical care in my office since [REDACTED] 2008. She has multiple medical problems, including significantly impaired vision, unsteady gait, and arthritis, which prevent her from performing most regular activities of daily living without assistance. The patient requires at least 6 hours of daily assistance for completion of ADL’s such as cooking, cleaning, and grooming, in order to maintain her independence and quality of life.

Page 17 of Respondent’s Composite Exhibit 1.

7. Petitioner requested a plan appeal and received an NPAR dated September 5, 2020, upholding the denial. See pages 73 – 75 of Respondent’s Composite Exhibit 1. The NPAR explained as follows:

You asked for homemaker services. You would like 6 more hours a week. You need help with light housekeeping. Based on my professional judgment, we are not approving these extra hours. They are in excess of your needs. Six hours a week of homemaker service can meet your needs and is approved by the health plan. You also have family who can help. Your personal care help can also clean-up after caring for you. This is why we cannot approve what you asked for. Please talk about this with your doctor.

Page 73 of Respondent’s Composite Exhibit 1.

8. On September 15, 2020, Petitioner requested a Fair Hearing to challenge the denial of homemaker services. On September 29, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 28, 2020, at [REDACTED].

9. As testified to by [REDACTED], Petitioner's care aide is present for three (3) hours on Monday, Wednesday, and Friday, and for two (2) hours on Saturday, and Sunday. She lives in [REDACTED], and Petitioner's other daughter lives in [REDACTED]

10. As testified to by [REDACTED], Petitioner lives in a one (1) story home, with two (2) bedrooms. It takes approximately ninety (90) minutes, in total, each day to prepare all of Petitioner's meals. It takes approximately one (1) hour each day to do the dishes and clean the kitchen, bathroom, and bedroom. It takes approximately three (3) hours to do all of Petitioner's shopping. Laundry is done daily to wash Petitioner's linens.

11. Dr. Baharieba is a Medical Director at United. Dr. Baharieba testified that Respondent's decision was based on the 701B. Dr. Baharieba testified that, based on the size of Petitioner's home, the approved services were felt to be sufficient for Petitioner's needs. Dr. Baharieba testified that four (4) additional hours of personal care services were recently approved. Thus, Petitioner's current plan of care includes seven (7) hours of personal care services, weekly, and six (6) hours of homemaker services, weekly.

#### **CONCLUSIONS OF LAW**

12. 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).

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

14. Because Petitioner is requesting a new service, Fla. Admin Code R. 59-1.100(17)(g) assigns the burden of proof to Petitioner. The standard of proof in an administrative hearing is a

preponderance of the evidence. The preponderance of the evidence standard requires proof by “the greater weight of the evidence” (Black’s Law Dictionary at 1201, 7th Ed.)

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

**1.1 Description and Program Goal**

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

...

**1.3.1 Activities of Daily Living (ADLs)**

ADLs include:

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

...

**1.3.9 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

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

...

**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

...

#### **4.2.1.9 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.

...

#### **4.2.2.6 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.

16. 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.

17. 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.

18. Petitioner requested six (6) hours per week of additional homemaker services. In the NABD, dated August 5, 2020, Respondent denied Petitioner’s request. See pages 5 – 12 of Respondent’s Composite Exhibit 1. Respondent indicated on the NABD that Petitioner did not meet all of the criteria of medical necessity, but did not specify which medical necessary criteria was the basis for its decision. *Id.* at 5 and 6.

19. As provided in the LTC policy, homemaker services is 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.” As provided in the LTC policy, personal care services are to provide assistance with ADLs and IADLs. As provided in the record, Petitioner

needs assistance (but not total help) with bathing, dressing, and eating; and Petitioner needs supervision or prompting with using the bathroom, transferring, and walking/mobility. *Id.* at 52. Petitioner needs total assistance with all of her IADLs. *Id.* Furthermore, Petitioner has constant bladder incontinence. *Id.* at 53. As testified to by [REDACTED], it takes approximately one (1) hour each day to do dishes, and clean the kitchen, bathroom, and bedroom. As testified to by [REDACTED], it takes approximately ninety (90) minutes each day to prepare all of Petitioner's meals, as well as three (3) hours per week to shop for Petitioner. This totals to approximately twenty and a half (20.5) hours each week for homemaker tasks. Further, as testified to by [REDACTED], *supra* ¶ 10, Petitioner's laundry is done daily due to the need to change her linens. Petitioner's physician, [REDACTED], opined that Petitioner needs six (6) hours daily to complete her ADLs. *See* page 17 of Respondent's Composite Exhibit 1. Petitioner lives with her [REDACTED]-year old husband, but he can no longer provide assistance. *Id.* at 69.

20. Respondent denied Petitioner's request for homemaker services because Petitioner "has family who can help" and "[y]our personal care help can also clean-up after caring for you." *Id.* at 73. As discussed, *supra* ¶ 19, Petitioner lives with her [REDACTED] year old husband, and he is no longer able to provide assistance. Further, Petitioner has two daughters, but Petitioner lives in [REDACTED] and they live in [REDACTED], and [REDACTED] respectively. *See* page 47 of Respondent's Composite Exhibit 1 and ¶ 9. Thus, the record does not show that Petitioner has consistent help beyond what is provided by the home health aide. Petitioner is currently approved to receive seven (7) hours of personal care services, weekly, and six (6) hours of homemaker services, which totals to thirteen (13) hours of combined services, weekly. Here, there is no clear indication of how many hours Petitioner needs for her ADLs. As testified to by



██████████, *supra* ¶ 4, it takes approximately 15 minutes to provide a bath for Petitioner. Petitioner's provider estimated six (6) hour per day, but this is unsupported in the record. As discussed, *supra* ¶ 19, Petitioner requires approximately twenty and a half (20.5) hours each week to assist with her IADLs, thus even if the entirety of Petitioner's personal care and homemaker services were used for homemaker tasks, Petitioner would still need an additional seven and a half (7.5) hours of homemaker services each week to account for her IADLs.

21. As homemaker services are intended is to provide assistance with "general household activities" and "routine household care", Petitioner has shown that her request is "individualized specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment." Petitioner has shown that her husband is no longer able to provide care for her, thus she has shown that her request is not in "excess of [her] needs" and is not "intended for the convenience of the recipient, the recipient's caretaker, or the provider." Further, Petitioner's request may enable her to "live . . . in the setting of her choice." As such, Petitioner has shown that she has an unmet need for assistance with her household care. Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned finds that Petitioner proved by a preponderance of the evidence that Respondent's denial of an additional six (6) hours of homemaker care services was incorrect.

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

Respondent's denial of six (6) additional hours of homemaker services, weekly, is **REVERSED**. Petitioner's appeal based on Respondent's denial of six additional hours of homemaker services, weekly, is **GRANTED**.

**DONE AND ORDERED** this 25th day of November, 2020, in Tallahassee, Leon County,  
Florida.

 Joseph Mabry  
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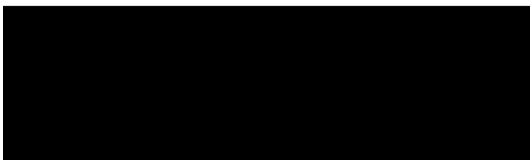
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**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**  
**Office: (850) 412-3649**  
**Fax: (850) 487-1423**  
**Email: OfficeOfFairHearings@ahca.myflorida.com**

**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:**



**United**  
**UHC\_Hearings@uhc.com**

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**