



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

FILED

Nov 25, 2020, 8:16 am  
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

FLORIDA COMMUNITY CARE, LLC,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the above-styled case on October 27, 2020, at [REDACTED].

**APPEARANCES**

For the Petitioner: [REDACTED]  
Authorized Representative

For the Respondent: Susy Cabrera  
Assistant General Counsel  
Florida Community Care, LLC

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of Personal Care services, from twenty-nine (29) hours per week to fourteen (14) hours per week, was correct.

## PRELIMINARY STATEMENT

All parties and witnesses appeared for the Fair Hearing telephonically. [REDACTED] ("Petitioner's Authorized Representative" or "[REDACTED]"), Petitioner's daughter, appeared for the Fair Hearing to provide testimony on behalf of Petitioner and did not call any witnesses. Susy Cabrera ("Ms. Cabrera"), Assistant General Counsel for Florida Community Care, LLC ("Florida Community Care"), appeared for the hearing as representative for Respondent. The following persons appeared for the hearing as witnesses for Respondent: Dr. Dennis Liotta ("Dr. Liotta"), Chief Medical Officer for Florida Community Care; Susan Kaspar, Registered Nurse Appeals Specialist for Florida Community Care; and Hope McLaren, Registered Nurse for Florida Community Care. Interpreter Luis (Identification #362893), Spanish Interpreter for Language Line Solutions, appeared for the Fair Hearing to provide language translation services for Petitioner. Sheila Gonzalez, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer..

Petitioner's Authorized Representative introduced an evidence packet containing three (3) pages, which was admitted into evidence as Petitioner's Composite Exhibit 1. Petitioner's Composite Exhibit 1 includes the following: a Concord Fax email (dated October 19, 2020); a Fax cover sheet (dated October 19, 2020); and a letter from [REDACTED] ("[REDACTED]") (dated October 8, 2020).

Respondent introduced an evidence packet containing one hundred and eighteen (118) pages, which was admitted into evidence as Respondent's Composite Exhibit 1. Respondent's Composite Exhibit 1 includes the following: a Table of Contents; a Medicaid Fair Hearing Checklist; an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions

("Scheduling Order") (dated October 1, 2020) (Spanish); a Scheduling Order (dated October 1, 2020) (English); a Case Summary (dated October 12, 2020); a Florida Department of Elder Affairs: 701B Comprehensive Assessment ("701B Comprehensive Assessment") (dated August 19, 2019); a Comprehensive Plan of Care (dated August 20, 2019); a Notice of Adverse Benefit Determination ("NABD") (dated March 30, 2020); a Revised NABD (dated September 18, 2020); Petitioner's appeal request (undated); a letter from [REDACTED] (" [REDACTED] [REDACTED] ") (dated May 28, 2020); an Appeal Acknowledgement letter (dated May 31, 2020); a Notice of Plan Appeal Resolution ("NPAR") (dated June 29, 2020); IRE Appeal Information (dated June 29, 2020); Florida Medicaid Personal Care Services Coverage Policy ("PCS Policy")(November 2016); and Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy ("LTC Policy")(March 2017).

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Florida Community Care's Long-Term Care ("LTC") Program. *See* Respondent's Composite Exhibit 1, page 17. Florida Community Care is a Medicaid Managed Care organization contracted by the Agency to provide services to eligible Medicaid recipients in the State of Florida.
2. Petitioner is a seventy-five (75) year old woman residing in the community with a primary community caregiver, the primary caregiver's husband, and Petitioner's husband. *Id.* at 20-21; *see also* as reiterated by Dr. Liotta at the hearing. Petitioner is diagnosed with Alzheimer's disease. *Id.* at 22. Petitioner experiences the following physical health conditions: Allergies; Osteoporosis; High cholesterol; Diabetes; and constant bowel and bladder incontinence. *Id.* at 26-27. Petitioner eats three meals per day which includes the following: Breakfast (toast and

coffee); Lunch (Sandwich); and Dinner (Fish, meat, or chicken with brown rice and vegetables). *Id.* at 31. Petitioner's primary caregiver is [REDACTED] ("[REDACTED]"). [REDACTED] does not work outside of the home. *Id.* at 34. [REDACTED] is also Petitioner's Direct Service Worker (DSW). *Id.* at 17. [REDACTED] does not have anyone assisting her with providing care for Petitioner. *Id.* at 34. [REDACTED] has been providing care for Petitioner for the past one to two years. *Id.* at 35. [REDACTED] spends twenty-four (24) hours per week providing care for Petitioner. *Id.* [REDACTED] is very confident in her ability to provide care for Petitioner. *Id.* [REDACTED] is experiencing financial crisis, but not an emotional or physical crisis. *Id.*

3. Petitioner needs assistance (but not total help) with Activities of Daily Living ("ADLs") such as bathing, dressing, and using the bathroom. *Id.* at 24. Petitioner needs supervision or prompt with eating. *Id.* Petitioner uses an assistive device for transferring and walking/mobility. *Id.* Petitioner always has assistance with ADLs. *Id.* These facts were reiterated by Dr. Liotta at the hearing. [REDACTED] stopped working outside of the home to provide the Petitioner with "daily support with ADL's." *Id.* at 24. Petitioner's husband is unable to assist with ADLs due to a recent leg amputation. *Id.* at 24. Petitioner always has assistance with performing ADLs. *Id.*

4. As testified to by [REDACTED], Petitioner has forgotten how to chew and swallow food. Petitioner has lost a lot of weight due to her inability to eat. As testified to by [REDACTED], Petitioner now requires complete assistance with walking and transferring as she is no longer able to walk on her own and cannot use a walker (assistive device).

5. Petitioner needs total assistance (cannot do at all) with Instrumental Activities of Daily Living ("IADLs") such as heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation. *Id.* at 25. Petitioner needs assistance

(but not total help) with using the telephone. *Id.* ██████ assists [Petitioner] with IADLs. *Id.* at

25. Petitioner always has assistance with performing IADLs. *Id.*

6. Petitioner currently receives the following LTC services:

- Pull-ups – 1 box/monthly
- Disposable Underpads – 150 box/monthly
- Personal Care 14 hours/weekly
- Homemaker 7 hours/weekly
- Adult Companion Care 4 hours/weekly
- HDM (Home Delivered meals) – 7 hours/weekly

*Id.* at 18, 44-45. This was reiterated by Dr. Liotta at the hearing.

7. Petitioner’s provider, ██████, is “concerned Petitioner’s dementia is progressing and she will require more hours from your home health aide facility’s medical professionals.” See Petitioner’s Composite Exhibit 1, page 3.

8. On March 30, 2020, Florida Community Care issued an NABD reducing Petitioner’s Personal Care services from twenty-nine (29) hours per week to fourteen (14) hours per week.

*Id.* at 48-49. The NABD states as follows:

Florida Community Care has reviewed your request for:  
T1019 - PERSONAL CARE (15 MINUTE UNIT)  
29 Hours/Week 7 Days/Week  
Which we received on 03/26/2020.

After our review, this service has been:  
Denied as of 03/28/2020.

We made our decision because:

*(Check all boxes that apply)*

- We determined that your requested services are not medically necessary because the services do not meet either of the reason(s) checked below: *(See Rule)*
- Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR

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: We reviewed your request for personal care services (T1019) and found that it does not meet the Agency for Health Care Administration (AHCA) criteria for medical necessity. Your request was not substantiated by any clinical information nor was it cited as part of a change in your care plan due to your increasing needs. You live with your caregivers. It appears that some of the Personal care is for the convenience of the caregiver and not required to deliver services to the member. Fourteen (14) hours of personal care services is approved and Fifteen (15) hours of personal care services is denied.

*Id.*

9. On June 29, 2020, Florida Community Care issued an NPAR denying Petitioner's plan

appeal. *Id.* at 77-78. The NPAR states as follows:

On 05/29/2020 we received your timely plan appeal request regarding Florida Community Care's Notice of Adverse Benefit Determination dated 6/29/2020, NABD Number [REDACTED], REDUCING the Personal Care: (T1019) 29 hours to 14 hours provided to [Petitioner].

On 06/29/2020, after consideration of the information you provided to Florida Community Care in support of your plan appeal, Florida Community Care hereby **UPHELD** your plan appeal. As a result, [Petitioner] **will not** receive (T1019) Personal Care 29 hours , effective 07/10/2020.

(T1019) Personal Care: 14 hours/week approved.

*Id.* (Emphasis in original).

10. On September 18, 2020, Florida Community Care issued a revised NABD. *Id.* at 56-57. The revised NABD states as follows:

Florida Community Care has reviewed your request for:  
T1019 - PERSONAL CARE (15 MINUTE UNIT)  
29 Hours/Week 7 Days/Week  
Which we received on 03/26/2020.

After our review, this service has been:  
**Reduced** as of 03/28/2020.

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

- We determined that your requested services are not medically necessary because the services do not meet either of the reason(s) checked below: (*See Rule*)
  - Meet all of the criteria as defined in Rule 59G-1.010(166), F.A.C., for all nursing facility services and mixed services; OR
  - 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:

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: We reviewed your request for personal care services (T1019) and found that it does not meet the Agency for Health Care Administration (AHCA) criteria for medical necessity. Your request

was not substantiated by any clinical information nor was it cited as part of a change in your care plan due to your increasing needs. You live with your caregivers. It appears that some of the Personal care is for the convenience of the caregiver and not required to deliver services to the member. Fourteen (14) hours of personal care services is approved and Fifteen (15) hours of personal care services is denied.

*Id.* (Emphasis added).

11. Florida Community Care's summary of the instant case provides as follows:

**Reason for Appeal:** Reduction of Personal Care (29 hours to 14 hours)

**Enrollee Background**

74 year-old-female, dual member with hx of Alzheimer's disease who lives with her husband, daughter, son-in-law, and granddaughter, in a private home. Jeanette Vega is member caregiver who is also the Direct Service Worker (DSW), and Olga Vega/daughter is the Power of Attorney (POA). The Florida Department of Elder Affairs: 701 B Comprehensive was done 8/19/2019 with daughter/caregiver and member present. Daughter/caregiver was the main informant as member is only oriented to person. Daughter/caregiver report she gave up employment to take care of her mother due to decline in her health and need twenty-four seven (24/7) supervision and assistance required. Member's husband is unable to assist in caring for his wife, due to his own medical conditions, who recently had an amputation of his leg.

**701B Assessment:**

**ADL'S:** Need assistance but not totally with bathing, dressing, and using bathroom. Uses assistive device (walker) to walk and require assistance in transferring/walking.

**IADL'S:** Need total assistance for heavy chores, lighthouse keeping, management of money, preparing meals, shopping, managing money and transportation.

**Mental Health:** Forgetful/confused nearly every day; Agitated/disruptive several days.

**Medical Issues:** Alzheimer's, DM (NIDDM), Arthritis, High Cholesterol, Incontinence of Bowel and Bladder.

Florida Community Care (FCC) Medical Director reviewed the products and services associated with enrollees who receive Home and Community-based Services (HCBS) and products. **Your case was selected for a review on March 28,**

**2020 by Medical Director it was noted member was receiving more than required hours needed for Personal Care.**

The Medical Director reduced Personal care to fourteen (14) hours a week and denied fifteen (15) hours. There was no change in the member's condition that would show member need twenty-nine hours 29 of personal care. After reviewing, it was noted it was more a convenience for your daughter who is not employed and decided to take care of you. The decision was based on the Agency for Health Care Administration (AHCA) criteria for medical necessity for Personal Care LTC program. (See NABD)

It needs to be noted that in the 701B line item #130, under the Caregiver Section, Jeanette Vega indicate she spends twenty-four (24) hours to take care of her mother. The medical director took this into consideration when making the determination to terminate the 15 hours of PCS.

**Current approved services:**

**Personal Care 14 hours/weekly**  
**Homemaker 7 hours/weekly**  
**Adult Companion Care 4 hours/weekly**  
**HDM (Home Delivered meals)**

*Id.* at 17-18. (Emphasis added).

12. On September 17, 2020, Petitioner's Authorized Representative timely requested a Fair Hearing to contest the Respondent's reduction of Personal Care services. The Fair Hearing was scheduled to be convened by telephone for October 27, 2020, at [REDACTED].

13. At the hearing and under oath, Dr. Liotta testified that Respondent's decision to reduce Petitioner's Personal Care services by fifteen (15) hours per week was based on the 701-B Comprehensive Assessment, prescribed medications, medical diagnoses, the plan of care, [REDACTED] letter, *supra* ¶ 7, [REDACTED] letter (See Respondent's Composite Exhibit 1, pages 67-68), and Petitioner's natural support. Respondent applied the PCS Policy in making their medical necessity determination (See Respondent's Composite Exhibit 1, pages 86-95). Dr. Sydney Ross-Davis ("Dr. Ross-Davis") reviewed Petitioner's case and issued the NABD. Dr. Michael Yanuck ("Dr.

Yanuck”) reviewed Petitioner’s case and issued the NPAR. All three medical professionals agree that fifteen (15) hours per week were not medically necessary, because they are in excess of Petitioner’s needs.

14. Dr. Liotta classified Petitioner as having “moderate functional impairment”, according to the Review Criteria for Personal Care Services (*See Respondent’s Composite Exhibit 1, page 94*). Respondent applied the Florida Medicaid’s time allotments for Personal Care tasks (*See Respondent’s Composite Exhibit 1, page 95*) and Respondent’s calculation indicated that Petitioner needs 14 hours per week of assistance with Personal Care tasks.

15. Respondent did not consider [REDACTED] letter as a “Letter of Medical Necessity” because it contained only two sentences and did not support the necessity of Personal Care services. This letter was not included in the medical necessity determination process.

16. At the hearing and under oath, [REDACTED] argued that Respondent’s Florida Community Care was not correct because the documentation used by Florida Community Care was based on information obtained in a 701-B Comprehensive Assessment performed in 2019, and not up-to-date to reflect Petitioner’s current condition. [REDACTED] acknowledged that the 701-B Comprehensive Assessment was correct when completed, but [REDACTED] argues that Petitioner’s condition has worsened since 2019. [REDACTED] asked the Case Manager come to the home to complete an up-to-date assessment, but Florida Community Care has not sent anyone to the home since the last assessment. [REDACTED] testified that Petitioner now requires full assistance with all ADLs. [REDACTED] argued that an up-to-date 701-B Comprehensive Assessment should be conducted to accurately reflect the Petitioner’s needs, and the Petitioner is available at any time for Florida Community Care to come to the home. [REDACTED] testified

that the fifteen (15) hours per week of Personal Care services, at issue, are used for assistance with bathing, eating, getting dressed, transferring, walking, and using the bathroom. ■■■■

■■■■ testified that Petitioner needs more time than estimated for these tasks. ■■■■ does not have medical or clinical documentation to support that Petitioner's condition has worsened.

### CONCLUSIONS OF LAW

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

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

19. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. **The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service.** The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

(Emphasis added).

20. Because Respondent reduced an existed service, the burden of proof is on the Respondent. *See* Fla. Admin. Code R. 59G-1.100(17)(g). The standard of proof in an administrative hearing is a preponderance of the evidence. *Id.* The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

21. The LTC Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.192, governs LTC services available to eligible Medicaid recipients in the State of Florida. See Respondent's Composite Exhibit 1, pages 97-118. The 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.

...

#### **4.1 General Criteria**

Florida Medicaid covers services that meet all of the following:

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

#### **4.2 Specific Criteria**

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

- Consistent with the type, amount, duration, frequency, and scope of services specified in an enrollee's authorized plan of care
- Provided in accordance with a goal in the enrollee's plan of care

- Intended to enable the enrollee to reside in the most appropriate and least restrictive setting

...

#### **4.2.1 Home and Community-Based Supportive Services**

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

##### **4.2.1.1 Adult Companion Care**

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

##### **4.2.1.8 Home Delivered Meals**

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

##### **4.2.1.9 Homemaker Services**

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

...

#### **4.2.2 Mixed Services**

Mixed services may exceed State Plan limits on those services in accordance with this policy. The Long-term Care benefit includes coverage of the following mixed services:

...

##### **4.2.2.6 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.

*Id.*

22. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines Medically Necessary or Medical Necessity as:

**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.

23. The PCS Policy, incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs Personal Care services available to eligible Medicaid recipients in the State of Florida. The PCS Policy provides as follows:

**1.1 Description**

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

**4.1 General Criteria**

Florida Medicaid reimburses for services that meet all of the following:

- Are determined medically necessary

- Do not duplicate another service
- Meet the criteria as specified in this policy

#### **4.2 Specific Criteria**

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician’s order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

For recipients requiring less than two hours of personal care services per day, please refer to the Florida Medicaid home health visits coverage policy.

...

#### **REVIEW CRITERIA FOR PERSONAL CARE SERVICES**

First level reviewers evaluate all of the following information to ensure requested services are appropriate. Reviewers will approve the frequency and duration of services that are medically necessary.

If the first level reviewer cannot determine medical necessity, or additional hours are requested, the case will be referred to a physician reviewer for final determination.

#### **1. Service Criteria for First Level Reviewers:**

All documentation submitted must substantiate the recipient’s specific diagnoses and the coverage criteria specified in section 4.0. Providers must include assessments from both the personal care services provider and the treating physician.

All documentation must substantiate one of the following functional impairments:

- a. Minimal functional impairment - One of the following indicators must be satisfied:**
  - ADLs requiring at least minimum assistance
  - Ambulates with assist of person or device
  - Transfers requiring at least minimum assistance

- b. Moderate functional impairment - Two of the following indicators must be satisfied:**
  - ADLs requiring at least minimum assistance
  - Ambulates with assist of person or device
  - Transfers requiring at least minimum assistance
- c. Maximum functional impairment - All of the following indicators must be satisfied:**
  - ADLs requiring total assistance
  - Non-ambulatory
  - Transfers requiring 1-2 person assist
- d. Maximum and persistent functional impairment without available parent or legal guardian support - All of the following indicators must be satisfied:**
  - ADLs requiring total assistance
  - Non-ambulatory
  - Transfers requiring 1-2 person assist
  - Treating physician must certify that all of the above impairments are present

**2. Determining Service Duration**

First level reviewers will determine whether the amount of services requested will be approved using the following chart:

Personal Care Task	General Time Allowances
<b>Bathing</b>	
<b>Full-body Bath:</b> Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient's needs
<b>Partial Bath:</b> A sponge bath includes, at minimum, bathing of the face, hands, and perineum.	15–20 minutes per partial bath
<b>Dressing</b>	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or prosthesis
<b>Grooming and Skin Care</b>	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes

<b>Positioning</b>	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
<b>Transfers</b>	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
<b>Toileting and Maintaining Continence</b>	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
<b>Eating</b>	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
<b>Delegated Medical Monitoring and Activities</b>	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	15–30 minutes day for all monitoring tasks performed

24. Based on the NABD, Respondent reduced Petitioner’s Personal Care services by fifteen (15) hours per week based on medical necessity. See supra ¶ 8. Respondent determined that, “some of the Personal care is for the convenience of the caregiver and not required to deliver services to the member,” and “member was receiving more than required hours needed for Personal Care.” See supra ¶ 8. Respondent based the medical necessity determination on the 701-B Comprehensive Assessment, prescribed medications, medical diagnoses, the plan of care, [REDACTED] letter, [REDACTED] letter, and Petitioner’s natural support. See supra ¶ 13-15. Dr.

Liotta classified Petitioner as having “moderate functional impairment” and applied the Florida Medicaid’s time allotments for Personal Care tasks to determine that 14 hours per week of Personal Care services was medically necessary. *See supra* ¶ 13-15. The Florida Medicaid’s time allotments for Personal Care tasks are located in the PCS Policy. *See supra* ¶ 23.

25. The LTC Policy covers Personal Care services if they are deemed to be medically necessary. Because Personal Care services are classified as “Home and Community-Based Supportive Services,” Petitioner must meet the medical necessity criteria defined in section 1.3.14(b) of the the LTC Policy. Based on the record, Respondent denied Petitioner’s requests for not meeting the following medical necessity standards: Services must 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; and Services must 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. These medical necessity standards are outlined in the first and second prongs of medical necessity. *See supra* ¶ 21.

26. Personal Care services provide “assistance with ADLs and IADLs.” *See supra* ¶ 21. Respondent asserted that the reduced fifteen (15) hours per week of assistance (or a total of twenty-nine (29) hours) with ADLs and IADLs were not medically necessary. The record indicates that Petitioner needs total assistance with all ADLs (heavy chores, light housekeeping, managing money, preparing meals, shopping, managing medication, and using transportation). *See supra* ¶ 5. The record also indicates that Petitioner needs assistance, but not total help with ADLs such as bathing, dressing, and using the bathroom. *See supra* ¶ 3. Respondent used the following information to make such a determination: 701-B Comprehensive Assessment, prescribed

medications, medical diagnoses, the plan of care, [REDACTED] letter, [REDACTED] letter, and Petitioner's natural support. Petitioner's Authorized Representative asserted that the 701-B Comprehensive Assessment does not reflect the most up-to-date information of the Petitioner's condition. However, Petitioner's Authorized Representative did not present any evidence to reflect Petitioner's current condition and Respondent testified that the 701-B Comprehensive Assessment is the most recent assessment performed. Petitioner's Authorized Representative testified that Petitioner needs more time than estimated for these tasks according to the PCS Policy. However, Petitioner's Authorized Representative did not provide any evidence as to support her assessment how much time Petitioner needs for each of the Personal Care tasks identified in the PCS Policy. Respondent asserted that three Medical directors (Dr. Yanuck, Dr. Ross-Davis, and Dr. Liotta) reviewed Petitioner's case and concluded that the hours at issue were no longer medically necessary. See supra ¶ 13-15. The 701-B Comprehensive Assessment indicates that the Petitioner needs assistance with ADLs and IADLS. However, the 701-B Comprehensive Assessment does not indicate that the Petitioner's condition has worsened or that Petitioner's natural support has decreased. See supra ¶ 3-4. Petitioner's Authorized Representative argued that the Personal Care services should be reinstated to assist the Petitioner with bathing, eating, getting dressed, transferring, walking, and using the bathroom. When comparing the record to the minimum time allotments provided for in the PCS Policy, the record indicates that Petitioner needs at least five (5) hours, fifteen (25) minutes per day of assistance with bathing, eating, getting dressed, transferring, walking, and using the bathroom. Specifically, the record indicates Petitioner needs at minimum: Full body bath (30 minutes); Dressing (30 minutes); Grooming and Skin Care (30 minutes); Transfers (120 minutes - 15

minutes/every 2 hours for 16 hours); Toileting (15 minutes per incident); and Eating (30 minutes per meal, 3 meals total). See supra ¶ 23. Neither Respondent nor Petitioner identified how often Petitioner requires transferring or uses the bathroom in a day.

27. In consideration of all the evidence in this case, the record does not indicate that Petitioner requires more hours than the reduced amount. Section 1.3.16 of the LTC Policy defines “natural support” as “[u]npaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.” The record indicates that [REDACTED] is Petitioner’s sole natural support, as Petitioner’s husband is unable to assist Petitioner with Personal Care tasks. However, [REDACTED] has quit her job to care for the Petitioner, always assisting Petitioner with ADLs and IADLs on a daily basis, and spending twenty-four (24) hours per week providing care for Petitioner. See supra ¶ 2-3, 5. The record also reflects that [REDACTED] is confident in her ability to assist Petitioner with ADLs and IADLs, and is not experiencing an emotional or physical crisis that would affect her ability to care for the Petitioner. See supra ¶ 2. Although [REDACTED] asserts she is experiencing a financial crisis, the evidence does not indicate that this affects her ability to provide natural support. Furthermore, to be medically necessary, the services at issue must “be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider.” Thus, the admitted evidence and testimony indicates that the allotted hours, and natural support provided, are sufficient to meet Petitioner’s needs for assistance with ADLs and IADLs.

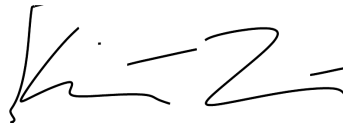
28. Based on the record, Respondent has demonstrated that Personal Care services at issue were in excess of the Petitioner’s needs at this time. Thus, the Petitioner does not meet criterion number two for medical necessity, according to section 1.3.14 of the Definitions Policy.

29. Accordingly, upon consideration of Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, both parties' sworn testimony, the LTC Policy, the PCS Policy, and the Definitions Policy, the undersigned Hearing Officer concludes that Respondent has shown by a preponderance of the evidence that Respondent's reduction of Personal Care services was correct.

**DECISION**

Respondent's reduction of Personal Care services from twenty-nine (29) hours per week to fourteen (14) hours per week is **AFFIRMED**. Petitioner's request for relief is hereby **DENIED**.

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



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Kristopher León  
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**KRISTOPHER LEÓN, Hearing Officer**  
**Agency for Health Care Administration**  
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**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

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

**COPIES FURNISHED TO:**



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