



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

FILED

Nov 24, 2020, 12:23 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

[REDACTED],

PETITIONER,

AHCA Case No.: 20-FH [REDACTED]

Plan ID No.: [REDACTED]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 30, 2020, at [REDACTED]

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Melissa Layne  
Senior Manager for Member Appeals  
Sunshine State Health Plan, Inc.

### **STATEMENT OF ISSUE**

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's adult companion care services was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to terminate Petitioner's home delivered meals was correct.

### **PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner's Authorized Representative and son, [REDACTED] ("[REDACTED]") appeared on behalf of the Petitioner.

Melissa Layne, Senior Manager for Member Appeals for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. The following attended as witnesses for Respondent: Dr. Erin O'Brien, Medical Director for Sunshine; Talia Augiar, Supervisor for Sunshine; and Charles Hill, Care Coordinator for Sunshine.

Doris Rivera, 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 six (6)-page evidence packet. The evidence packet included: an e-mail from [REDACTED], dated September 18, 2020; a Notice of Adverse Benefit Determination ("NABD"), dated September 11, 2020; and a Request for an Appeal or Grievance Form. Absent an objection from the Respondent, the undersigned admitted the six (6)-page packet into evidence as Petitioner's Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and five (105)-page evidence packet. The evidence packet included: a table of contents;

a Medicaid Fair Hearing Summary; a NABD, dated September 11, 2020; a Long Term Care Person-Centered Care Plan (“POC”), dated August 26, 2020; a POC, dated September 10, 2020; Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”), dated August 12, 2020; an e-mail from Respondent, dated October 1, 2020; an NABD, dated September 11, 2020, with handwritten notation; a second e-mail from Respondent, dated October 1, 2020; a third e-mail from Respondent, dated October 1, 2020; an Expedited Appeal Acknowledgment, dated September 21, 2020; a Notice of Plan Appeal Resolution (“NPAR”), dated September 23, 2020; Sunshine Health Policy and Procedure-LTC Ancillary Service Criteria-LT.UM.09; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from the Petitioner, the undersigned admitted the one hundred and five (105)-page packet into evidence as Respondent’s Composite Exhibit 1.

#### **FINDINGS OF FACT**

1. Petitioner is an enrolled member of Sunshine. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is eighty-four (84)-years old. *See* page 14 of Respondent’s Composite Exhibit 1. Petitioner lives with her husband, [REDACTED], her daughter-in-law, her grandson and granddaughter. *Id.* at 33. Petitioner is rarely left alone. *Id.* 48.
3. Petitioner’s diagnoses include: osteoarthritis; high blood pressure; high cholesterol; diabetes; occasional dizziness; heart problems; constant bladder incontinence; constant bowel incontinence; osteoporosis; hypothyroid problems; gastritis; insomnia; anxiety; and cellulitis. *Id.* at 38 – 39.

4. Petitioner's activities of daily living ("ADLs") are as follows: for bathing and dressing, Petitioner needs assistance (but not total help); and for eating, using the bathroom, transferring, and walking/mobility, Petitioner needs supervision or prompting. *Id.* at 36. Petitioner's instrumental activities of daily living ("IADLs") are as follows: for heavy chores and light housekeeping, Petitioner needs total assistance (cannot do at all); for using the telephone, Petitioner needs supervision of prompting; and for managing money, preparing meals, shopping, managing medication, and using transportation, Petitioner uses an assistive device. *Id.* at 37. In regards to meal preparation, Petitioner difficulties in obtaining food from the fridge and is not able to use the microwave or prepare her own meals." *Id.* at 48. Petitioner needs supervision. *Id.* at 41.

5. Petitioner talks to friends or relatives by phone at least two (2) to six (6) times per week. *Id.* at 45. Petitioner spends time with someone who does not live with her at least two (2) to six (6) times per week. *Id.* Petitioner participates in activities outside the home that interest her at least two (2) to six (6) times per week. *Id.*

6. Petitioner's plan of care formerly included the following services: twelve (12) hours, weekly, of personal care services; four (4) hours, weekly, of homemaker services, three (3) hours, weekly, of adult companion care services; and seven (7) home delivered meals. *Id.* at 30.

7. In the NABD, dated September 11, 2020, Respondent terminated Petitioner's home delivered meals (7 per week), and Petitioner's adult companion care services (3 hours per week). *Id.* at 4 – 12. The NABD explained the basis of the terminations as follows:

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

...

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

and one of the following:

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

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

...

Based on the assessment of the member’s care needs and household and caregiver status, Sunshine Health will terminate the 3 hours per week of Companion Care Services. Companion Care is provided to prevent social isolation. Companion Care is not hands on care. The member lives with family and there [sic] no concerns for social isolation. Sunshine Health will terminate the 7 meals per week of Home Delivered Meals. The member receives Home Health Aide services and lives with family who can assist with meal preparation. In addition, the member receives food stamps.

...

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

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

8. Petitioner requested a plan appeal and received an NPAR dated September 23, 2020, upholding the termination of three (3) hours of adult companion care services, and seven (7) home delivered meals. *Id.* at 67 – 73. The NPAR explained as follows:

The reason for our decision was [t]he request for 3 hours per week of Companion Care is denied. Companion Care is provided to prevent social isolation. Companion

Care is not hands on care. The member lives with family. There is low risk of social isolation. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria. . . . The request for 7 Home Delivered Meals per week is denied. The member has Homemaking service which includes meal preparation. This decision was made with Sunshine Health Policy LT.UM.09 Long Term are Ancillary Service Criteria.

Page 67 of Respondent's Composite Exhibit 1.

9. On September 23, 2020, Petitioner requested a Fair Hearing to challenge the termination of three (3) hours, weekly, of adult companion care services and seven (7) home delivered meals. On October 9, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 30, 2020, at [REDACTED]

10. Dr. O'Brien is a Medical Director for Sunshine. Dr. O'Brien testified that Petitioner's adult companion care services were terminated because it was not felt that she was at risk for social isolation. Dr. O'Brien testified that the home delivered meals were terminated because it a duplication of the homemaker services, which can be used to prepare meals.

11. As testified to by [REDACTED], either he or the home health aide will provide Petitioner's meals. As testified to by [REDACTED], he is retired. As testified to by [REDACTED], he does not have a problem with preparing Petitioner's meals, rather the problem is with paying for the meals. As testified to by [REDACTED], Petitioner and her husband receive together \$154 in food stamps.

**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 Respondent is terminating previously approved services. 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 adult companion care and home delivered meals:

#### **1.1 Description and Program Goal**

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

...

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

ADLs include:

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

...

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

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene

- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

...

#### **4.1 General Criteria**

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

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

...

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

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

...

#### **4.2.1.8 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.

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. LT.UM.09 provides as follows in regards to adult companion care and home delivered

meals:

## **2. Adult Companion Care**

Adult Companion Care services provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services. The provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks

incidental to the care and supervision of the member. The provision of services is provided at the member's residence when supervision is necessary.

### Approval Criteria

To be considered for Adult Companion Care Services, a member must have a qualifying trigger diagnosis and meet the minimal criteria for the four (4) dimensions of determination as discussed here.

- a) Trigger diagnosis include:
  - Advanced Alzheimer's disease & dementia
  - Mental illness requiring supervision
  - Parkinson's disease
  - Multiple sclerosis
  - ALS
  - Congestive Heart Failure
  - COPD
  - Cancer
  - End State Renal Disease
  - TBI
  - Other diagnosis as deemed medically necessary by Medical Director
- b) Four (4) Dimensions of Determination
  - Need for Supervision – safety risk if left without supervision
    - See Section C.1.c for more details
  - Informal supports
    - None
    - Few friends/family in area
    - Family nearby
  - Living Situation
    - Lives alone
    - Lives with other but is alone for extended periods of time due to the necessary absence of a caregiver
    - Lives with caregiver and others
  - Services in Place
    - Sunshine Health provided and provided by other provider/insurance

Exclusions and Limitations Adult Companion Care include but are not limited to:

1. Service must be provided at member's residence.
2. Member must reside in a non-facility based setting.
3. Member resides alone or resides with others and is left alone for long periods where member is at risk.
4. Member is at risk of social isolation.

5. Member has cognitive impairment that prevents them from knowing when or how to carry out personal tasks.
6. The member has memory deficits, which prevent them from knowing when or how to carry out personal care tasks.
7. Member requires hands on assistance to carry out ADL tasks.
8. Member attends Adult day care or engages in community group or social events, unless service is needed for supervision. The provider must be awake during the provision of companion services, and the services shall not be provided overnight.
9. Adult Companion Care services provided by Sunshine Health may not duplicate services that are provided under by another provider.
10. Cognitive ability of member to engage in an comprehend conversation with others
11. Care, grooming, or feeding of pets and animals
12. Yard work, gardening, or home maintenance work
13. Escort Services

...

#### **5. Home Delivered Meals.**

Nutritionally sound meals to be delivered to the residence of the member who has difficulty shopping for or preparing appropriate, nutritious meals without assistance. The member must be given a choice of meals from a menu provided in advance. Each meal is designed to meet the *USDA 2015-2020 Dietary Guidelines for Americans*. The service must be provided at the member's residence. The Home Delivered Meals must be provided at the member's residence. The Home Delivered Meals can be hot, cold, frozen, dried, canned, or a combination of these options. More than one meal can be delivered at a time if there is proper storage and heating facilities at a member's residence. The member must be able to prepare and consume the meals him/herself with available assistance.

...

#### Approval Criteria

All home delivered meals will comply with any physician ordered and/or cultural special diets. The number of meals provided depend on caregiver availability and dietary need. To be eligible to receive home delivered meals, member must be:

- Ambulatory in the home and able to answer the door
- Able to obtain food from a refrigerator and able to microwave the food
- Homebound
- Live alone or spend extended periods of time alone
- Assistance is needed with IADL tasks for shopping and meal preparation
- Home delivered meals are not meant to cover the cost of meals

Exclusions and Limitations for Home Delivered Meals include but are not limited to:

1. Service must be provided at member's residence.
2. Member resides alone or resides with others and is left alone for long periods.
3. The service is not provided when other family members and/or friends reside in the home.
4. Member must reside in a non-facility based setting.
5. Member needs assistance with meal preparation/and or shopping for food.
6. Member must be able to ambulate to door to receive meals
7. The member must be able to prepare and consume the meals with him/herself with available assistance.
8. Member must be able to obtain food from the refrigerator and be able to operate microwave to prepare meals.
9. This service is not intended to cover the cost of meals.

*Id.* at 80 - 81, and 83 through 85.

#### **A. Adult Companion Care**

19. In the NABD, dated September 11, 2020, Respondent terminated Petitioner's adult companion care services (3 hours per week). *See* page 4 of Respondent's Composite Exhibit 1. In the NABD, Respondent explained that adult companion care services were not medically necessary, and that the termination was "[b]ased on the assessment of the member's care needs and household and caregiver status . . . ." *Id.* at 5 - 6. The NABD further explained "member lives with family and there [are] no concerns for social isolation." *Id.* at 6.

20. As provided in Respondent's policy, LT.UM.09, adult companion care services are to "provide non-medical care, supervision, and socialization to a functionally impaired adult." As discussed in LT.UM.09, adult companion care services are determined, in part, based on: the recipient's need for supervision; the recipient's informal supports; the recipient's living situation; and the services in place for the recipient. Moreover, as provided in the LTC Policy, adult companion care is to provide "non-medical care, supervision when necessary to protect the health, safety, and well-being of the enrollee, or social enrichment of a functionally impaired

enrollee.” As provided in the record, Petitioner lives with her husband, son, and daughter-in-law. Petitioner is rarely left alone. *Id.* at 48. As provided in the record, for at least two (2) to six (6) times per week, Petitioner talks to friends or relatives on the phone, spends times with people who do not live with her, and participates in activities outside the home that interest her. *Id.* at 45.

21. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive the terminated services. As discussed above, Petitioner may need supervision, but she is rarely left alone, as she lives with her husband, son, daughter-in-law, and two (2) grandchildren. Moreover, Petitioner has multiple opportunities to socialize with others. See page 45 of Respondent’s Composite Exhibit 1. Thus the record shows that Petitioner’s adult companion care services are not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment”, and are “in excess of [her] needs.” Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent showed by a preponderance of the evidence that its termination of three (3) hours, weekly, of Petitioner’s adult companion care was correct.

#### **B. Home Delivered Meals**

22. In the NABD, dated September 11, 2020, Respondent terminated Petitioner’s home delivered meals (7 meals per week). *Id.* at 4 - 12. In the NABD, Respondent explained that home delivered meals were not medically necessary, and that the termination was “[b]ased on the assessment of the member’s care needs and household and caregiver status . . . .” *Id.* at 5. The

NABD further explained “member receives Home Health Aide services and lives with family who can assist with meal preparation. In addition, the member receives food stamps.” *Id.* at 6.

23. As provided in Respondent’s policy, LT.UM.09, home delivered meals are to provide “nutritionally sound meals to be delivered to the residence of the member who has difficulty shopping for or preparing appropriate, nutritious meals without assistance.” Per the LTC Policy, home delivered meals are to provide “nutritionally sound meals delivered to an enrollee’s home when the enrollee has difficulty shopping for, or preparing food, without assistance.” As shown by the record, Petitioner has “difficulties in obtaining food from the fridge and is not able to use the microwave or prepare her own meals.” *Id.* at 48. As shown by the record, Petitioner receives twelve (12) hours of personal care services and four (4) hours of homemaker services. *Id.* at 30. Dr. O’Brien testified, *supra* ¶ 10, that Petitioner’s homemaker services can be used to prepare meals for Petitioner. Further, as testified to by ██████████, *supra* ¶ 11, he and Petitioner’s care aide, prepare the meals that are not provided by the home delivered meal service.


24. As Respondent bears the burden of proof, Respondent must show that it is not medically necessary for Petitioner to receive the seven (7) home delivered meals, weekly. Respondent asserted that Petitioner has home health aide services that can be used to prepare meals, however, it was not established how much time Petitioner needs with each of her ADLs, IADLs, and homemaker tasks. Thus, Respondent did not show that Petitioner’s home health aides had sufficient time to prepare an additional meal. However, as testified to by ██████████, *supra* ¶ 11, he is retired, and already prepares meals for Petitioner. Further, as testified to by ██████████, he is not concerned with not being able to prepare the meals, rather he is concerned that Petitioner does not have enough money to pay for her meals. *Id.* However, it is not reflected in Medicaid

policy that home delivered meals are intended to provide a financial supplement. As such, [REDACTED] is available to provide meals for Petitioner. Thus the record shows that Petitioner's home delivered meals are not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment", and are "in excess of [her] needs." Therefore, upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent showed by a preponderance of the evidence that its termination of Petitioner's seven (7) home delivered meals, weekly, was correct.

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

Respondent's termination of Petitioner's three (3) hours of adult companion care services, weekly, is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of adult companion care services is **DENIED**. Respondent's termination of Petitioner's seven (7) home delivered meals is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of home delivered meals is **DENIED**.

**DONE** and **ORDERED** this 24th day of November, 2020, in Tallahassee, Leon County, Florida.

  
Joseph Mabry  
20-FH [REDACTED] & 20-  
FH [REDACTED]  
2020.11.24 12:21:38  
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**JOSEPH MABRY, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
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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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