



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

FILED

Dec 18, 2020, 9:57 am
OFFICE OF FAIR HEARINGS

[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 Hearing Officer convened a telephonic Medicaid Fair Hearing on November 12, 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 issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of personal care services from 37 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 husband, appeared for the Fair Hearing and provided

testimony on Petitioner's behalf. [REDACTED], Petitioner's caregiver, also appeared for the Fair Hearing and provided testimony on Petitioner's behalf.

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; Alshenetha Williams, Care Coordinator Supervisor for Sunshine.; Yana Langford, Supervisor of Case Management for Sunshine; Louise Jeanty, Supervisor of Quality Improvement; and Lisa Shirazi, Care Coordinator for Sunshine.

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

Prior to the hearing, Petitioner did not send an evidence packet to the Office of Fair Hearings and Respondent. Additionally, Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 121-page evidence packet. The packet included the following documents: a Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated October 20, 2020; a Notice of Adverse Benefit Determination ("NABD"), dated July 16, 2020; Sunshine's LTC Person-Centered Care Plan ("care plan"), signed by the Care Manager on July 6, 2020; the care plan ("7/6/20 care plan"), signed by the Care Manager on September 21, 2020 ("9/21/20 care plan"); the Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B") with an assessment date of July 6, 2020 (the "7/6/20 701B"); the 701B with an assessment date of September 21, 2020 (the "9/21/20 701B"); Sunshine's Expedited Appeal Request Decision, dated August 17, 2020; a

Notice of Plan Appeal Resolution (“NPAR”) dated, September 9, 2020; the Sunshine Health Policy and Procedure LT.UM.9; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent’s 121-page evidence packet into evidence as Respondent’s Composite Exhibit 1.¹

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 53-year-old female who resides in a private residence with her husband. See Respondent’s Composite Exhibit 1, pages 59 – 60. The 9/21/20 701B, which is the most recent 701B, states, “Spouse providing all care services to member. He states she needs more assist with ADLs.” *Id.* at 60. Petitioner has “poor safety awareness” and is “not steady on her feet.” *Id.* at 61 and 63. See Respondent’s Composite Exhibit 1, page 66. Petitioner “needs assist with all aspects of care.” *Id.* at 68. The 9/21/20 care plan states, “member needs supervision 24/7, has set routine and assistance.” *Id.* at 29.

3. The 9/21/20 701B reflects that Petitioner has the following health conditions: past and current allergies (Amoxicillin); past cancer (pre-cervical cancer); past and current bladder

¹ During the Fair Hearing, ██████████ alleged that Respondent was withholding a document from him which allegedly contained information relating to Petitioner’s need for 24/7 care/supervision, and that the Fair Hearing should not move forward until he received the requested document. The undersigned Hearing Officer treated ██████████ allegations as a Motion to Continue (“motion”), and denied the motion due to the following: Respondent denied having possession of such document; and the Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, dated October 20, 2020, provided instructions and a deadline for exhibits. It should be noted that the record already includes the information about which ██████████ appeared to be arguing, as the 9/21/20 care plan states, “member needs supervision 24/7, has set routine and assistance.” See Respondent’s Composite Exhibit 1, page 29.

incontinence (frequent); past and current bowel incontinence (occasional); past and current multiple sclerosis; and past and current urinary tract infection.

4. The 9/30/20 701B reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner needs assistance (but not total help) with bathing and dressing. See Respondent's Composite Exhibit 1, page 63. Petitioner needs supervision or prompting for eating, using the bathroom, transferring, and walking/mobility. *Id.* Regarding transfers and ambulation, the record reflects that Petitioner "will not use walker, uses walls and furniture, walker more of a hazard to her." *Id.* The 9/30/20 701B notes, "[w]alk with her always. Walking more bent over and head down" and "[s]pouse states her mobility and stability have declined." *Id.*

5. The 9/30/20 701B reflects the following regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"). Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and using transportation. See Respondent's Composite Exhibit 1, page 64. Petitioner needs assistance (but not total help) with using the telephone and managing medication. *Id.*

6. On July 16, 2020, Respondent issued an NABD reducing personal care services from 37 hours per week to 32 hours per week. See Respondent's Composite Exhibit 1, pages 4 and 5. The NABD stated the reason for Respondent's determination was that the "requested services are **not medically necessary.**" *Id.* at 4. (Emphasis added.)

7. Petitioner timely requested a plan appeal. See Respondent's Composite Exhibit 1, page 77. On September 9, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 83 – 85. The NPAR stated as follows:

On August 11, 2020 we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated July 16, 2020 Notice of

Adverse Benefit Determination Number [REDACTED] reducing the 5 hours of Personal Care Services provided to [Petitioner].

On September 9, 2020 after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby approves your plan appeal. As a result, [Petitioner] will not receive 5 hours of Personal Care Services effective September 9, 2020.

The reason for our decision was: The reconsideration of the reduction of 5 hours of Personal Care Services is denied. Original reduction is upheld. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

This decision was made by a Medical Director who is a Board Certified Cardiologist. You, or someone authorized to do so, can ask us for a complete copy of your file, including medical records, a copy of plan review criteria and guidelines, contract provisions, other documents, records, and other information considered during the plan appeal process. These will be provided free of charge.

Respondent's Composite Exhibit 1, page 83.

8. The Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria states the following with regards to personal care services:

7. Personal Care Services

A service that provides assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. The service includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping tasks such as bed making, dusting and vacuuming, which are incidental to the care furnished or are essential to the health and welfare of the member, rather than the member's family. Personal care services include the following:

- a. Assistance to the member to complete personal hygiene (bathing, grooming, mouth care, etc.)
- b. Assistance with bladder and bowel requirements that include assisting the member to and from the bathroom or with bedpan routines
- c. Assisting the member in following through with physician orders
The Personal Care provider cannot not administer any medications, but may bring medications to the member and remind the member to take the medicine at specific times
- d. Assisting with food, nutrition, and diet activities, including preparing meals, when required
and other incidental services, (i.e. housekeeping chores) essential to the health

and welfare of the member

e. Performing household services (changing bed linen or arranging furniture), when such services are essential to the member's health and comfort.

...

Exclusions and Limitations for Personal Care services 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. The provider must be awake during the provision of personal care services.
4. If services are required overnight, member must live alone and one of the following conditions must apply:
 - a. Member requires frequent repositioning due to wounds
 - b. Severe incontinence requiring multiple overnight changes and cleaning
5. Services provided by Sunshine Health may not duplicate services that are provided under by another provider.
6. Escort Services

Respondent's Composite Exhibit 1, pages 107, 108, and 113.

9. On September 24, 2020, [REDACTED] requested a Fair Hearing on Petitioner's behalf due to the reduction of personal care services from 37 hours per week to 32 hours per week. The undersigned scheduled the Fair Hearing for November 12, 2020, at [REDACTED], and all parties were duly notified.

10. Petitioner is currently authorized to receive the following home and community based services: the Personal Emergency Response System ("PERS"); 3 hours per week of homemaker services; 1 case per month of underpads; 1 case per month of bladder control pads; and 2 packs per month of wipes. See Respondent's Composite Exhibit 1, page 32.

11. Dr. Carter is an LTC Medical Director for Sunshine. Dr. Carter testified that Respondent reduced Petitioner's personal care services, because Petitioner resides in the home with her spouse, and needs partial assistance with only 2 ADLs and supervision for the remaining ADLs.

12. [REDACTED] is Petitioner's husband. At hearing, [REDACTED] explained that Petitioner resides in the home with [REDACTED] and no other adults. [REDACTED] is Petitioner's primary caretaker. [REDACTED] works outside the home 32 hours per week. [REDACTED] works Tuesday, Wednesday, Thursday, Friday, and Saturday from 9:00 a.m. until 3:00 p.m. [REDACTED] gets off work at 3:00 p.m., and barely makes it home by 4:00 p.m. [REDACTED] explained that if Petitioner's personal care services are reduced from 37 hours per week to 32 hours per week, he will have to go to part-time status on his job, which will cause him to lose his job benefits such as health care, dental, vision.

13. [REDACTED] is Petitioner's caregiver. [REDACTED] comes into the home and provides care to Petitioner when [REDACTED] is at work. [REDACTED] provides care to Petitioner Tuesday, Wednesday, Thursday, Friday, and Saturday from 8:00 a.m. until 4:00 p.m. [REDACTED] explained that Petitioner "cannot do anything by herself." Petitioner cannot go to bathroom or wipe herself. Petitioner can barely feed herself. It is hard for Petitioner to get up by herself, and [REDACTED] has to hold on to Petitioner throughout the day. Petitioner cannot get out of bed by herself. Petitioner cannot walk to the kitchen to get her own food or her own drinks. [REDACTED] does not feel comfortable leaving Petitioner if [REDACTED] is not home.

CONCLUSIONS OF LAW

14. 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).

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

16. 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.

17. Because Respondent is reducing existing 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.).

18. 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.

...

1.3.18 Plan of Care A description of the enrollee's goals for long-term care, the services and supports needed to meet those goals, and the specific service needs of each enrollee, showing the projected duration, desired frequency, and type of provider furnishing each service, and the scope of the services to be provided.

...

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:

...

4.2.1.9 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.

...

4.2.1.14 Personal Emergency Response Systems

For installation and service monitoring of an electronic device connected to an enrollee's phone that includes a portable "help" button, when provided to an enrollee at high risk of institutionalization to secure help in an emergency.

...

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.

19. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, states as follows:

1.0 Introduction

This policy contains definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule.

...

2.18 Caregiver

Person(s) attending to the needs of another person, who is physically or mentally impaired, injured, incapacitated, or a child unable to care for him or herself.

...

2.2 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

...

2.32 Covered Services

Medical and allied care, goods, services, or procedures that are reimbursable by Florida Medicaid.

...

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

- 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)

...

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.

Definitions Policy, pages 1, 2, 3, 6 and 7.

20. The Agency's PC Policy has been incorporated, by reference, into Fla. Admin. Code R. 59G-

4.215. The PC 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.

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent coverage limits than specified in Florida Medicaid policies.

...

4.0 Coverage Information

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

...

5.1 General Non-Covered Criteria

Services related to this policy are not reimbursed when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0.
- The recipient does not meet the eligibility requirements listed in section 2.0.
- The service unnecessarily duplicates another provider's service.

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act

- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

Florida Medicaid may reimburse for some services listed in this section through a different service benefit.

...

7.0 Authorization

7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid’s General Policies on authorization requirements.

...

Personal Care Task

General Time Allowances

Bathing

Full-body Bath: Tub, shower or sponge/bed bath.

Up to 30 minutes. May rotate with partial bath based on recipient’s needs

Partial Bath: A sponge bath includes, at a minimum, bathing of the face, hands, and perineum.

15–20 minutes per partial bath

Dressing

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
Grooming and Skin Care	
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
Positioning	
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
Transfers	
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
Toileting and Maintaining Continence	
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
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
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

PC Policy, pages 3 – 8, and 10.

21. In the instant case, Respondent reduced Petitioner's personal care services from 37 hours per week to 32 hours per week. *See supra* ¶ 6. As established on the record by the evidence and testimony, Respondent reduced Petitioner's personal care services, because Respondent's position is that the documentation submitted in support of Petitioner's request failed to establish that the requested services were medically necessary. *See supra* ¶ 6 and 7.

22. 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* ¶ 18. Section 4.2.2.6 of the SMMC 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* ¶ 18. The Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria states that personal care services provide "assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living. . . . includes assistance with preparation of meals, but does not include the cost of meals. The service may also include housekeeping. . . ." *See supra* ¶ 8. Further, the PC Policy provides that personal care services are to "provide medically necessary assistance, in the home or in the community, with [ADL] and age appropriate [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." *See supra* ¶ 20.

23. The evidence presented in this case reflects that Respondent's reduction of personal care services is not warranted under the circumstances of this case. Specifically, regarding ADLs, the 9/30/20 701B reflects that Petitioner needs: assistance (but not total help) with bathing and

dressing; and supervision or prompting for eating, using the bathroom, transferring, and walking/mobility. *See supra* ¶ 4. Regarding IADLs, the 9/30/20 701B reflects that Petitioner needs: total assistance (cannot do at all) with heavy chores, light housekeeping, managing money, preparing meals, shopping, and using transportation; and assistance (but not total help) with using the telephone and managing medication. *See supra* ¶ 5. Petitioner has frequent bladder incontinence and occasional bowel incontinence. *See supra* ¶ 3.

24. Dr. Carter testified that Respondent reduced Petitioner's personal care services, because Petitioner resides in the home with her spouse, and needs partial assistance with only 2 ADLs and supervision for the remaining ADLs. *See supra* ¶ 11. However, ██████████ explained that Petitioner "cannot do anything by herself." *See supra* ¶ 13. It is hard for Petitioner to get up by herself, and ██████████ has to hold on to Petitioner throughout the day. *Id.* Petitioner cannot get out of bed by herself, nor can she walk to the kitchen to get her own food or her own drinks. *Id.* Petitioner can barely feed herself. *Id.* Petitioner cannot go to bathroom or wipe herself. *Id.* The record appears to corroborate ██████████ testimony, as it reflects that Petitioner has "poor safety awareness," is "not steady on her feet," and "needs assist with all aspects of care." *See supra* ¶ 2. Additionally, the record reflects that Petitioner "will not use walker, uses walls and furniture, walker more of a hazard to her." *See supra* ¶ 4. The 9/30/20 701B appears to corroborate ██████████ testimony, as it notes, "[w]alk with her always. Walking more bent over and head down" and "[s]pouse states her mobility and stability have declined." *See supra* ¶ 4. As such, the record appears to indicate that Petitioner needs assistance with more than just 2 ADLs as Respondent indicated, as it appears that Petitioner also needs assistance with transferring and walking/mobility. Although the PC Policy provides guidance for general

allowances for ADLs, *supra* ¶ 20, Respondent provided no calculations nor time estimates for each ADL to explain how Respondent arrived at the reduction of personal care services in this case. Based upon the evidence presented by both parties, Respondent failed to establish that a reduction of personal care services was warranted in this matter.

25. Section 1.3.16 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* ¶ 18. In this case, Petitioner resides in the home with her husband and primary caretaker, ██████████. *See supra* ¶ 12. Although Petitioner has natural supports (██████████) available to assist with her care and needs, ██████████ works Tuesday, Wednesday, Thursday, Friday, and Saturday from 9:00 a.m. until 3:00 p.m. *See supra* ¶ 12. ██████████ comes into the home and provides care to Petitioner when ██████████ is at work on Tuesday, Wednesday, Thursday, Friday, and Saturday from 8:00 a.m. until 4:00 p.m. *See supra* ¶ 13. ██████████ gets off work at 3:00 p.m., but barely makes it home by 4:00 p.m. *See supra* ¶ 12. Respondent offered no testimony at the Fair Hearing to rebut the testimony of ██████████ or ██████████. In light of the aforementioned facts, Respondent failed to meet its burden of proving that the reduction of personal care services from 40 hours per week to 32 hours per week is correct.

26. 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* ¶ 18. Petitioner is currently authorized to receive the following home and community-based services: PERS; 3 hours per week of homemaker services; 1 case per month of underpads; 1 case per month of

bladder control pads; and 2 packs per month of wipes. See supra ¶ 10. The NPAR explains that “[b]ased on the assessment, the member's currently approved services are adequate (enough) to meet the member's care needs.” See supra ¶ 7. Considering Petitioner’s current needs, supra ¶ 2 – 5, 12, and 13, the LTC Policy’s definitions for personal care services and homemaker services, supra ¶ 18, and the availability and work status of Petitioner’s natural supports, supra ¶ 25, Respondent failed to demonstrate that Petitioner’s aforementioned needs, supra ¶ 2 – 5, 12, and 13, will be sufficiently met by the 32 hours per week of personal care services. Given that Respondent failed to establish that the reduction of personal care services is warranted in this matter, supra ¶ 24 and 25, the requested 37 hours per week of personal care services is not “in excess of [Petitioner’s] needs.” See supra ¶ 18.



27. In light of the both parties’ testimony, Respondent’s Composite Exhibit 1, the SMMC LTC Policy, the Authorization Requirements Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent failed to meet its burden of proving that the amount of hours reduced are no longer medically necessary.

28. Accordingly, the undersigned Hearing Officer finds that Respondent failed to prove 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 37 hours per week to 32 hours per week is **REVERSED**. Petitioner’s appeal based on Respondent’s reduction in this matter is **GRANTED**.

DONE AND ORDERED this 18th day of December, 2020, in Tallahassee, Leon County,
Florida.

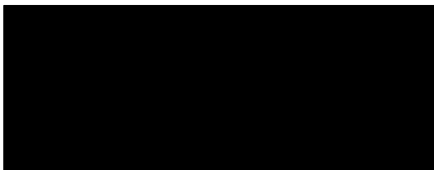
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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