



FILED

Dec 22, 2020, 10:52 am

OFFICE OF FAIR HEARINGS

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

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PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

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PETITIONER,

AHCA Case No.: 20-FH █

Plan ID No.: █

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SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Medicaid Fair Hearing in the above styled consolidated cases on October 30, 2020, at [REDACTED]

APPEARANCES

For the Petitioner: Petitioner

For the Respondent: Louise Jeanty
 Supervisor of Quality Improvement
 Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The first issue is whether Respondent proved by a preponderance of the evidence that Respondent’s termination of 5 hours per week of adult companion care services was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent’s termination of 7 home delivered meals per week was correct.

The third issue is whether Respondent proved by a preponderance of the evidence that Respondent’s termination of 1 case per month of disposable under pads and 1 box per month of gloves was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner appeared at the Fair Hearing and provided testimony on his own behalf. [REDACTED] (“[REDACTED]”), RN with [REDACTED], appeared as a witness for Petitioner.

Louise Jeanty (“Ms. Jeanty”), Supervisor of Quality Improvement for Sunshine State Health Plan, Inc. (“Sunshine” or “Respondent”), represented Respondent at the hearing. The

following individuals appeared on behalf of Respondent: Dr. Bonnie Korreff-Wolf (“Dr. Korreff-Wolf”), Medical Director for Sunshine; Marie Beaubrun-Thomas, a case manager for Sunshine; Jacqueline Alvarez, a supervisor for Sunshine; Alicia Swartz, Manager of Case Management 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, nor did Petitioner introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-two (132)-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated October 8, 2020; a Notice of Adverse Benefit Determination (“NABD”), dated August 20, 2020; Sunshine’s care plans, signed July 31, 2020, and October 1, 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B Assessment”), dated July 31, 2020; 701B Assessment, dated September 30, 2020; letter for medical necessity from [REDACTED] (“[REDACTED]”), dated September 1, 2020; prescriptions, dated [REDACTED], 2020; letter for medical necessity from [REDACTED], dated September 10, 2020; Progress Notes from [REDACTED], dated [REDACTED], 2020; Standard Appeal Acknowledgement, dated August 28, 2020; Revised Standard Appeal Acknowledgement, dated September 21, 2020; Notice of Plan Appeal Resolution, dated September 20, 2020; the Sunshine Health Policy and Procedure LT.UM.09; the Sunshine Health Policy and Procedure LT.UM.10; and Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.010. Absent an objection from

Petitioner, the undersigned admitted Respondent's 132-page evidence packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine's LTC plan. *See* Respondent's Composite Exhibit 1 at page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the hearing, Petitioner is 68 years old, and he resides alone. *Id.* at 13 - 14, and 50. The 701B Assessment dated September 30, 2020, which is the most recent 701B Assessment, reflects that Petitioner has the following health conditions: spinal cord injury, paralysis from the waist down; high blood pressure; constant incontinence of bowel; and bladder and depression. *Id.* at 55 - 56. He has suffered from bed sores in the past. *Id.* at 56. Petitioner experiences frequent Urinary Tract Infections ("UTI's"). *Id.* at 69. Petitioner works full time as a [REDACTED]. *Id.* at 22 - 23. Petitioner receives \$116 per month in food stamps. *Id.* at 50.

3. Regarding Petitioner's Activities of Daily Living ("ADLs"), Petitioner uses assistive devices for using the bathroom, transferring, and walking/mobility. *Id.* at 53. Petitioner needs assistance (but not total help) with bathing and dressing. *Id.* at 53 and 22. Petitioner needs supervision or prompt with eating. *Id.* Petitioner relies on his home health aide for daily meal preparation. *Id.* at 60.

4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, shopping, and managing medication. *Id.* at 54. Petitioner has his own vehicle and uses an assistive device with transportation. *Id.* Petitioner needs no assistance with using the telephone,

managing money, and managing medication. *Id.* at 54 and 22. Petitioner’s 701B Assessment indicates that Petitioner’s nephew assists with shopping as necessary and transportation to appointments. *Id.* at 54. The 701B Assessment does not specify how much assistance Petitioner receives from his nephew. *Id.*

5. Aside from the services and medical supplies at issue, Petitioner is currently authorized to receive 20 hours per week of personal care services, 15 hours per week of homemaker services, and monthly personal emergency response system monitoring. *Id.* at 29 and 53. Petitioner’s 701B Assessment indicated that he needs some level of supervision. Although Petitioner has no cognitive limitations, *Id.* at 33, Petitioner’s physical limitations place him at risk for falls. *Id.* at 40. The 701B Assessment concludes that Petitioner would benefit from supervision. *Id.*

6. On June 29, 2020, Respondent issued an NABD terminating 5 hours per week of companion care services, 7 meals a week of home delivered meals, 1 case per month of disposable underpads/chux, and 1 box per month of gloves. *Id.* at 4 – 8. The NABD stated the reason for Respondent’s determination as follows:

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 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. The member's present care plan includes 5 hours/week of Companion Care Services + 7 meals/week of Home Delivered Meals + 1 box/month of Gloves + 1 case/month of Disposable Underpads/Chux. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 5 hours/week of companion care services, and will terminate the 7 meals/week of Home Delivered Meals, and will terminate the 1 box/month of Gloves, and will terminate the 1 case/month of Disposable Underpads/Chux, and will approve the one-time addition of 4 reusable Underpads. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria and Sunshine Health Policy LT.UM.10LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

Id. at 5.

7. On August 21, 2020, Petitioner requested an appeal of Respondent's action. *Id.* at 79. On September 20, 2020, Respondent sent Petitioner a Notice of Plan Appeal Resolution, denying Petitioner's plan appeal. *Id.* at 85 - 87. The Notice of Plan Appeal Resolution stated as follows:

On August 21, 2020 we received your timely plan appeal request about Sunshine Health's Notice of Adverse Benefit Determination dated August 20, 2020, Notice of Adverse Benefit Determination Number [REDACTED], terminating 5 hours a week of companion care (the person who helps and watches over you), 7 meals a week of home delivered meals (meals sent to your home), 1 case a month of disposable underpads/chux (pad for the bed or chair that can be thrown away after use), and 1 box a month of disposable gloves (gloves used to protect your hands and thrown away after use), provided to [Petitioner].

On September 19, 2020, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [Petitioner] will not receive 5 hours a week of companion care (the person who helps and watches over you), 7 meals a week of home delivered meals (meals sent to your home), 1 case a month of disposable underpads/chux (pad for the bed or chair that can be thrown away after use), and 1 box a month of disposable gloves (gloves used to protect your hands and thrown away after use), effective September 19, 2020.

The reason for our decision was:

The reconsideration request for 5 hours/week of Companion Care Services (the person who helps and watches over you) + 7 meals/week of Home Delivered Meals (meals sent to your home) + 1 box/month of Gloves (gloves used to protect your hands and thrown away after use) is denied and the original denial is upheld. You are receiving Homemaking (the person who cleans for you) 15 hr weekly, and Personal Care (the person who bathes and dress you) 20 hr weekly which appear adequate (enough) for you at this time.

This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria, and Sunshine Health Policy LT.UM.10 LTC (Long Term Care) Durable Medical Equipment (DME)/Supplies/Orthotics & Prosthetics (O&P) Criteria.

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

Id. at 85.

8. On September 10, 2020, [REDACTED] provided a letter which stated:

I am writing on behalf of my patient, [Petitioner], to request Long Term Care. This letter serves to document that [Petitioner] has a diagnosis of Paraplegia, Chronic Urinary Tract Infection, Diabetes Type 2, Hypertension, Chronic Kidney Disease Stage 4, Wheelchair bound and needs help with everyday activities, and that Long-Term care is medically necessary for the patient. On behalf of the patient, I am requesting approval for Long-Term Care.

Patient Medical History and Diagnosis:

[Petitioner] is a 68-year-old Male diagnosed with longstanding history of T 5 Paraplegia wheelchair bound with history of Chronic Urinary Tract Infection. He has a Chronic external Foley catheter. [Petitioner] has been in my care since [REDACTED]/11. As a result of a T 5 Paraplegia, my patient requires assistance with basic transfers from bed to wheelchair. Dependent for ADL's – Activities of daily living,

i.e. shaving, dressing, bathing, and meals. Patient at high risk for pressure sores, and continued UTI and bowel problems.

Based on the above facts, I am confident that you will agree that Long-Term Care is indicated and medically necessary for the patient.

Id. at 69.

9. On September 30, 2020, Petitioner requested a Fair Hearing due to the termination of services. On October 6, 2020, the undersigned scheduled the Fair Hearing for October 30, 2020, at [REDACTED], and all parties were duly notified.

10. Dr. Korreff-Wolfe personally reviewed all documentation submitted to Respondent for this case, including all documents admitted in evidence. Dr. Korreff-Wolfe argued that the terminations in this case are medically appropriate. In deciding this case, Respondent considered Petitioner's medical conditions, the amount of assistance Petitioner needs with ADLs and IADLs, the fact that Petitioner lives alone, and that Petitioner's nephew assists with shopping and transportation to appointments. Dr. Korreff-Wolfe explained that adult companion care services were terminated because companion care is intended for socialization and supervision. She asserted that Petitioner is not at risk of social isolation because he can socialize with his caregiver during weekly homemaker and personal care services. She further pointed out that Petitioner's nephew visits regularly, and Petitioner is able to use the telephone to speak with his nephew. Dr. Korreff-Wolfe asserted that the 7 home delivered meals were terminated because Petitioner is getting personal care services that can be used for meal preparation and also because Petitioner receives \$116 in food stamps. She asserted that the food stamps are a duplication of services. Addressing the termination of Petitioner's gloves, Dr. Korreff-Wolfe testified that Petitioner's home care aids bring their own gloves with them to Petitioner's home, and there is an over-the-

counter benefit available to Petitioner if he wants additional gloves for his personal use. Dr. Korreiff-Wolff testified that the underpads/chux were terminated and replaced with reusable underpads. She argued that the reusable pads stay in place better, and they have no plastic backing, which contributes to bed sores. She argued that the reusable pads are more gentle than disposable underpads on Petitioner's skin.

11. Petitioner testified that he has a spinal cord injury and incontinence, experiences frequent UTI's, and is bound to his wheelchair. Petitioner reiterated that he lives alone and is unable to stand or walk on his own. He asserted that he is unable to cook, and the aid is only supposed to "heat" meals rather than cook. Petitioner clarified that his nephew lives 5 – 6 hours away and has a life of his own. Petitioner asserted that his nephew only visits every 2 – 3 months, but he calls regularly.

12. ████████ testified that she sees Petitioner regularly, he visits ████████ alone, and although he has physical limitations, he is "somewhat independent." She stated that Petitioner uses a scooter to ambulate. ████████ asserted that Petitioner is at high risk for bed sores, has frequent UTI's, and is incontinent.

13. Ms. Jeanty asserted that Petitioner's personal care aids are permitted to cook meals and not just heat-up meals. She further asserted that Petitioner may purchase reusable underpads/chux and gloves for personal use through his over-the-counter benefit.

14. Sunshine relied upon Health Policy and Procedure, LTC Ancillary Service Criteria, LT.UM.09, when making its decision. The LTC Ancillary Service Criteria state the following regarding home delivered meals:

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 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.
10. Member attends Adult day care or engages in community group or social events, where meals are provided.
11. Home delivered meals provided by Sunshine Health may not duplicate services that are provided under by another provider.

Id. at 102 – 103.

15. Sunshine also relied upon Health Policy and Procedure, LTC Durable Medical Equipment/Supplies/Orthotics & Prosthetics Criteria, LT.UM.10 in making its decision. These criteria state the following regarding incontinence supplies:

Prior authorization is required for diapers, gloves, perineal wipes, emollients and absorbent products used to manage incontinence in individuals covered by Sunshine Health LTC product. Coverage determinations are based on an assessment of the individual's unique clinical needs as documented in the clinical information submitted by the requesting provider and/or the current 701B

assessment completed by the LTC Care Coordinators. The 701B assessment is used to identify the member's level of incontinence, functional status as measured through Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL), and level of caregiver support.

...

Criteria to support need for incontinence products

Upon review of the 701B assessment, Sunshine Health will consider but is not limited to the following:

- Member must have current incontinence of the bladder and/or bowel; and/or
- Member must have one of the following limitations in their Activities of Daily living:

Using the bathroom (toileting, hygiene, cleaning) and/or Walking/Mobility and/or Transferring:

- ✓ Needs supervision or prompt
- ✓ Needs assistance without a caregiver
- ✓ Needs assistance with a caregiver
- ✓ Needs total assistance without a caregiver

Id. at 126 – 127.

CONCLUSIONS OF LAW

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

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

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

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

position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

19. Because Respondent is terminating 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.).

20. The Florida Medicaid policy that applies to the requested services is the Florida Medicaid Statewide Medicaid Managed Care Long-term Care Program Coverage Policy (March 2017) (“SMMC LTC Policy”). The Agency’s SMMC LTC Policy has been incorporated, by reference, into Florida Administrative Code Rule 59G-4.192. The SMMC LTC Policy provides as follows:

1.1 Description and Program Goal

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

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.5 701-B Comprehensive Assessment

An individualized, complete assessment of an individual's medical, developmental, behavioral, social, financial, and environmental status. The assessment is conducted by a trained individual employed by the Department of Elder Affairs Comprehensive Assessment and Review for Long-Term Care Services (CARES) program or the LTC plan, to determine eligibility for the LTC program based on the need for a nursing facility level of care.

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

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

...

1.3.14 Medically Necessary or Medical Necessity

For the purposes of this policy, the service must meet either of the following criteria:

- (a) Nursing facility services and mixed services must meet the medical necessity criteria defined in Rule 59G-1.010, F.A.C.
- (b) All other LTC supportive services must meet all of the following:
 - Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs
 - Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
 - Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

And, one of the following:

- Enable the enrollee to maintain or regain functional capacity; or

- Enable the enrollee to have access to the benefits of community living, to achieve person-centered goals, and to live and work in the setting of his or her choice.

...

1.3.16 Natural Supports Unpaid supports that are provided voluntarily to the individual in lieu of home and community-based services and supports.

...

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.

...

4.2.1.1 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:

...

4.2.2.5 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.

See SMMC LTC Policy, pages 1-8.

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

2.83 Medically Necessary or Medical Necessity

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

22. In the instant case, Respondent terminated 5 hours per week of adult companion care services, terminated 7 meals per week of home delivered meals, terminated 1 case per month of disposable underpads/chux, and terminated 1 box per month of disposable gloves. See supra ¶¶ 6 and 7. As established on the record by the evidence and testimony, Respondent terminated homemaker services because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. See supra ¶¶ 6 and 7.

23. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 20.

24. Regarding ADL's, Petitioner uses assistive devices for using the bathroom, transferring, and walking/mobility. *See supra* ¶ 3. Petitioner needs assistance (but not total help) with bathing, and dressing. *See supra* ¶ 3. Petitioner needs supervision or prompt with eating. *Id.* Petitioner is bed bound and no longer tolerates sitting in a chair. *See supra* ¶ 3. Regarding IALs, Petitioner needs: Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping, preparing meals, shopping, and managing medication. *See supra* ¶ 4. Petitioner uses an assistive device with transportation. Petitioner needs no assistance with using the telephone, managing money, and managing medication. *See supra* ¶ 4. Petitioner's nephew assists with shopping and transportation to appointments. *See supra* ¶ 4.

25. Aside from the services and medical supplies at issue, Petitioner is currently authorized to receive the following home and community-based services: 20 hours per week of personal care services and 15 hours per week of homemaker services; and monthly personal emergency response system monitoring. *See supra* ¶ 5.

Adult Companion Care Services

26. Respondent's termination of 5 hours per week of adult companion care services is warranted under the circumstances of this case. Section 4.2.1.1 of the SMMC LTC Policy reflects that adult companion care services are "[t]he 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.” See supra ¶ 20.

27. As stated above, Petitioner works full time as a [REDACTED]. *Id.* at 2. Petitioner needs assistance with bathing and dressing, and he uses assistive devices for mobility, using the bathroom, and transferring. See supra ¶ 3, 4 and 24. Petitioner requires assistance with most IADLs, and he uses an assistive device for transportation. See supra ¶ 3, 4 and 24. Petitioner has some natural support from his nephew for assistance with shopping and transportation needs; however, there is conflicting information in the record as to how much natural support Petitioner receives from his nephew. See supra ¶ 4 and 11. Petitioner is able to use the telephone and speaks to his nephew regularly. See supra ¶ 4, 10 - 11. Petitioner also receives other home and community-based services that provide an opportunity for socialization with his caregivers. See supra ¶ 5. Although Petitioner has multiple medical conditions, *supra* ¶ 2, Petitioner uses a scooter and is “somewhat independent.” See supra ¶ 12.

28. Section 1.3.14 of the SMMC LTC Policy requires that the requested services must “[b]e individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs.” See supra ¶ 20. As noted above, Petitioner works full time as a [REDACTED], is able to use the telephone, speaks to his nephew regularly, and is currently authorized to receive other home and community-based services that provide opportunities for socialization. See supra ¶ 2, 4, and 5. Beyond socialization, the definition of adult companion care services includes “assistance or supervision with meal preparation, laundry, and light housekeeping tasks incidental to the care and supervision of the enrollee.” See supra ¶ 20. The record reflects that Petitioner has

assistance with light housekeeping and meal preparation. *See supra* ¶ 4. Considering the SMMC LTC Policy’s definitions for natural supports, adult companion care services, homemaking services, and personal care services, *supra* ¶ 20, Respondent demonstrated that Petitioner’s aforementioned companion care needs, *supra* ¶ 2, 3, and 4, are sufficiently met by his currently authorized services. Given that Respondent established that the adult companion care services are not warranted in this matter, *supra* ¶ 26, the requested adult companion care services are “in excess of [Petitioner’s] needs.” *See supra* ¶ 20.

Home Delivered Meals

29. Respondent’s termination of 7 home delivered meals per week is not warranted under the circumstances of this case. Section 4.2.1.8 of the SMMC LTC Policy defines home delivered meals as “[t]he 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.” *See supra* ¶ 20.

30. The record reflects that Petitioner requires total assistance with all his meal preparation. *See supra* ¶ 4. Petitioner is currently authorized to receive 20 hours per week of personal care services and 15 hours per week of homemaker services. *See supra* ¶ 15. According to the SMMC LTC Policy, personal care service include “assistance with preparation of meals.” *See supra* ¶ 20. Dr. Korreff-Wolfe asserted that the 7 home delivered meals were terminated in part because Petitioner is receiving 20 hours per week of personal care services, which can be used to assist with meal preparation. *See supra* ¶ 10. Respondent did not present any documentation showing that Petitioner’s current level of personal care services are adequate to cover Petitioner’s need for total assistance with meal preparation. As previously

stated, Respondent terminated Petitioner's companion care services, which could also be used for meal preparation. Accordingly, the record does not show that 7 home delivered meals per week are in excess of Petitioner's needs. See supra ¶ 18. Dr. Korreiff-Wolfe asserted that Petitioner is receiving \$116 per month in food stamps, *supra* ¶ 2, which is a duplication of services. See supra ¶ 10 and 14. As stated above, Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. See supra ¶ 20. Dr. Korreiff-Wolff did not explain, nor did the record demonstrate, how Petitioner's food stamps are a duplication of services or how the receipt of food stamps addresses Petitioner's difficulty shopping for or preparing meals.

31. Considering the totality of Petitioner's circumstances – including the fact that Petitioner's companion care services are being terminated and that Respondent has not shown that Petitioner's current level of personal care and homemaker services is adequate to cover Petitioner's needs for total assistance with meal preparation, Respondent failed to establish that the termination of the 7 home delivered meals weekly was correct. Based upon the evidence presented by both parties, the termination of home delivered meals was not warranted in this case.

Underpads/Chux and Gloves

32. Respondent terminated 1 case per month of underpads/chux and replaced them with reusable underpads. See supra ¶ 21. Section 1.3.14 of the SMMC LTC Policy mandates that “[t]he medical or allied care, goods, or services furnished or ordered 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 ¶ 19. Dr. Korreff-Wolfe testified that the reusable underpads are adequate to meet Petitioner's incontinence needs. See supra ¶ 10. In light of the fact that Petitioner is at high risk for bed sores, supra ¶ 2 and 12, the record demonstrates that the reusable underpads are better for Petitioner's skin because they do not have a plastic backing, which contributes to bed sores. See supra ¶ 10. Based upon the evidence presented by both parties, the termination of underpads/chux was warranted in this case. Respondent also terminated 1 box per month. See supra ¶ 21. Dr. Korreff-Wolfe testified that the gloves are unnecessary because the Petitioner's home health aides bring their own when they care for Petitioner. See supra ¶ 12. Given the above facts, Respondent established that the requested underpads/chux and gloves are in "excess" of Petitioner's needs. Therefore, the termination of the termination of 1 case per month of underpads/chux and 1 box per month of gloves was warranted under the circumstances of this case.

Conclusion

33. In light of the both parties' testimony, Respondent's Composite Exhibit 1, the SMMC LTC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent demonstrated that Petitioner's previously authorized amount of adult companion care services, and underpads/chux, and gloves are not medically necessary. Respondent did not demonstrate that Petitioner's previously authorized home delivered meals are not medically necessary.

34. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent's termination of adult companion care services and underpads/chux and gloves was correct. The undersigned Hearing Officer finds that

Respondent did not prove by a preponderance of the evidence that Respondent's termination of home delivered meals was correct.


DECISION

Respondent's termination of 5 hours per week of adult companion care services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of adult companion care services is **DENIED**.

Respondent's termination of 7 meals per week of home delivered meals is **REVERSED**. Petitioner's appeal based on Respondent's termination of 7 meals per week of home delivered meals is **GRANTED**.

Respondent's termination of 1 case per month of underpads/chux and 1 box per month of gloves pack per month of wipes is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of 1 case per month of underpads/chux, and termination of 1 box per month of gloves is **DENIED**.

DONE AND ORDERED this 22nd day of December 2020, in Tallahassee, Leon County, Florida.



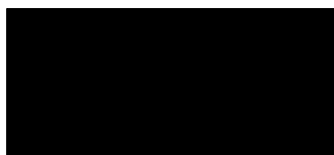
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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