



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

FILED

Dec 02, 2020, 9:02 am

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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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on November 12, 2020, at █

**APPEARANCES**

For the Petitioner:

█

Petitioner

For the Respondent:

Kizzy Alleyne  
Senior Manager Compliance  
Sunshine State Health Plan, Inc.

**STATEMENT OF ISSUE**

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to reduce Homemaker services from fourteen (14) hours per week to seven (7) hours per week was correct.

**PRELIMINARY STATEMENT**

PRR0001397

All parties appeared telephonically. Petitioner appeared on her own behalf.

Kizzy Alleyne, Senior Manager Compliance for Sunshine State Health Plan, Inc. ("Sunshine") appeared on behalf of Respondent. Teresa Barron Gornto, Long term Care Supervisor for Sunshine; Dr. Bonnie Koreff Wolf ("Dr. Koreff Wolf"), Medical Director for Sunshine; Alicia Schwartz, Manger for Case Management for Sunshine; Veronica Bernal, Long term Care Coordinator for Sunshine; and Melissa Layne, Senior Manager for Member Appeals for Sunshine attended as witnesses for Respondent.

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared as an observer.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a ninety six (96) page evidence packet. The evidence packet included a table of contents; a Medicaid Fair Hearing Summary, dated October 23, 2020; the Notice of Adverse Benefit Determination ("NABD"), dated August 28, 2020; a Long Term Care Person Centered Care Plan, reviewed August 21, 2020; a second Long Term Care Person Centered Care Plan, reviewed October 7, 2020; a Florida Department of Elder Affairs 701B Comprehensive Assessment ("701B"), dated August 21, 2020; Petitioner's plan appeal, dated September 29, 2020; a plan appeal acknowledgment, dated September 14, 2020; a Notice of Plan Appeal Resolution ("NPAR"), dated September 23, 2020; Sunshine Health Policy and Procedure LT.UM.09, last revised November 2019; and Fla. Admin. Code R. 59G 1.010(166). Absent an objection from the Petitioner, the undersigned admitted the ninety six (96) page evidence packet into evidence as Respondent's Composite Exhibit 1.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a thirty one (31) page evidence packet. The evidence packet included a scan of the envelope containing Petitioner's evidence packet, postmarked October 22, 2020; a copy of an incomplete Designation of Authorized Representative ("DAR"), dated October 20, 2020; a letter dated September 25, 2020; Petitioner's labs, dated [REDACTED] 2019, and [REDACTED] 2020; an imaging report, dated [REDACTED], 2020; an imaging report, dated [REDACTED] 2020; an untitled study, dated [REDACTED] 2019; an imaging report, dated [REDACTED] 2020; an imaging report, dated [REDACTED] 2020; an imaging report, dated [REDACTED] 2018; an imaging report, dated [REDACTED] 2017; progress notes, dated [REDACTED] 2020. Absent an objection from the Respondent, the undersigned admitted the thirty one (31) page evidence packet into evidence as Petitioner'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 sixty four (64) years old and diagnosed with osteoarthritis, asthma, pancreatitis, and heart valve leakage. See Respondent's Composite Exhibit 1 at 31 and 37. Petitioner is also diagnosed with stage three chronic kidney disease. Petitioner's Composite Exhibit 1 at 5.
3. Petitioner husband acts as Petitioner's paid caregiver through the Patient Directed Option ("PDO"). See Respondent's Composite Exhibit 1 at 36. Petitioner is currently receiving twenty one (21) hours of Personal Care services and seven (7) hours of Homemaker services.

Respondent's Composite Exhibit 1 at 58. Petitioner's husband does not work outside of the home. *Id.* at 45.

4. Petitioner requires total assistance for heavy chores, light housekeeping, managing money, shopping, and preparing meals. *Id.* at 36. While the Petitioner was still receiving fourteen hours of Homemaker services per week, Petitioner always had assistance with heavy chores, light housekeeping, managing money, shopping, and preparing meals. *Id.* Petitioner's husband does Petitioner's laundry three times per week, including Petitioner's linens and towels. *Id.* Petitioner's husband also cleans all home areas daily, which include two bedrooms, a bathroom, a kitchen, a dining room, and a living room. *Id.* Petitioner's husband prepares three meals per day for Petitioner. *Id.* Petitioner does not know how long it takes her husband to assist with her Activities of Daily Living as it varies with her level of pain. *Id.* 35.

5. Respondent reduced Petitioner's Homemaker services effective September 12, 2020. Prior to the reduction Petitioner was receiving fourteen (14) hours per week of Homemaker services. The NABD, dated August 28, 2020, explained as follows:

Sunshine Health has reviewed your request for 14 hours a week of homemaker service (the person who cleans for you), which we received on 8/28/2020. After our review, this service has been:

REDUCED as of 9/12/2020.

...

- We determined that your requested services are not medically necessary because the services do not meet 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 looked at the member's present care needs and provided home services. The member's present care plan includes 14 hours/week of Homemaker Services. Based on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Homemaker Services from 14 hours/week to 7 hours/week. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

You, or someone legally 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 relevant to the adverse benefit determination. These will be provided free of charge.

*Id.* at 4 through 5.

6. Petitioner requested a plan appeal and received an NPAR dated September 23, 2020, upholding the denial. The NPAR explained as follows:

The reason for our decision was the appeal to overturn the reduction of 7 hours per week of Homemaker Services (the person who helps you around the house) is denied for lack of medical necessity (not needed). Based on the assessment, the member's currently approved services are adequate (enough) to meet the member's care needs. The member's present care plan includes 21 hours per week of Personal Care Services (the person who helps bathe and dress you) and 7 hours per week of Homemaker Services (the person who helps you around the house). This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria.

*Id.* at 58.

7. Petitioner requested a Fair Hearing on October 2, 2020. On October 23, 2020, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for November 12, 2020, at [REDACTED]

8. During the hearing, Dr. Koreff Wolf testified the reduction in services was the result of a regular review of Petitioner's services. Dr. Koreff Wolf testified that Respondent determined, upon reviewing the 701B, that Petitioner's needs for Homemaker services could be met with the reduced hours and through the Personal Care services provided.

9. Petitioner testified that her husband must clean frequently due to her breathing issues. Petitioner also testified that the reduction of services would result in her husband having to return to work to make ends meet.

#### **CONCLUSIONS OF LAW**

10. 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). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

12. Because Respondent is reducing services, Fla. Admin Code R. 59G 1.100(17)(g) assigns the burden of proof to 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.

13. The Florida Medicaid Statewide Medicaid Managed Care Long term Care Program Coverage Policy (March 2017) ("LTC Policy"), incorporated by reference in Fla. Admin. Code R.

59G 4.192, governs Long Term Care services available under Florida Medicaid. The LTC Policy provides the following with respect to Homemaker and Personal Care services:

**1.1 Description and Program Goal**

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

...

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

ADLs include:

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

...

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

When necessary for the recipient to function independently, including:

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

...

**1.3.16 Natural Supports**

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

...

**4.1 General Criteria**

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

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

...

**4.2.1.9 Homemaker Services**

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

...

**4.2.2.6 Personal Care**

In accordance with Rule 59G 4.215, F.A.C., for enrollees under the age of 21 years. To provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.

- 14. 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.

- 15. The 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.

16. The NABD reduced Petitioner's Homemaker services on the basis that the requested hours are not medically necessary. *Supra* ¶ 5. As provided in the LTC Policy, Homemaker services are intended for 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. *Supra* ¶ 13. The LTC Policy also provides that Personal Care Services may be utilized to assist 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. *Id.*

17. The record reflects that Respondent reviewed Petitioner's 701B and reduced Petitioner's Homemaker Services reasoning that Petitioner's need for Homemaker services could be met with the reduced Homemaker services and the Personal Care services in place. *Supra* ¶ 8. The evidence

shows that Petitioner's husband acts as Petitioner's paid caregiver through the PDO. *Supra* ¶ 3. The evidence also shows that Petitioner's husband cleans the home daily, does Petitioner's laundry three (3) times per week, and prepares three (3) meals per day for Petitioner. *Supra* ¶ 4. Per the 701B, Petitioner does not know how long it takes for her husband to assist with her ADLs as it varies with her pain. *Id.* Petitioner testified that her husband must clean frequently to accommodate her asthma and that reduction in services would result in him having to return to work to make ends meet. *Supra* ¶ 9.

18. The component of medical necessity at issue is whether Petitioner's request is 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. *Supra* ¶ 14. Here, Petitioner is receiving a total of twenty eight (28) hours per week of home health services. Respondent did not offer any testimony as to what portion of Personal Care services may be available to Petitioner to accomplish tasks reserved for Homemaker Services. Respondent's testimony was limited to reading portions of the 701B into the record as a justification for the reduction in Homemaker Services and arguing that the services were excessive. The 701B does not show how long homemaker tasks take Petitioner's husband to complete nor does the testimony in the record speak to the duration of time required for those tasks. As shown in the 701B, Petitioner does not know how long it takes her husband to assist with her ADLs. The record is void of any testimony connecting Personal Care service hours that may be available to use for homemaker tasks. Respondent has not met the burden of proof to show that the Homemaker services prior to reduction were not 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.

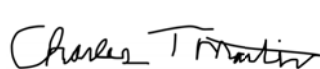
Accordingly, the Respondent has not shown that the Homemaker services are not medically necessary.

19. Therefore, upon consideration of the testimony, evidence, and applicable polices, the undersigned concludes that Respondent has not proved by a preponderance of the evidence that Respondent's reduction of Homemaker Services from fourteen (14) hours per week to seven (7) hours per week was correct.

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

Respondent's reduction of Homemaker Services from fourteen (14) hours per week to seven (7) hours per week is **REVERSED**. Petitioner's appeal based on Respondent's reduction of Homemaker Services from fourteen (14) hours per week to seven (7) hours per week.

**DONE and ORDERED** this 2nd day of December, 2020, in Tallahassee, Leon County, Florida.

 Charles Martin  
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**CHARLES MARTIN, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
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**Tallahassee, FL 32308-5407**  
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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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**AHCA Medicaid Hearing Unit**  
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