



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

FILED

Dec 29, 2020, 8:39 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 in the above styled case on December 9, 2020, at [REDACTED]

[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 first issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 35 hours per week of adult companion services was correct.

The second issue is whether Respondent proved by a preponderance of the evidence that Respondent's termination of 1 case per month of disposable liners was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and son, appeared at 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; Roberta Joseph, Care Coordinator for Sunshine; Jacqueline Seaton, Manager for Case Management for Sunshine; Marisol Ciccotelli, Supervisor of Case Management; and Melissa Layne (“Ms. Layne”), Manager for Quality Improvement for Sunshine.

Linda Latson, Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for observational purposes. Michael Hauversburk, Hearing Officer for the Office of Fair Hearings at AHCA, also appeared for observational purposes.

Prior to the hearing, Petitioner sent a 5-page evidence packet to the Office of Fair Hearings. The packet included the following documents: an email from [REDACTED] to the Office of Fair Hearings, dated November 5, 2020; a letter from [REDACTED] (“[REDACTED]”), Doctor of Nursing Practice (“DNP”), Advanced Practice Registered Nurse (“APRN”), dated August 14, 2020; an email from [REDACTED] (“[REDACTED]”), MS, CCC-SLP, Speech Language Pathologist, dated October 26, 2020; and a letter from [REDACTED] (“[REDACTED]”), APRN, dated October 29, 2020. Absent an objection from Respondent, the undersigned admitted Petitioner’s 5-page evidence packet into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a 133-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated November 6, 2020; the Notice of Adverse Benefit Determination (“NABD”), dated August 5, 2020; Sunshine’s Long Term Care Person-Centered Care Plan (“care plan”), signed August 3, 2020; Sunshine’s care plan, signed November 6, 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of August 3, 2020 (the “8/3/20 701B”); the 701B with an assessment date of October 30, 2020 (the “10/30/20 701B”); a 5-page facsimile transmission (“fax”) from ██████████ to Sunshine, dated August 19, 2020; Sunshine’s Expedited Appeal Acknowledgment, dated August 19, 2020; Sunshine’s Notice of Plan Appeal Expedited Resolution (“NPAR”), dated August 25, 2020; the Revised NPAR, dated October 12, 2020; the Sunshine Health Policy and Procedure LT.UM.09; the Sunshine Health Policy and Procedure LT.UM.10; the Sunshine Health Policy and Procedure LT.UM.10; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent’s 133-page evidence 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, page 2. Sunshine is a managed care organization contracted by AHCA to provide services to eligible Medicaid recipients in Florida.
2. Petitioner is an adult female who resides in a private residence. *See* Respondent’s Composite Exhibit 1, page 50. Petitioner is “deaf, blind, mute and needs full assistance in every ADL.” *Id.* at 53. Petitioner is “unable to care for herself.” *Id.*

3. The 10/30/20 701B, which is the most recent 701B, reflects that Petitioner has the following health conditions: past and present acid reflux; past and present osteoarthritis; past and present high cholesterol; past and present constant incontinence of bowel and bladder; past stroke/cerebrovascular accident (“CVA”); current thyroid problems (hypo); past urinary tract infection (“UTI”); and “Usher syndrome, vitamin d deficiency, dementia, anxiety, constipation.” See Respondent’s Composite Exhibit 1, pages 55 – 56. Petitioner “was born with Usher Syndrome which caused her to be deaf/mute from birth and then also in her 50’s to gradually start losing vision until she is now blind.” *Id.* at 56.

4. The 10/30/20 701B reflects the following regarding Petitioner’s Activities of Daily Living (“ADLs”). Petitioner needs total assistance (cannot do at all) with bathing, dressing, eating, using the bathroom, transferring, and walking/mobility. See Respondent’s Composite Exhibit 1, page 53. Petitioner “is never left alone, there is always an aide present at member’s home.” *Id.*

5. Regarding Petitioner’s Instrumental Activities of Daily Living (“IADLs”), the 10/30/20 701B reflects that Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping using the telephone, managing money, preparing meals, shopping, managing medication, and using transportation. See Respondent’s Composite Exhibit 1, page 54.

6. Petitioner is currently authorized to receive the following home and community-based services (not including the 35 hours per week of adult companion care services, and the 1 case per month of disposable liners that are the subject of this case): 72 hours per week of personal care services; 2 cases of briefs/diapers per month; 1 case per month of underpads; 7 packs per month of wipes; and 61 hours per week of homemaker services. See Respondent’s Composite Exhibit 1, page 25.

7. The letter from [REDACTED], dated August 14, 2020, states in pertinent part as follows:

Please consider restoring the 35 hours per week of Companion Care for [Petitioner]. She has severe dementia, which renders her bedbound, and is totally deaf and blind. She requires 24-hour continuous care and supervision. She must be turned regularly to prevent pressure sores.

[Petitioner] resides with her son and daughter-in-law and family. Her son must work over 40 hours a week to provide for his mother and his family. He also is immunocompromised.

Her daughter-in-law has a bad back and neuropathy. These issues severely hinder her ability to turn and position her mother-in-law. Also, she has her own medical appointments which she must follow through.

[Petitioner] is incontinent of urine & stool. She often urinates through her diaper, and really needs the incontinence liners to reduce the number of times per day of linen changes.

Petitioner's Composite Exhibit 1, page 2.

8. The letter from [REDACTED], states in pertinent part, as follows:

[Petitioner] is bed bound at this time and is also incontinent of urine and feces. She is unable to feed herself. All of her needs and wants must be anticipated. [Petitioner] lives in a house with her family and they oversee her care. Currently she receives 24/7 home health aide assistance. The aides have all been trained by myself, a speech language pathologist, in safe swallowing strategies.

[Petitioner] is at moderate risk for aspiration, dehydration, malnutrition, skin breakdown and weight loss secondary to moderate oropharyngeal dysphagia up from severe/profound at the start of care. [Petitioner] currently tolerates puree diet consistency and honey thickened liquids. All staff has been trained in aspiration precautions and proper positioning for mealtime. [Petitioner] must be fed at a slow rate alternating small bites and sips at a slow rate and to watch for each swallow before giving the next bite.

[Petitioner] is currently being well cared for and her current 24/7 caregivers need to remain intact in order to keep her safe and to prevent the risk of aspiration, dehydration, malnutrition, skin breakdown and weight loss.

Petitioner's Composite Exhibit 1, page 3.

9. The letter from [REDACTED], dated October 29, 2020, states, "Companion Care has also made sure that patient is repositioned on a regular basis. . . . Companion care has been providing [Petitioner] with touch stimulation." See Petitioner's Composite Exhibit 1, page 5. Said letter also states "[i]n my professional medical opinion, I feel that continued Companion Care, at the present 35 hours is necessary for [Petitioner]'s medical and emotional well-being." *Id.*

10. On August 5, 2020, Respondent issued an NABD terminating 35 hours per week of adult companion services and 1 case per month of disposable liners, explaining that the "requested services are **not medically necessary**." See Respondent's Composite Exhibit 1, page 4. (Emphasis added.) The NABD stated "[b]ased on the assessment of the member's care needs and household and caregiver status, Sunshine Health will terminate the 35 hours/week of Companion Care Services, and will terminate the 1 case/month of Liners. See Respondent's Composite Exhibit 1, page 5.

11. Petitioner requested an appeal of Respondent's termination of 35 hours per week of adult companion services and 1 case per month of disposable liner. See Respondent's Composite Exhibit 1, page 69. On October 12, 2020, Respondent sent Petitioner a Revised NPAR, denying Petitioner's plan appeal. *Id.* at 86. The Revised NPAR stated as follows:

The reason for our decision was: The appeal to overturn the termination of 35 hours per week of Companion Care Services is DENIED for lack of medical necessity. . Companion Care is provided to prevent social isolation. The member does not live alone and there is a low risk of social isolation.

The updated care plan approved by Sunshine Health will include:

- 72 hours per week of Personal Care Services
- 61 hours per week of Homemaker Services

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

Also, appeal to overturn the termination 1 case/month of Liners is DENIED for lack of medical necessity. The member receives pull ups. Liners are not supposed to be

used in addition as this increases the risk of skin breakdown. 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.

Respondent's Composite Exhibit 1, page 86.

12. Sunshine Health Policy LT.UM.09 provides the following:

Adult Companion Care

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

Respondent's Composite Exhibit 1, page 99.

13. Sunshine's Policy and Procedure LT.UM.10 provides the following:

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
 - Needs total assistance with a caregiver

Respondent's Composite Exhibit 1, page 128.

14. On October 9, 2020, ██████ requested a Fair Hearing due to the termination of adult companion services and the 1 case per month of disposable liners. On November 6, 2020, the

undersigned scheduled the Fair Hearing for December 12, 2020, at [REDACTED], and all parties were duly notified.

15. Dr. Carter is the LTC Medical Director for Sunshine. During the Fair Hearing, Dr. Carter testified that he reviewed all documentation submitted to Respondent for this case. Explaining the rationale for Respondent's the termination of adult companion care services, Dr. Carter testified that: Petitioner lives with her son and daughter-in-law; Petitioner's son works outside the home; and Petitioner's daughter-in-law does not work outside the home, but suffers from a back condition. Dr. Carter testified that adult companion care services are not hands-on services.

16. Discussing the termination of liners, Dr. Carter testified that since Petitioner gets briefs or diapers, and there is no need for liners, since her other incontinence supplies are adequate to meet her needs. Dr. Carter explained that liners can be called shields, liners, or pads – and they are used for incontinence, but liners are for someone who is wearing their own underwear. Dr. Carter explained that in Petitioner's case, she is provided with briefs or diapers, which are disposable undergarments that absorb incontinence fluids. Dr. Carter explained that liners are not meant to be put in disposable undergarments.

17. [REDACTED] is Petitioner's son and Power of Attorney. Petitioner resides in the home with [REDACTED] and his wife (Petitioner's daughter-in-law). [REDACTED] works outside the home Monday through Friday, 8:30 a.m. until 5:00 p.m. Approximately every 2 weeks, he flies out of town for overnight stays for his job. [REDACTED] testified that his wife is "disabled," cannot stand or sit more than 15 minutes due to back injuries, and at times, cannot stand at all due to her medications. There are times when [REDACTED] wife has to attend her own doctor's appointments. [REDACTED] believes that his wife cannot provide care to Petitioner during the 35 hours if they are terminated.

██████ believes that Petitioner cannot be left alone. Lighthouse for the Blind provided braille cards for Petitioner, specialty tools for Petitioner's hand, and tips on how to deal with blindness. Regarding Petitioner's liners, ██████ believes that the diapers that are provided to Petitioner do not hold enough of her bladder removal and leak, but the liners have been working.

CONCLUSIONS OF LAW

18. 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).

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

20. 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.

21. Because Respondent is terminating existing services and 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.).

22. 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.

...

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.

...

4.2.1.9 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.

...

4.2.2.5 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.

23. 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.

24. In the instant case, Respondent terminated 35 hours per week of adult companion services and 1 case per month of disposable liners. *See supra* ¶ 10 and 11. As established on the record by the evidence and testimony, Respondent terminated 35 hours per week of adult companion services and 1 case per month of disposable liners, because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. *Id.*

25. 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* ¶ 22.

Adult Companion Care Services

26. Section 4.2.1.1 of the LTC Policy reflects that adult companion 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* ¶ 22.

27. The Sunshine Health Policy LT.UM.09 states that adult companion care services “provide non-medical care, supervision, and socialization to a functionally impaired adult. Companions supervise the member with tasks such as meal preparation, laundry, and/or shopping, but do not perform these activities as discreet services.” *See supra* ¶ 12. Sunshine’s policy also states, “[t]he provision of companion services does not entail hands-on nursing care. The service includes light housekeeping tasks incidental to the care and supervision of the member. The provision of services is provided at the member’s residence when supervision is necessary.” *Id.*

28. The evidence presented in this case reflects that Respondent's termination of 35 hours per week of adult companion services is warranted under the circumstances of this case. Specifically, regarding ADLs, Petitioner needs total assistance (cannot do at all) with bathing, dressing, eating, using the bathroom, transferring, and walking/mobility. See supra ¶ 3. Regarding IADLs, Petitioner needs total assistance (cannot do at all) with heavy chores, light housekeeping using the telephone, managing money, preparing meals, shopping, managing medication, and using transportation. See supra ¶ 4. Petitioner is "deaf, blind, mute and needs full assistance in every ADL," supra ¶ 2, and has constant incontinence of bowel and bladder. See supra ¶ 3. Petitioner is "unable to care for herself." *Id.* Petitioner "requires 24-hour continuous care and supervision" and "must be turned regularly to prevent pressure sores." See supra ¶ 7. ██████ believes that Petitioner cannot be left alone. See supra ¶ 17. However, Petitioner resides in the home with ██████ and his wife. See supra ¶ 15 and 17. ██████ works outside the home Monday through Friday, 8:30 a.m. until 5:00 p.m., and he flies out of town for overnight stays for his job approximately every 2 weeks. See supra ¶ 17. ██████ wife does not work outside the home, supra ¶ 15, but ██████ noted his wife is "disabled," cannot stand or sit more than 15 minutes due to back injuries, cannot stand at all at times due to her medications, and has to attend her own doctor's appointments. See supra ¶ 17. The letter from ██████ corroborates Ms. ██████ description of his wife's medical condition, as it states, "[h]er daughter-in-law has a bad back and neuropathy. These issues severely hinder her ability to turn and position her mother-in-law." See supra ¶ 7. The letter from ██████, states, "Companion Care has also made sure that patient is repositioned on a regular basis. . . . Companion care has been providing [Petitioner] with touch stimulation." See supra ¶ 9.

However, Dr. Carter explained that adult companion care services are not hands-on services. *See supra* ¶ 15. Based upon the evidence presented by both parties, Respondent established that the termination of 35 hours per week of adult companion services is warranted in this case.

29. Additionally, 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* ¶ 22. Petitioner is currently authorized to receive the following home and community-based services (not including the 35 hours per week of adult companion care services, and the 1 case per month of disposable liners that are the subject of this case): 72 hours per week of personal care services; 2 cases of briefs/diapers per month; 1 case per month of underpads; 7 packs per month of wipes; and 61 hours per week of homemaker services. *See supra* ¶ 6. Further, given that Respondent established that the requested adult companion services are not warranted in this matter, *supra* ¶ 28, the previously authorized amount of adult companion services are “in excess of [Petitioner’s] needs.” *See supra* ¶ 22.

30. Appurtenant to this matter, section 1.3.14 of the 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* ¶ 22. Petitioner resides in the home with ██████████ and his wife. *See supra* ¶ 15 and 17. Although ██████████ wife has health issues, the record does indicate that ██████████ is capable of assisting Petitioner when he is present in the home with Petitioner. Therefore, Petitioner also has natural supports available to assist with her care and needs.

Disposable Liners

31. Section 4.2.2.5 of the SMMC LTC Policy defines medical equipment and supplies as the “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.” *See supra* ¶ 22.

32. Sunshine’s Policy and Procedure LT.UM.10 reflects that for incontinence products, “[m]ember must have current incontinence of the bladder and/or bowel.” *See supra* ¶ 13.

33. The evidence presented in this case reflects that Respondent’s termination of 3 termination of 1 case per month of disposable liners is warranted under the circumstances of this case. Specifically, Petitioner has constant incontinence of bowel and bladder. *See supra* ¶ 3. [Petitioner] is bed bound. *See supra* ¶ 8. Petitioner needs total assistance (cannot do at all) with using the bathroom. *See supra* ¶ 3. Petitioner is “deaf, blind, mute and needs full assistance in every ADL.” *See supra* ¶ 2. Petitioner is “unable to care for herself.” *Id.* Petitioner “must be turned regularly to prevent pressure sores.” *See supra* ¶ 7. However, Petitioner resides in the home with ██████████ and his wife. *See supra* ¶ 15 and 17. ██████████ works outside the home Monday through Friday, 8:30 a.m. until 5:00 p.m., and he flies out of town for overnight stays for his job approximately every 2 weeks. *See supra* ¶ 17. ██████████ wife does not work outside the home, *supra* ¶ 15, but has health issues of her own. *See supra* ¶ 17.

Petitioner is authorized to receive the following incontinence supplies: 2 cases of briefs/diapers per month; 1 case per month of underpads; and 7 packs per month of wipes. *See supra* ¶ 6. The NPAR states, “[t]he member receives pull ups. Liners are not supposed to be used in addition as this increases the risk of skin breakdown.” *See supra* ¶ 11. Dr. Carter explained that since Petitioner gets briefs or diapers, there is no need for liners, since her other incontinence supplies are adequate to meet her needs. *See supra* ¶ 16. Florida Medicaid LTC plans do not cover services that duplicate another service. *See supra* ¶ 22. ████████ believes that the diapers that are provided to Petitioner do not hold enough of her bladder removal and leak. *See supra* ¶ 17. The letter from ████████ reflects that Petitioner “often urinates through her diaper, and really needs the incontinence liners to reduce the number of times per day of linen changes.” *See supra* ¶ 7. However, Dr. Carter explained that liners can be called shields, liners, or pads – and they are used for incontinence, but liners are for someone who is wearing their own underwear. *See supra* ¶ 16. Dr. Carter explained that in Petitioner’s case, she is provided with briefs or diapers, which are disposable undergarments that absorb incontinence fluids. *See supra* ¶ 16. Dr. Carter explained that liners are not meant to put in disposable undergarments. *See supra* ¶ 16. Based upon the evidence presented by both parties, Respondent established that the termination of 1 case per month of disposable liners is warranted in this case.

34. Specifically, 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* ¶ 22. Petitioner is currently authorized to receive 2 cases of briefs/diapers per month, 1 case per

month of underpads, and 7 packs per month of wipes. *See supra* ¶ 6. Considering the LTC Policy’s definitions for medical equipment and supplies, and the evidence discussed, *supra* 23, Respondent demonstrated that Petitioner’s needs are sufficiently met by her currently authorized services, and the requested liners would be duplicative. Given that Respondent established that the requested disposable liners are not warranted in this matter, *supra* ¶ 33, the previously authorized disposable liners are “in excess of [Petitioner’s] needs.” *See supra* ¶ 22.

Conclusion

35. In light of the both parties’ testimony, Petitioner’s Composite Exhibit 1, 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 services and disposable liners is not medically necessary.

36. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent’s termination of 35 hours per week of adult companion services and 1 case per month of disposable liners was correct.

DECISION

Respondent’s termination of 35 hours per week of adult companion services is **AFFIRMED**. Respondent’s termination of 1 case per month of disposable liners is **AFFIRMED**.

Petitioner’s appeal based on Respondent’s terminations in this matter is **DENIED**.

DONE AND ORDERED this 29th day of December, 2020, in Tallahassee, Leon County, Florida.

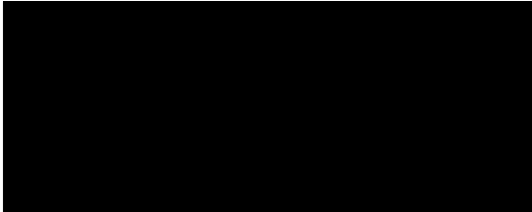
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TRACIE HARDIN, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
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Office: (850) 412-3649
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NOTICE 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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