



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

FILED

Dec 18, 2020, 10:00 am
OFFICE OF FAIR HEARINGS

█

PETITIONER,

AHCA Case No.: 20-FH █
Plan ID No.: █

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Medicaid Fair Hearing in the above styled case on November 19, 2020, at █

APPEARANCES

For the Petitioner: █
Petitioner

For the Respondent: Maria Mojica
Compliance Specialist
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's reduction of personal care services from 21 hours per week to 14 hours per week was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner appeared at the Fair Hearing and provided testimony on her own 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; Marsha Prosper-Charles, Care Coordinator for Sunshine; Alicia Swartz, Manager of LTC services for Region 9 for Sunshine; Talia Aguiar, Case Management Supervisor for Sunshine; and Melissa Layne (“Ms. Layne”), Manager for Quality Improvement 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 94-page evidence packet. The packet included the following documents: the Medicaid Fair Hearing Table of Content; a Medicaid Fair Hearing Summary, dated October 29, 2020; the Notice of Adverse Benefit Determination (“NABD”), dated August 27, 2020; Sunshine’s Long Term Care Person-Centered Care Plan (“care plan”), signed August 4, 2020; the Florida Department of Elder Affairs 701B Comprehensive Assessment (“701B”) with an assessment date of August 4, 2020; a copy of the completed copy of Sunshine’s Request for an Appeal or Grievance Form, dated September 9, 2020; a letter from [REDACTED] (“[REDACTED]”), dated September 9, 2020; the completed authorized representative information for [REDACTED], dated September 9, 2020; Sunshine’s Standard Appeal Acknowledgment, dated September 16, 2020; Sunshine’s Notice of Plan Appeal Resolution (“NPAR”), dated October 7, 2020; Sunshine’s Revised NPAR, dated

October 29, 2020; the Sunshine Health Policy and Procedure LT.UM.09; and Fla. Admin. Code R. 59G-1.010. Absent an objection from Petitioner, the undersigned admitted Respondent's 94-page evidence packet into evidence as Respondent's Composite Exhibit 1.

Prior to the hearing, Respondent also sent to the Office of Fair Hearings and Petitioner a 9-page evidence packet. The packet included Sunshine's care plan, signed October 27, 2020. Absent an objection from Petitioner, the undersigned admitted Respondent's 9-page evidence packet into evidence as Respondent's Composite Exhibit 2.

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 alone in a private residence. See Respondent's Composite Exhibit 1, pages 22 and 23. The 701B reflects that Petitioner has the following health conditions: osteoarthritis; high blood pressure; and cancer of the left breast (past). See Respondent's Composite Exhibit 1, pages 28 and 29. Petitioner "had a double knee replacement about 15 years ago." *Id.* at 29. Petitioner has "difficulty walking" and ambulates with "a 4 wheel rolling walker due to unsteady gait." *Id.* at 26. The record reflects "NO SUPERVISION REQUIRED." *Id.* at 31.

3. The 701B reflects the following regarding Petitioner's Activities of Daily Living ("ADLs"). Petitioner needs no assistance with dressing, eating, using the bathroom, and transferring. See Respondent's Composite Exhibit 1, page 26. Petitioner uses assistive devices for walking/mobility. *Id.* Petitioner needs assistance (but not total help) with bathing. *Id.*

4. Regarding Petitioner's Instrumental Activities of Daily Living ("IADLs"), the 701B reflects that Petitioner needs no assistance with using the telephone. See Respondent's Composite Exhibit 1, page 27. Petitioner needs assistance (but not total help) with managing money, preparing meals, shopping, managing medication, and transportation. *Id.* Petitioner needs total assistance (cannot do at all) with heavy chores and light housekeeping. *Id.* The 701B states:

Member requires assistance with heavy chores which she pays a cleaning company to do. Member's aide provides services to her 7 days a week for 5 hours daily. Member's aide completes member's grocery shopping twice a week 1 hour each day member's aide completes member's laundry twice a week. Member's aide picks up member's prescriptions. Member's aide provides member companionship to doctor appointments.

Respondent's Composite Exhibit 1, page 27.

5. Question number 33 on the 701B asks, "Is someone besides the client providing answers to questions?" The box for "No" is checked. Question number 50 on the 701B asks, "How often do you change or limit your activities out of fear of falling?" Petitioner's response is listed as "Never."

6. Petitioner is currently authorized to receive the following home and community-based services: 5 home delivered meals per week; 14 hours per week of homemaker services; and 14 hours per week of personal care services (not including the 7 hours of personal care services that are the subject of this case). See Respondent's Composite Exhibit 2, page 4.

7. The letter from [REDACTED], dated September 9, 2020, states as follows:

[Petitioner] continues to have ongoing issues with her ADL's and continues to need daily assistance in maintaining her independence at home. She continues to require and would benefit with assistance with cooking, cleaning, and assistance with self hygiene. She remains mobile with the walker but limited in distance she can travel due to pain and limited range of motion.

She would benefit from maintenance of her home health aide. Forty hours of assistance weekly in composite will help improved [sic] her quality of life.

Respondent's Composite Exhibit 1, page 41.

8. On August 27, 2020, Respondent issued an NABD reducing personal care services from 21 hours per week to 14 hours per week, and explaining that the "requested services are not medically necessary." See Respondent's Composite Exhibit 1, page 4. The NABD stated "[b]ased on the assessment of the member's care needs and household and caregiver status, Sunshine Health will reduce the Personal Care Services from 21 hours/week to 14 hours/week." See Respondent's Composite Exhibit 1, page 5.

9. Petitioner requested an appeal of Respondent's reduction of personal care services from 21 hours per week to 14 hours per week. See Respondent's Composite Exhibit 1, page 40. On October 7, 2020, Respondent sent Petitioner an NPAR, denying Petitioner's plan appeal. *Id.* at 49.

The NPAR stated as follows:

The reason for our decision was: The appeal to overturn the reduction of 7 hours per week of Personal Care Services is denied for lack of medical necessity. Based on the assessment, the member's currently approved services are adequate to meet the member's care needs. The member's present care plan includes 14 hours per week of Personal Care Services and 14 hours per week of Homemaker Services. This decision was made with Sunshine Health Policy LT.UM.09 Long Term Care Ancillary Service Criteria

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

Respondent's Composite Exhibit 1, page 49.

10. Respondent relied upon the Sunshine Health Policy and Procedure LT.UM.09 to make its determination in this case, which states in pertinent part, as follows:

5. Home Delivered Meals

Nutritionally sound meals to be delivered to the residence of the member who

has difficulty shopping for or preparing appropriate, nutritious meals without assistance. The member must be given a choice of meals from a menu provided in advance. Each meal is designed to meet the

USDA *2015-2020 Dietary Guidelines for Americans*. The service must be provided at the member's residence. The Home Delivered Meals can be hot, cold, frozen, dried, canned or a combination of these options. More than one meal can be delivered at a time if there is proper storage and heating facilities at the member's residence. The member must be able to prepare and consume the meals him/herself with available assistance.

To be considered a home delivered meal, each meal must be designed to provide a minimum 33% of the current Dietary Reference Intake (DRI). The meals shall meet the Dietary Guidelines for Americans and the USDA My Food Pyramid Intake Pattern. The meals must reflect the predominant statewide demographic.

...

6. Homemaker Services

Homemaker provides assistance with essential shopping, light housework, laundry, and meal preparation. These services are provided to member's who exhibit a functional deficit that impairs their ability to complete these tasks and lack an available support system. Services are provided to support member's health, safety, and ensure basic standards are met. Services are provided by a trained homemaker when the individual regularly responsible for these services is temporarily absent or unable to manage these activities.

Approval Criteria

Homemaker Service reviews include four (4) criteria:

- a) Instrumental Activities of Daily Living (IADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available supports

...

7. Personal Care Services

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

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

Approval Criteria

Personal Care Services reviews include four (4) criteria:

- a) Activity of Daily Living (ADL) limitations
- b) Living situation
- c) Supervision needs
- d) Available Supports

Respondent's Composite Exhibit 1, pages 72 – 74 and 80 – 81.

11. On October 14, 2020, Petitioner requested a Fair Hearing due to the reduction of personal care services. On October 19, 2020, the undersigned scheduled the Fair Hearing for November 19, 2020, at [REDACTED], and all parties were duly notified.

12. Dr. Carter is the LTC Medical Director for Sunshine. During the Fair Hearing, Dr. Carter explained that the rationale for Respondent's determination is as follows: Petitioner lives alone and is cognitively intact; Petitioner only requires partial assistance with bathing; and Petitioner is receiving home delivered meals and homemaking services. Addressing [REDACTED]'s letter on page 41 of Respondent's Composite Exhibit 1, Dr. Carter noted that the letter included generalized statements, and despite the letter, he believes the reduction of personal care services is appropriate as Petitioner only needs partial assistance with bathing.

13. Petitioner is 87 years old, lives alone, does not work, and has no family living nearby. Petitioner explained that with fewer hours, she feels less safe. Petitioner believes that she needs someone to accompany her when she goes to the bathroom. Petitioner uses a walker in the house and is afraid of falling. Petitioner believes that she needs more help with bathing, dressing, and going to the doorbell.

CONCLUSIONS OF LAW

14. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Florida Statute § 409.285(2). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

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

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

17. Because Respondent is 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.).

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

1.1 Description and Program Goal

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

...

1.3 Definitions

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

1.3.1 Activities of Daily Living (ADLs)

ADLs include:

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

...

1.3.5 701-B Comprehensive Assessment

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

...

1.3.9 Instrumental Activities of Daily Living (IADLs)

When necessary for the recipient to function independently, including:

- Grocery shopping

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

...

1.3.14 Medically Necessary or Medical Necessity

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

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

And, one of the following:

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

...

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

...

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.

...

4.2.1.8 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.

...

4.2.2.6 Personal Care

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

...

6.0 Documentation

...

6.2 Specific Criteria

In order to receive LTC services, services must be documented on an individualized plan of care based upon a comprehensive needs assessment. The comprehensive

assessment includes the completion of the 701-B Comprehensive Assessment and the LTC Supplemental Assessment.

SMMC LTC Policy, pages 1-8.

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

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

4.215. The PC Policy provides as follows:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

1.1.2 Statewide Medicaid Managed Care Plans

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

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid reimburses for services that meet all of the following:

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

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

5.1 General Non-Covered Criteria

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

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

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities

- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facility for individuals with intellectual disabilities – Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence
- Yard work, gardening, or home maintenance work

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

...

7.0 Authorization

7.1 General Criteria

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

...

Personal Care Task	General Time Allowances
Bathing	
Full-body Bath: Tub, shower or sponge/bed bath.	Up to 30 minutes. May rotate with partial bath based on recipient’s needs
Partial Bath: A sponge bath includes, at a	15–20 minutes per partial bath

minimum, bathing of the face, hands, and perineum.	
Dressing	
Laying out clothing, handing and retrieving clothing, putting clothes on and taking them off, including handling fasteners, zippers, and buttons.	15 minutes
Application of prosthetic devices or application of therapeutic stockings.	May add 15 minutes for applying hose and/or Prosthesis
Grooming and Skin Care	
Brushing teeth, denture care, shaving, washing and drying face and hands. Applying lotion to non-broken skin.	15–30 minutes
Shampoo and comb hair, basic hair care, basic nail care.	15 minutes
Positioning	
Moving recipient to and from a lying position, turning side to side, and positioning recipient in bed.	10 minutes/every 2 hours when medically indicated
Transfers	
Moving recipient into and out of a bed, chair, or wheelchair. May include the use of assistive devices.	15 minutes/every 2 hours when medically indicated
Toileting and Maintaining Continence	
Includes transfer on or off the toilet, bedside commode, urinal, or bedpan. Includes cleaning the perineum and cleaning after an incontinent episode. Includes taking care of a catheter or colostomy bag or changing a disposable incontinence product.	15–45 minutes
Eating	
Taking in food by any method. Extra time may be allowed for preparing a special diet.	30 minutes per meal
Delegated Medical Monitoring and Activities	
Non-skilled medical tasks that are delegated to the aide by the RN, in accordance with	15–30 minutes day for all monitoring tasks performed

Florida laws and practice acts. The tasks include, but are not limited to, assisting recipient with pre-poured medications, monitoring vital signs, and measurement of intake/output.	
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PC Policy, pages 3 – 8, and 10.

21. In the instant case, Respondent reduced personal care services from 21 hours per week to 14 hours per week. *See supra* ¶ 8 and 9. As established on the record by the evidence and testimony, Respondent reduced personal care services, because the documentation submitted in support of Petitioner’s request failed to establish that the requested services were medically necessary. *See supra* ¶ 8 and 9.

22. Section 4.1 of the SMMC LTC Policy provides that Florida Medicaid LTC plans cover services that: are medically necessary, as defined in the SMMC LTC Policy; do not duplicate another service; and meet the criteria as specified in the SMMC LTC Policy. *See supra* ¶ 17. Further, the PC Policy provides that personal care services are to “provide medically necessary assistance, in the home or in the community, with [ADL] and age appropriate [IADL] to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.” *See supra* ¶ 20.

23. Section 4.2.2.6 of the SMMC LTC Policy reflects that personal care services are “[t]o provide assistance with ADLs and IADLs, including assistance with preparation of meals, and housekeeping chores which are incidental to the care furnished or are essential to the health and welfare of the enrollee. The scope and nature of these services do not otherwise differ from personal care services furnished to persons under the age of 21 years.” *See supra* ¶ 17. The Sunshine Health Policy and Procedure LT.UM.09 reflects that personal care services provide

“assistance with eating, bathing, dressing and personal hygiene, and other activities of daily living.” See supra ¶ 10.

24. The evidence presented in this case reflects that Respondent’s reduction of personal care services from 21 hours per week to 14 hours per week are warranted under the circumstances of this case. Specifically, regarding ADLs, Petitioner uses assistive devices for walking/mobility, and needs assistance (but not total help) with bathing. See supra ¶ 3. The PC Policy allows up to 30 minutes per instance for bathing. The record reflects that Petitioner needs no assistance with dressing, eating, using the bathroom, and transferring. See supra ¶ 3. Regarding IADLs, Petitioner needs: assistance (but not total help) with managing money, preparing meals, shopping, managing medication, and transportation; total assistance (cannot do at all) with heavy chores and light housekeeping; and needs no assistance with using the telephone. See supra ¶ 4. Petitioner is 87 years old, lives alone, does not work, and has no family living nearby. See supra ¶ 2 and 12. Petitioner “had a double knee replacement about 15 years ago,” has “difficulty walking,” and ambulates with “a 4 wheel rolling walker due to unsteady gait.” See supra ¶ 2. Petitioner explained that with fewer hours, she feels less safe, and believes that she needs someone to accompany her when she goes to the bathroom. See supra ¶ 12. Petitioner uses a walker in the house and is afraid of falling. See supra ¶ 12. However, the record reflects “NO SUPERVISION REQUIRED.” See supra ¶ 2. Although Petitioner believes that she needs more assistance with bathing, dressing, and going to the doorbell, *supra* ¶ 12, Petitioner is currently authorized to receive 5 home delivered meals per week, 14 hours per week of homemaker services, and 14 hours per week of personal care services (not including the 7 hours of personal care services that are the subject of this case). See supra ¶ 6. Petitioner’s

aide provides services to her 7 days a week for 5 hours daily, provides member companionship to doctor appointments, completes Petitioner's grocery shopping twice a week 1 hour each day, completes Petitioner's laundry twice a week and picks up member's prescriptions. *See supra* ¶ 4. Given that the record reflects that Petitioner needs no assistance with dressing, eating, using the bathroom, and transferring, *supra* ¶ 3, Respondent's reductions are reasonable under the circumstances of this case. The NPAR explains that "[b]ased on the assessment, the member's currently approved services are adequate to meet the member's care needs." *See supra* ¶ 9. Based upon the evidence presented by both parties, Respondent established that the reduction of personal care services from 21 hours per week to 14 hours per week is warranted in this case.

25. 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* ¶ 17. Petitioner is currently authorized to receive the following home and community-based supportive services: 5 home delivered meals per week; 14 hours per week of homemaker services; 14 hours per week of personal care services (not including the 7 hours of personal care services that are the subject of this case). *See supra* ¶ 6. Considering the LTC Policy's definitions for home delivered meals, homemaker services and personal care services, *supra* ¶ 17, Respondent demonstrated that Petitioner's aforementioned needs, *supra* ¶ 2, 3, 4, 7, 12, and 23, are sufficiently met by her currently authorized services. Further, given that Respondent established that the requested personal care services are not warranted in this matter, *supra* ¶ 23, the previously authorized amount of personal care services are "in excess of [Petitioner's] needs." *See supra* ¶ 17.

26. The letter from ██████████, dated September 9, 2020, states “[Petitioner] continues to have ongoing issues with her ADL's and continues to need daily assistance in maintaining her independence at home. She continues to require and would benefit with assistance with cooking, cleaning, and assistance with self hygiene.” See supra ¶ 7. The letter also notes that Petitioner “remains mobile with the walker but limited in distance she can travel due to pain and limited range of motion,” and “would benefit from maintenance of her home health aide.” *Id.* According to ██████████, “[f]orty hours of assistance weekly in composite will help improved [Petitioner’s] quality of life.” *Id.* The document offers no insight into how ██████████ determined the severity of Petitioner’s medical condition, nor does it prescribe the type, amount, or length of services warranted to address Petitioner’s medical condition. Section 2.83 of the Definitions Policy mandates that “[t]he 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.” See supra ¶ 18. Therefore, the letter from ██████████ does not, in itself, make the requested personal care services medically necessary.

27. In light of the both parties’ testimony, Respondent’s Composite Exhibit 1, Respondent’s Composite Exhibit2, the SMMC LTC Policy, the PC Policy, and the Definitions Policy, the undersigned Hearing Officer finds that Respondent demonstrated that Petitioner’s previously authorized amount of personal care services is not medically necessary.



28. Accordingly, the undersigned Hearing Officer finds that Respondent proved by a preponderance of the evidence that Respondent’s reduction of personal care services from 21 hours per week to 14 hours per week was correct.

DECISION

Respondent's reduction of personal care services from 21 hours per week to 14 hours per week is **AFFIRMED**.

Petitioner's appeal based on Respondent's denial in this matter is **DENIED**.

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

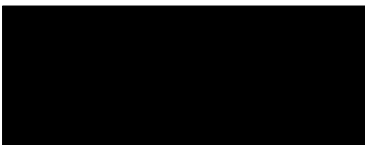

Tracie Hardin
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TRACIE HARDIN, Hearing Officer
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

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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