

STATE OF RHODE ISLAND  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES APPEALS OFFICE

█  
v.

DOCKET No. 24-2021

EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES

**DECISION**

**I. INTRODUCTION**

A telephonic hearing on the above-entitled matter was conducted by an Appeals Officer on May 7, 2024, with the Executive Office of Health and Human Services (“EOHHS”), the Managed Care Organization (“MCO”) Neighborhood Health Plan of Rhode Island (“NHPRI”), and █ (“Appellant”). The Appellant initiated this matter to appeal an action taken by NHPRI. This matter arose from a reduction in the Appellant’s Long-Term Services and Supports Home Care Service hours (“LTSS hours”) from 40 hours weekly to 30.5 hours weekly. NHPRI conducted an in-home assessment with the Appellant on December 11, 2023, and reassessment on February 8, 2024. Both assessments determined that 30.5 LTSS hours weekly were medically necessary. The Appellant disagreed with NHPRI’s decision because she needs the extra hours for meal preparation, self-feeding, mobility, administering medication, errands and grooming. For the reasons discussed in more detail below, the decision has been decided against the Appellant.

## **II. JURISDICTION**

The Executive Office of Health and Human Services (EOHHS) is authorized and designated by R.I.G.L. §42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to the actions taken by the Medicaid MCO. Furthermore, under 210-RICR-10-05-2 §2.4.2, a member of a MCO is required to exhaust all appeal rights under the MCO before seeking an appeal with EOHHS. The Administrative Hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. §42-35-1 et. seq., and EOHHS regulation 210-RICR-10-05-2.

## **III. ISSUE**

The issue is whether the Appellant's reduction in LTSS hours were determined appropriately based on medical necessity in accordance with the Federal and State Regulations and the MCO's Clinical Medical Policy for Home Care Services #20.

## **IV. PARTIES AND EXHIBITS**

Administrator of Medical Services for Medicaid, Nina Lennon, attended the telephonic hearing and presented the case on behalf of EOHHS relevant to the Appellant's request for increased LTSS hours for home care services. Also, in attendance to assist was Medical Director for RI Medicaid, Jerry Fingerut. The Agency did not offer any evidence at the hearing.

Attorney Mary Catala of Chace Rutenberg & Freedman, LLP presented the Appellant's case on behalf of NHPRI. Registered Nurse and Manager of Care Management for MMP, Kim Carty ("NHPRI Manager") also provided testimony to the reduction of LTSS hours based on the in-home assessments completed by NHPRI. Also, in attendance for NHPRI to assist was Senior Associate Medical Director Dr. Michael Mitchell, Senior Manager Grievance and Appeals

Lindsey Sousa, Clinical Manager of Grievance and Appeals Catherine Daignault. NHPRI offered the following into evidence as full exhibits:

- Exhibit A: NHPRI Clinical Medical Policy for Home Care Services #20 dated December 6, 2023.
- Exhibit B: NHPRI Comprehensive Functional Needs Assessment (“Assessment”) dated December 11, 2023.
- Exhibit C: NHPRI Service Calculator and Plan of Care dated December 11, 2023.
- Exhibit D: Medical Review & Reduction of Hours approval.
- Exhibit E: NHPRI Notice of Denial of Medical Coverage dated December 11, 2023.
- Exhibit F: Initial Appeal Request Form dated January 26, 2024, and Acknowledgement of Appeal dated January 29, 2024.
- Exhibit G: Appeal Review and Request for New Assessment and Calculation dated February 5, 2024.
- Exhibit H: NHPRI Assessment, Service Calculator and Plan of Care dated February 8, 2024.
- Exhibit I: Notice of Level 1 Appeal Status dated February 14, 2024.
- Exhibit J: External Agency’s Assessment, Service Calculator, and Notes approving 40 LTSS hours weekly dated May 8, 2023.

The Appellant, [REDACTED] attended the telephonic hearing and testified on her own behalf. Also, in attendance was her CNA, [REDACTED] to assist if needed. The Appellant did not offer any evidence at the hearing.

## **V. RELEVANT LAW**

The Rhode Island Code of Regulations (“RICR”) for the EOHHS in effect at the time of the action, 210-RICR-40-10-1, entitled “Managed Care Service Delivery Arrangements”, §1.2 (A)(15) “Medically Necessary service means a medical, surgical, or other service required for the prevention, diagnosis, cure, or treatment of health-related condition including such services that are necessary to prevent or slow a decremental change in either medical or mental health status.” §1.7 provides established guidance pertaining to the MMP which is bound by a three (3) way agreement between EOHHS, the Federal Centers for Medicare and Medicaid Services (“CMS”), and the participating MCO. §1.7.8 further provides the benefit package with includes home care services to members and discusses the standard of “medical necessity” that is used to determine the covered service.

NHPRI Clinical Medical Policy for Home Care Services #20 provides established guidance pertaining to MMP Integrity’s approval for services such as a Certified Nurse Assistant (“CNA”). The policy further explains the specific criteria including the level of assistance with Activities of Daily Living (“ADLs”) and Instrumental Activities of Daily Living (“IADLs”) required for the approval home care service hours are based on medical necessity. NHPRI medical management staff performs assessments, enters results into the service calculator to determine the number of home care hours needed and issues a plan of care.

## **VI. FINDINGS OF FACT**

1. The Appellant is enrolled in MMP Integrity, with NHPRI and is eligible for LTSS Home and Community Based Services (“HCBS”). She has a CNA through A Caring Experience to assist with her ADLs and uses Papa Pals to assist her with her IADLs.

2. NHPRI Integrated Care Managers are licensed clinicians who conduct assessments every 180 days to ensure the members services are appropriate based on any changes in health conditions. The members assessments are completed in the home and are attended by the member, their NHPRI Integrated Care Manager, caregivers, family members and anyone else the member asks to attend.

3. The assessment consists of a series of questions and the member is asked to demonstrate their physical abilities to determine the level of support they need in their home. The level of care is measured by what the member can complete by themselves and what their deficits are. The member is also asked about their health conditions, medications, medical equipment used, their providers, caregivers and any external supports.

4. Clinical Medical Policy-Home Care Services #20 is the policy used to assess and reassess the members LTSS hours. The policy explains that medical necessity and quantity of home care hours for MMP members is determined by assessments completed by NHPRI. Criteria used to assess the care needed and how much time is needed includes but is not limited to; Member's age, weight, height, Level of assistance needed with ADLs and IADLs, primary caretaker hours availability, Bowel/Bladder-continenence status, and Mobility.

5. ADLs consist of Ambulation, Self Feeding, Dressing, Functional Transfers, Bathing, Grooming, Bladder Management, and Bowel Management. IADLs consist of Laundry, Shopping, Housework-Cleaning, and Meal Preparation.

6. The service calculator is a tool used by NHPRI and approved by EOHHS to determine the number of hours that are appropriate based on the member's assessment. After the completed assessment, the times per day, how much assistance is needed, and how much time it takes to complete tasks are entered into the service calculator. The service calculator then

determines how many minutes per day the member requires hands on care for each task.

Additionally, the service calculator takes into consideration any medical equipment the member uses, family, friends, caretakers, and community groups.

7. The Appellant completed an in-home reassessment with a NHPRI external agency on June 15, 2023, requesting an increase in LTSS hours due to her progressing macular degeneration and acid reflux. She was previously receiving 36 LTSS hours weekly. The reassessment results were entered into the service calculator and the notes show she requires additional assistance with her ADLs for ambulation, transfers, self feeding, and IADL for meal preparation. She was approved for an increase in LTSS hours to 40 hours per week.

8. The Appellant completed a semi-annual in-home assessment with NHPRI on December 11, 2023, to determine her continuing LTSS hours. The assessment noted the Appellant's diagnoses as macular degeneration, gastro-esophageal reflux, diverticulosis, and hyperlipidemia. The assessment shows the Appellant's ability to perform her ADLs as: Self Feeding-Independent; Ambulation, Functional Transfers, Bladder/Bowel Management-Supervision; Dressing and Grooming-Limited Assistance and Bathing-Extensive Assistance. Her IADLs all require Extensive Assistance. The information was entered into the service calculator, and it was determined her LTSS hours weekly decreased from 40 hours to 30.5 hours.

9. A Notice of Denial of Medical Coverage dated December 11, 2023, was sent the Appellant reducing her LTSS hours from 40 hours per week to 30.5 hours per week of combination services based on the NHPRI Clinical Medical Policy for Long Term Care – Home Health Aid Hours.

10. The Appellant filed an appeal with NHPRI on January 26, 2024, and requested a reassessment based on the reduction of her LTSS hours. She explained that she suffers from

ulcers and after her CNA hours were reduced, she is rushing to eat which is causing her to choke on her food. The CNA cannot complete her job duties for meal preparation, administering medications, running errands, and grooming due to the decrease in LTSS hours. She also explained that due to hip surgery she is losing her balance and is a high fall risk. NHPRI reviewed the Appellant's appeal and approved a reassessment.

11. An in-home reassessment was performed by NHPRI on February 8, 2024. The assessment shows the Appellant's ability to perform her ADLs as: Self Feeding and Grooming-Limited Assistance; Dressing, Ambulation, Functional Transfers, Bladder/Bowel Management-Supervision; and Bathing-Extensive Assistance. Her IADLs all require extensive assistance. The information was entered into the service calculator, and it was determined her LTSS hours remained the same 30.5 hours. The NHPRI Manager of Care Management reviewed the reassessment, service calculator and notes and agreed with the determination.

12. A Notice of Level 1 Appeal Status was mailed to the Appellant on February 14, 2024. The notice states in part that after a review of the recent assessment and service calculator on February 8, 2024, NHPRI denied the Appellant's request for an increase of LTSS hours for her home health aide.

13. The Appellant again disagreed with NHPRI and filed a State Fair Hearing with EOHHS on March 22, 2024, requesting her LTSS hours be increased back to 40 hours per week based on her vision and mobility limitations. NHPRI responded that the decision was based on both the December 11, 2023, and February 8, 2024, assessments that determined 30.5 LTSS hours were medically necessary. A telephonic hearing was scheduled for May 7, 2024, and held accordingly.

14. EOHHS stated after review of the documents provided by NHPRI, they are in support of the decision to reduce the Appellant's LTSS hours.

15. The NHPRI Manager testified that every 180 days a home assessment is completed for their members. In this case the Appellant's assessment was completed on December 11, 2023. The Appellant appealed the decision, and a reassessment was performed on February 8, 2024. The service calculator was used after each assessment and a plan of care was established. She approved the December 11, 2023, assessment, service calculator and plan of care, and another NHPRI manager approved the February 8, 2024, assessment service calculator and plan of care. In both assessments NHPRI considered the criteria listed in the Clinical Medical Policy.

16. The Appellant testified that she needs the 40 LTSS hours weekly that she had previously. She agrees she uses a walker, can dress sitting down, but needs help running errands, doing laundry and making her meals. She does receive help from Papa Pals for the doctor's appointments but only when the CNA cannot take her. She argued that due to her macular degeneration she cannot see well to cook, she has fallen four (4) times because she has bad balance and cannot stand to dress. She further argued, based on the reduction of hours, she must rush to eat which at times makes her choke. She would be grateful to receive her original hours restored.

17. The NHPRI Manager further testified that the February 8, 2024, reassessment changed specific criteria based on the Appellant's January 26, 2024, NHPRI appeal which included Self Feeding and Grooming, but Meal Preparation and running errands cannot be increased because she already receives the maximum assistance. She also noted the CNA cannot administer medications. NHPRI stands with their determination of the Appellant's LTSS hours.



## **VII. DISCUSSION**

NHPRI maintains that two (2) in-home assessments were performed in the Appellant's home in December 2023 and February 2024 by a NHPRI Integrated Care Manager. The Appellant is asked to perform certain functions such as getting up, walking with a walker from one room to another, dressing, bathing, and toileting to determine what kind of assistance is needed. After the assessment a calculation is completed using the time in minutes it takes to complete the task, number of times per day, and the number of days per week to determine how many hours per week is needed. In this case 30.5 LTSS hours are medically necessary. In both assessments NHPRI considered criteria listed in the Clinical Medical Policy as required based on medical necessity. EOHHS agreed with NHPRI's determination of the Appellant's decrease in LTSS hours.

The NHPRI Manager testified that she manages a team of nurses, social workers, and community care coordinators who oversee the MMP members. Each team member ensures that assessments are given every 180 days, approves the service calculators, and reviews the members plan of care with the members.

NHPRI further testified that the December 11, 2023, shows the Appellant's ability to perform her ADLs specifically Self Feeding noted she was independent because she could feed herself. Additionally for acts of Ambulation, Functional Transfers, Bladder and Bowel Management she needs supervision because she can walk with her walker, get in and out of chairs, and use the toilet by herself. She needed limited assistance with Grooming and Dressing but Bathing she needs extensive assistance. For all IADLs she needs extensive assistance and receives the maximum amount of time allowed. The February 8, 2023, reassessment also reviewed the same criteria and found differences that were factored into the service calculator. In

review of the ADLs, specifically Self Feeding she needs limited assistance and was given 18 minutes, 3 times a day, 7 days a week totaling 378 minutes per week, whereas she previously did not need assistance. She continued to receive the maximum number of hours for her IADLs.

NHPRI explained that based on the appeal, the Appellant needed assistance with Meal Preparation, administering medication, help running errands and grooming. The Appellant is receiving the maximum assistance for the IADLs so they cannot be increased, and she receives limited assistance for grooming which was reduced to once a day and dressing from limited assistance to supervision. The Appellant has a CNA, has tools to assist her in her daily ADL tasks such as a walker rollator, cane, shower chair, grab bars, hand-held shower attachment, long handled reacher, knee braces and she uses Papa Pals for community supports.

The Appellant argued that she was concerned about the NHPRI's testimony regarding her assessment. She feels they are talking about another person. She cannot stand to dress and sits so she doesn't fall. Her doctor's appointments take a lot of time especially if they take her late. Her CNA takes her to the doctor, and she also uses Papa Pals depending on the time. She further argued she needs the 40 hours a week, so she is not rushed, and the CNA can continue to assist her as in the past.

NHPRI concluded that the Appellant's results show a correct calculation of LTSS hours based on assessment performance. The less assistance needed means less time for a home care assistant. There is no dispute that certain tasks show she does need extensive assistance or total assistance, and, in those cases, she was allotted the maximum amount of time. Supervision, for instance, does not allocate as many hours because she primarily does it herself. Additionally, if a CNA accompanies a member to a doctor appointment, that is set by the home care agency, but it takes time away from them in their home. There are other options like Papa Pals and MTM

Transportation for appointments that the Appellant may use, which would give her more CNA hours.

### **VIII. CONCLUSIONS OF LAW**

In review of 210-RICR-40-10-1 §1.7.8(A)(2) states in part that for “Medicaid Services” the standard of “medical necessity” is used as the basis for determining whether a covered service is appropriate. NHPRI completed an assessment with the Appellant at home on December 11, 2023, and approved 30.5 LTSS hours using their service calculator and provided a plan of care. NHPRI again completed another assessment at home on February 8, 2024, based on her appeal. The results did not change even though she was given more time for some ADLs, specifically Self Feeding but other ADLs showed a slight decrease. The Appellant also received the maximum hours to assist with her all her IADLs on both occasions to cover her Meal Preparation, Housework, Laundry and Shopping/Errands.

Furthermore, NHPRI considered all the requirements listed in the Clinical Medical Policy and approved the 30.5 LTSS hours that were medically necessary. There is no evidence or testimony to support that NHPRI’s assessment, calculation or plan of care were incorrect. The Appellant’s arguments were addressed by NHPRI regarding needing more time for eating, meal preparation, grooming, and running errands which includes doctor’s appointments.

After careful and considerate review of the Agency’s Rules and Regulations, as well as the evidence and testimony provided, this Appeals Officer concludes that NHPRI assessed and calculated the Appellant’s LTSS hours appropriately based on medical necessity.

### **IX. DECISION**

Based on the foregoing Findings of Fact, Conclusions of Law, and by a preponderance of evidence it is found that a final order be entered that the Appellants request for relief is denied.

**APPEAL DENIED**

**/s/ Louanne Marcello**

Louanne Marcello  
Appeals Officer

**CERTIFICATION**

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED], copies were sent via email to EOHHS representatives John Neubauer and Nina Lennon, NHPRI representatives Mary Catala, Esq., Robert Fine, Esq., Amy Coleman, Esq., and Mary Eldridge on this 30th day of May, 2024.



**NOTICE OF APPELLATE RIGHTS**

**This Final Order constitutes a final order of the Executive Office of Health and Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.**