



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

FILED

May 01, 2023, 11:47 am
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

vs.

AHCA Case No.: 23-FH0236

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on April 21, 2023, at 10:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Authorized Representative

For the Respondent:

Chrissie Simmons
Medical Healthcare Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s termination of Prescribed Pediatric Extended Care (“PPEC”) services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the scheduled Fair Hearing telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative appeared on behalf of Petitioner, provided testimony, and did not call any witnesses.

Chrissie Simmons, a Medical Health Care Program Analyst and Fair Hearing Liaison for the

Agency for Health Care Administration (“Agency” or “AHCA”), appeared for the Fair Hearing as representative for Respondent. Dr. Chris Kunis, MD (“Dr. Kunis”), a Medical Director with eQHealth Solutions, Inc. – Florida Division (“eQHealth”), appeared for the Fair Hearing as a witness for Respondent. Izzy Sizemore, the Director of Training and Education for eQHealth appeared for the Fair Hearing as an observer.

Prior to the Fair Hearing, Respondent filed with the Office of Fair Hearings a 113-page evidence packet, which was admitted into evidence without objection, is identified as “Respondent’s Composite Exhibit 1”, and appears in the Office of Fair Hearings document management system as “[REDACTED] FH 3.21.23.pdf”. In addition, the Respondent submitted an additional 46-pages of authorities, including the following: Table of Contents; Memorandum: Fair Hearing Process Authorization for Quality Improvement Organization in Medical Necessity Determinations (dated October 19, 2021); Memorandum: Medical Necessity as Limitation on Medicaid Services, including EPSDT (dated August 5, 2014); Florida Statutes (“Fla. Stat.”) § 409.905 (2020); Florida Administrative Code Rule (“Fla. Admin. Code R.”) 59G-1.001; Fla. Admin. Code R. 59G-1.010; the Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”); Fla. Admin. Code R. 59G-1.035; Fla. Admin. Code R. 59G-1.053; the Florida Medicaid Authorization Requirements Policy (June 2016) (“Authorization Requirements Policy”); Fla. Admin. Code R. 59G-4.260; the Florida Medicaid Prescribed Pediatric Extended Care Services Coverage Policy (February 2018) (“PPEC Policy”); Florida Medicaid PPEC Services Provider Fee Schedule (2021); Fla. Stat. § 400.902; and Fla. Admin. Code R. 59A-13.007.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis through the Agency. See Respondent’s Composite Exhibit 1, page 16. eQHealth is a Quality Improvement Organization (“QIO”)

contracted by the agency to review prior authorization requests and terminations for services.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] old and diagnosed with the following health conditions: [REDACTED]

[REDACTED] Respondent's Composite Exhibit 1, pages 16 – 20. Petitioner has no recent hospitalizations or emergency room visits. *Id.* at 18. The only prescription medication Petitioner is prescribed is an [REDACTED] and a [REDACTED]. *Id.* at 20.

3. The Petitioner [REDACTED], and there are no plans to revert to the use of [REDACTED]. Respondent's Composite Exhibit 1, page 109 and testimony of Dr. Chris Kunis.

4. On January 30, 2023, Respondent issued a Notice of Outcome ("NOO" or "Notice") terminating Petitioner's PPEC services based on medical necessity. Respondent's Composite Exhibit 1, page 26. The Notice states the following, in pertinent part:

Code: T1026 Partial day PPEC services From: 2/17/23
Thru: 8/15/23
Total Units: Denied – 520

Code: T1025 Full day PPEC services From: 2/17/23
Thru: 8/15/23
Total Units: Denied – 130

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administrative Code[.] Specifically, the requested services are not medically necessary under the following standard(s):

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.

The rationale for our decision is as follows:

...

PR Principal Reason – Denial:

Required services are denied because this care can be provided by the parent or

caregiver.

Clinical Rationale for Decision: The patient is a [REDACTED] with a history of [REDACTED] and [REDACTED] who is progressing well. [REDACTED] has a [REDACTED] and [REDACTED]. There is [REDACTED] is [REDACTED], but has [REDACTED]. There is no longer a need for skilled nursing services; therefore, PPEC has to be denied.

Id. at 25-26. (Emphasis added).

5. On February 3, 2023, [REDACTED] requested a Fair Hearing on behalf Petitioner to dispute Respondent's termination of PPEC services. On March 1, 2023, the undersigned Hearing Officer issued a Scheduling Order to all parties of record scheduling the Fair Hearing to be conducted by telephone on March 21, 2023, at 10:00 a.m. EST. The Petitioner did not appear at the March 21, 2023, Fair Hearing. On March 22, 2023, an Order to Show Cause was issued by this Hearing Officer requiring the Petitioner to demonstrate good cause as to why [REDACTED] did not attend the March 21, 2023, Fair Hearing. On April 4, 2023, the Petitioner demonstrated good cause for missing the March 21, 2023, and on April 5, 2023, the undersigned Hearing Officer issued another Scheduling Order setting an April 21, 2023, Fair Hearing, which was held at 10:00 a.m.

6. According to Dr. Kunis's testimony presented at the Fair Hearing, Respondent terminated Petitioner's PPEC services after reviewing the PPEC provider's documentation contained in Respondent's Composite Exhibit 1 and determining that the PPEC services are no longer medically necessary. Specifically, Dr. Kunis determined that PPEC services are no longer needed. Dr. Kunis gave the following assessment of Petitioner: Petitioner [REDACTED]; Petitioner is [REDACTED] [REDACTED] Petitioner has [REDACTED]; [REDACTED] [REDACTED]; Petitioner has [REDACTED]; Petitioner's has [REDACTED] [REDACTED] but is [REDACTED] and will [REDACTED] when the Petitioner is

older; that the speech, occupational and physical therapy can be provided outside of a PPEC setting; and Petitioner does not have a need for skilled nursing care. Dr. Kunis reviewed Petitioner's PPEC records and testified that the Petitioner does not have a need for skilled nursing services. Upon hearing the testimony of [REDACTED], Dr. Kunis's position did not change.

7. According to [REDACTED] testimony presented at the Fair Hearing, [REDACTED] is seeking a continuation of PPEC care through the conclusion of the current certification period, August 15, 2023, after which the Petitioner will start school.

CONCLUSIONS OF LAW

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

9. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b), which states "[e]ach fair hearing shall be a *de novo*, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule."

10. 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.

(Emphasis added).

11. In the instant case, Respondent terminated an already-approved service. As such, 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.).

12. The Florida Medicaid PPEC Policy, incorporated by reference within Fla. Admin. Code R. 59G-4.260, establishes the coverage and provision for PPEC services available under the Florida Medicaid program. The Florida Medicaid PPEC Policy states the following, in pertinent part:

12.1 Description

Florida Medicaid prescribed pediatric extended care (PPEC) services provide skilled nursing supervision and therapeutic interventions in a non-residential setting to medically dependent or technologically dependent recipients.

12.1.1 Florida Medicaid Policies

This policy is intended for use by PPEC providers that render services to eligible Florida Medicaid recipients. It must be used in conjunction with Florida Medicaid’s General Policies (as defined in section 1.3) and any applicable service-specific and claim reimbursement policies with which providers must comply.

Note: All Florida Medicaid policies are promulgated in Rule Division 59G, Florida Administrative Code (F.A.C.). Coverage policies are available on the Agency for Health Care Administration’s (AHCA) Web site at <http://ahca.myflorida.com/Medicaid/review/index.shtml>.

...

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.

1.3.4 Full Day

Five to twelve hours of PPEC services rendered in one day.

1.3.7 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

1.3.8 Partial Day

Four hours or less of PPEC services rendered in one day.

...

2.2 Who Can Receive

Florida Medicaid recipients under the age of 21 years requiring medically necessary PPEC services and who:

- **Require continuous therapeutic interventions or skilled nursing supervision, as described in section 400.902, F.S. and in Rule 59A- 13.007, F.A.C.**
- Are determined medically stable by a physician and who are not a threat to self or others Some services may be subject to additional coverage criteria as specified in section 4.0.

...

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

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

4.2 Specific Criteria

Florida Medicaid covers PPEC services provided in accordance with section 400.902, F.S., the applicable Florida Medicaid fee schedule, or as specified in this policy, on a full or partial day basis. Services must include the following at a minimum:

- Caregiver training
- Developmental therapies
- An appropriate escort for travel to and from the PPEC when Florida Medicaid nonemergency transportation is provided
- Medical services
- Nursing services
- Personal care services
- Psychosocial services
- Respiratory therapy services

The PPEC day begins when the recipient arrives at the PPEC or is picked up for escorted transportation to the PPEC.

The PPEC day ends when the recipient departs from the PPEC for the day or is returned home by escorted transportation from the PPEC.

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the

coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

13. Florida Statutes defines a "Medically Dependent or Technologically Dependent Child" as:

A child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse.

Fla. Stat. § 400.902.

14. States must provide Early and Periodic Screening, Diagnostic, and Treatment ("EPSDT") services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

15. Petitioner is under the age of 21 years, and therefore EPSDT applies to [REDACTED] request for services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Fla. Stat. § 409.905(2) limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

16. The Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule. See Respondent's Composite Exhibit 2, pages 16-27. The Definitions Policy defines "Medically

Necessary” or “Medical Necessity” as follows:

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

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

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

(Emphasis added.)

17. The Authorization Requirements Policy, incorporated by Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services. See Respondent’s Composite Exhibit 2, pages 30-37. The Authorization Requirements Policy states the following:

1.2 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 Authorization

The process of obtaining approval for reimbursement of a service based on medical necessity.

...

1.3.6 Provider

The term used to describe any entity, facility, person, or group that has been

approved for enrollment or registered with Florida Medicaid.

1.3.7 Quality Improvement Organization

Entity designated to perform utilization review, quality assurance, and quality improvement activities for Florida Medicaid-covered services rendered by fee-for-service providers (also known as the QIO).

...

2.0 Authorization Requirements

...

2.4.2 Requests for Additional Information

The QIO may request additional information, as necessary, to determine medical necessity.

...

3.0 Determination Process

3.1 Review Criteria

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO's physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA's medical necessity definition.

3.2 Review Process

The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.

3.2.1 Continued Authorization Requests

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual errors or omissions in prior certifications.
- **There is a documented improvement in the recipient's medical condition.**
- **There is a documented change in the recipient's circumstances.**
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

(Emphasis added).

18. Respondent terminated Petitioner's PPEC services on the basis that the services are no longer medically necessary. *See supra* ¶¶ 4,6. Specifically, Respondent found that the PPEC services did not meet the following criterion: services must be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs; and.

See supra ¶ 4.

19. Florida Medicaid covers PPEC services that: are determined medically necessary; do not duplicate another service; and meet the criteria as specified in the Florida Medicaid PPEC Policy. See supra ¶ 12. PPEC services provide skilled nursing supervision and therapeutic interventions in a nonresidential setting to medically dependent or technologically dependent recipients. See supra ¶ 13.

20. In this case, there was no credible testimony or evidence demonstrating that Petitioner requires “skilled nursing supervision and therapeutic interventions” at the PPEC facility. See supra ¶ 6-7. Further, the documentation regarding Petitioner’s medical status, supra ¶ 2-3, 6-7, reflects that Petitioner does not meet the definition of a “medically dependent or technologically dependent child” as Petitioner is not “a child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse.” See supra ¶ 12.

21. The record indicates, Petitioner has remained in [REDACTED], has [REDACTED], and is [REDACTED]. See supra ¶ 5. Based on the credible testimony presented by Dr. Kunis, Petitioner does not have a medical condition that requires the daily supervision of a skilled nurse. See supra ¶ 5. The undersigned Hearing Officer found insufficient evidence to indicate that Petitioner requires a skilled nurse to provide nursing supervision.

22. In addition, the Florida Medicaid program does not permit the continued authorization of a Medicaid service for the convenience of the recipient or the recipient’s caretaker. See supra ¶ 16. It appears that Petitioner’s caretaker is using PPEC services for babysitting, and daycare while [REDACTED] is working; not for “continuous therapeutic interventions or skilled nursing supervision.” Approving the

continuation of PPEC services for babysitting and daycare services when there is no continuous therapeutic interventions or skilled nursing supervision is prohibited by the Florida Medicaid program.

23. Florida Medicaid permits Respondent to terminate an existing service when, “[t]here is a documented improvement in the recipient’s medical condition, or “[t]here is a documented change in the recipient’s circumstances.” See supra ¶ 17. The evidence and testimony presented above supports a determination by eQHealth that the Petitioner’s documented improvement in their medication conditions justify the termination of PPEC enrollment. See supra ¶ 2-3, 4, and 6. Based on the above, Respondent established that the requested PPEC services are not medically necessary, according to section 2.83 of the Florida Medicaid Definitions Policy and section 1.3.7 of the Florida Medicaid PPEC Policy. Looking at all the evidence relevant to the particular needs of this Petitioner, the Respondent demonstrated that the continuation of the requested PPEC services is not necessary to correct or ameliorate a defect, a condition, or a physical or mental illness under EPSDT.

24. Accordingly, upon consideration of the parties’ admitted evidence, the parties’ sworn testimony, and the applicable laws and policies, the undersigned Hearing Officer concludes that the Respondent has proved by a preponderance of the evidence that Respondent’s termination of PPEC services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent’s termination of Petitioner’s PPEC services from February 17, 2023, through August 15, 2023, is **AFFIRMED**. Petitioner’s request for relief is **DENIED**.

DONE AND ORDERED this 1st day of May, 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer

Alan J. Leifer

23-FH0236

2023.05.01

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**ALAN J. LEIFER, Hearing Officer Agency
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NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

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