

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



FILED

May 17, 2023, 12:59 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0254

vs.

CHILDRENS MEDICAL SERVICES HEALTH PLAN

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on March 15, 2023, at 10:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Dr. Don Phillips
Medical Director
Childrens Medical Services Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to home health services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] testified on behalf of the Petitioner as

[REDACTED] Designated Authorized Representative.

Dr. Don Fillips (“Dr. Fillips”), Medical Director for the Childrens Medical Services Plan (“CMS”) testified on behalf of the Respondent. In addition, the Respondent had the additional following persons attend as observers: Nicole Vega, Regulatory Research Coordinator for CMS; Raquel Smith, Healthcare Manager for CMS; George Anne Oft, Supervisor for CMS; Amy Wheelan, Case Manager for CMS; Joanne White, Ombudsman for CSM;; and Dr. Andrew Matinko, Medical Director for CMS.

Stephanie Lang, Medical/Healthcare Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a four (4)-page document and a seventy (70)-page document. The four (4)-page document appears in the Office of Fair Hearings document management system as file title “[Petitioner Surname] ProgressNote (002).pdf” and the seventy (70)-page document appears as file title “23-FH0254 Evidence.pdf”. Absent an objection from the Respondent, the Hearing Officer admitted the four (4)-page document into evidence as Petitioner’s Composite Exhibit 1 and the seventy (70)-page document as Petitioner’s Composite Exhibit 2 (“PCE 2”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a seventy-five (75)-page evidence packet. The seventy-five (75)-page evidence packet was admitted into evidence without objection, is identified as Respondent’s Composite Exhibit 1 (“RCE 1”) and appears in the Office of Fair Hearings’ document management system as file title “23-FH0254 Evidence.pdf”.

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS. See page 2 of RCE 1. CMS is a managed care

organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner was [REDACTED] [REDACTED] old at the date of the Fair Hearing. *Id.* Petitioner is diagnosed with [REDACTED]. See page 3 of PCE 2.

3. In a Notice of Adverse Benefit Determination (“NABD”), dated January 2, 2023, Respondent denied the Petitioner’s December 26, 2022, request for a home health aid (a trained and certified health care worker to assist a person in the home with daily activities). In their denial, the Respondent states as follows:

We determined that the requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010).

Must be needed to protect your child’s life, prevent significant illness or disability to your child, or to alleviate your child’s severe pain.

Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of your child’s needs.

Must meet accepted medical standards and not be experimental or investigational.

Must be able to be 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.

Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.

(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)

The requested **service is not a covered benefit.**

Other authority:

The facts that we used to make our decision are:

Sunshine Health Policy on Review for Personal Care Services Requests, FL.UM.25.00 and Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request for home health aide (a trained and certified health care worker to assist a person in the home with daily activities) is denied due to lack of medical necessity (need). The clinical information submitted (sent) with this request does not support the medical need for a home health aide. All children at [REDACTED] need full supervision and assistance (help) with their activities of daily living. Your child appears to need adult supervision/babysitting services. Adult supervision does not require a home health aide.

...

See RCE 1, Pages 4 – 9.

4. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Plan Appeal Resolution (“NPAR”), dated March 29, 2022, Respondent upheld its decision, and stated as follows:

On 01/30/2023, after consideration of the information you provided to Children’s Medical Services Health Plan in support of your plan appeal, Children’s Medical Services Health Plan hereby Denies your plan appeal. As a result, [Petitioner] will not receive home health services, effective 01/30/2023.

The facts that we used to make our decision are: The previous denial to authorize a home health aide for your child is denied due to lack of medical necessity. The clinical information submitted with this request does not support the medical need for a home health aide. Your child appears to need adult supervision/babysitting services. Adult supervision does not require a home health aide. All young children need adult supervision and assistance with activities of daily living. The reasons for this decision are based on a set of standards. This included Criteria: SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Requests FL.UM.25; Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. This decision was made with regards to EPSDT.

See RCE, pages 39 – 42.

5. On February 7, 2023, Petitioner requested a Fair Hearing to challenge the denial of the

home health aide. On March 1, 2023, this Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for March 15, 2023, at 10:00 a.m. EST.

6. The Petitioner's [REDACTED] and Designated Authorized Representative testified [REDACTED] [REDACTED] still

[REDACTED]. The Petitioner's [REDACTED] also testified [REDACTED] needs to go back to work outside the home on a full-time basis.

7. Dr. Fillips, a Medical Director for CMS testified that the Petitioner has no functional limitations and that there are no supporting documents in evidence that support the medical necessity of a home health aide for the Petitioner. Dr. Fillips further testified that typically [REDACTED] [REDACTED] children need constant supervision and assistance and that the Petitioner's development is consistent with other [REDACTED]

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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

10. Because Petitioner is requesting a new service, Fla. Admin Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner to demonstrate the decision by CMS to deny a home health aide for the Petitioner was incorrect. 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.)

11. The Florida Medicaid Home Health Visit Services Coverage Policy (November 2016)

(“HHV Policy”) establishes the provision and coverage of home health services under Florida

Medicaid. The HHV Policy states as follows:

1.1 Description

Florida Medicaid home health visits provide medically necessary skilled nursing and home health aide services to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.

...

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.

...

1.3.10 Medically Necessary/Medical Necessity

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

...

2.1. General Criteria

An eligible recipient must be enrolled in the Florida Medicaid program on the date of service and meet the criteria provided in this policy. Provider(s) must verify each recipient’s eligibility each time a service is rendered.

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary home health visit services. Some services may be subject to additional coverage criteria as specified in section 4.0.

If a service is limited to recipients under the age of 21 years, it is specified in section 4.0. Otherwise, the service is covered for recipients of all ages.

...

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 four intermittent home health visits, per day, for recipients under the age of 21 years and pregnant recipients age 21 years and older
- Up to three intermittent home health visits, per day, for non-pregnant recipients age 21 years and older

Recipients who meet the following criteria may receive any combination of skilled nursing or home health aide visit services up to the coverage limits specified in this policy:

- Is under the care of a physician and have a physician's order for home health services
- Require services that can be safely provided in their home or in the community

See the Florida Medicaid personal care and private duty nursing services coverage policies if the recipient is under the age of 21 years and requires more care than can be furnished through a home health visit. 4.2.1 Short-term Nursing in an Intermediate Care Facility (ICF)

...

4.2.2 Home Health Aide Visits for Recipients Under the Age of 21 Years

Florida Medicaid reimburses for home health aide visits for recipients under the age of 21 years who have a medical condition or disability that substantially limits their ability to perform ADLs or IADLs.

...

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.

5.0 Exclusion

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
- Intermittent home health visits rendered less than an hour apart
- 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
- 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.

12. 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.

Petitioner is under age 21, and therefore eligible for EPSDT services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d).

13. Petitioner is under age 21, and therefore eligible for EPSDT services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d).

14. 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.

15. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

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

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for

which no equally effective and more conservative or less costly treatment is available statewide

- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

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

16. In the NABD, dated February 11, 2022, Respondent denied Petitioner's request for a home health aide based on a lack of medical necessity See ¶ 3. The NABD further states that

All children at [REDACTED] of age need full supervision and assistance (help) with their activities of daily living. Your child appears to need adult supervision/babysitting services. Adult supervision does not require a home health aide.

Id.

17. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. As provided in the Definitions Policy, a component of medical necessity is that services must be "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs". See ¶ 15. As shown by the record, the Petitioner was diagnosed with [REDACTED] by [REDACTED] and a review of other symptoms was otherwise negative, has no functional limitations, [REDACTED], [REDACTED], [REDACTED]. See Respondent's Composite Exhibit, pages 49-50, and 28, Petitioner's Composite Exhibit 2, pages 26, and 35. Petitioner has failed to provide compelling documentation supporting the conclusion of "medical necessity".

18. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner has failed to prove by a preponderance of the

evidence that a home health aid was not medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, the Petitioner has not demonstrated that a home health aid is not medically necessary. Accordingly, the Petitioner has failed to prove by a preponderance of the evidence that Respondent's denial of a home health aid (a trained and certified health care worker to assist a person in the home with daily activities) was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of a home health aide for the Petitioner is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

DONE and ORDERED this 17th day of May, 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer
23-FH0254
2023.05.17 12:52:56
-04'00'

ALAN J. LEIFER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649
Fax: (850) 487-1423
Email: OfficeOfFairHearings@ahca.myflorida.com

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:



Children's Medical Services
CMSPlanContract@flhealth.gov

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com