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

FILED
May 30, 2023, 12:03 pm
OFFICE OF FAIR HEARINGS

[redacted]

PETITIONER, **AHCA Case No.: 23-FH0434**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 17, 2023, at 10:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

For the Respondent: Marielisa Amador
Medical/Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Petitioner s request for personal care services was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner's Authorized Representative and [redacted] appeared on behalf of Petitioner. The following attended as witnesses for Petitioner: [redacted]

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Chris Kunis ("Dr. Kunis"), Medical Director for eQHealth Solutions Inc. ("eQHealth") appeared as a witness for Respondent.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty-eight (88)-page evidence packet and an eighty (80)-page evidence packet. The eighty-eight (88)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title " FH 04.17.2023.pdf" and the eighty (80)-page evidence packet appears as "23-FH434 AHCA Evidence (Page 1-80 of 80).pdf". Absent an objection from the Petitioner, the undersigned admitted the packets into evidence as Respondent's Composite Exhibit 1 ("RCE 1") and Respondent's Composite Exhibit 2 ("RCE 2") respectively.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. *See* page 2 of RCE 2.

2. Petitioner is . *See* page 16 of RCE 1. Petitioner is diagnosed with the following: . *See* page 17 of RCE 1. Petitioner requires assistance with activities of daily living ("ADLs"). *Id.* at 58.

3. Petitioner requested eight (8) hours of personal care services, daily. *Id.* at 60. In a Notice of Outcome ("NOO"), dated January 17, 2023, Respondent approved four (4) hours of services, daily, but denied the remaining units. The NOO explained the basis for the denial as follows:

> [T]he 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 NOO further provided:

> PR Principal Reason – Denial: Submitted information does not support the medical necessity for the requested frequency and\or duration.
>
> Patient is [redacted]. Based on these clinicals approve PCS as was approved previously. Deny the rest.
> . . .

Pages 22 of RCE 1.

4. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD"), dated March 1, 2023, Respondent upheld its decision. *Id.* at 31-34. The NRD explained the basis for the decision as follows:

> The medical basis for the reconsideration decision is as follows:
>
> [redacted]
> . . .

Pages 32 of RCE 1.

5. On March 2, 2023, Petitioner requested a Fair Hearing to challenge the partial denial of Personal Care services. On March 21, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for April 17, 2023, at 10:00 a.m. EST.

6. [redacted] of the Recipient. [redacted] testified to the following:

a. Petitioner requested additional personal care services because Recipient [redacted] Petitioner needs these services for supervision of Recipient.

b. [redacted]

[redacted]

[redacted]

[redacted].

e. [redacted]

[redacted]

f. [redacted]

[redacted].

7. [redacted] is the Director of [redacted]. [redacted] testified to the following:

a. [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

8. Doctor Chris Kunis is the medical director at eQHealth. Doctor Kunis testified to the following:

a. A review was conducted by the care coordination team on the recipient.

b. Two physicians reviewed the personal care services related to health care. They also reviewed activities of daily living feeding bathing and the requirement of certified health care assistance.

c. The standard criteria are to approve 4 hours per day of personal care services.

d. These hours can be shifted around to accommodate family schedules.

e. On page 42 of Respondent's Composite Exhibit 2, Dr. Kunis referred to criteria 4.2.1 discussing parental responsibility.

f. On page 43 and criteria 5.2 stating that the plan does not cover supervision services.

g. Evaluation of the recipient was based upon medical necessity and a change in the health situation.

h. Services were denied as there has been no change in the Recipient's health situation in the previous six months.

CONCLUSIONS OF LAW

9. Pursuant to Fla. Stat. § 409.285(2) (2019), the Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties. This Final Order is the final administrative decision of AHCA. *See* Fla. Stat. § 409.285(2)(a).

10. Pursuant to Fla. Admin. Code R. 59G-1.100(17)(b), this hearing was held as a *de novo* proceeding.

11. Pursuant to Fla. Admin. Code R. 59G-1.100(17)(g), the burden of proof is 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

> reduction 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.

12. Because Petitioner requested a new service, the burden of proof is on the Petitioner. *See* Fla. Admin. Code R. 59G-1.100(17)(g). The standard of proof in an administrative hearing is a preponderance of the evidence. *Id*. The preponderance of the evidence standard requires proof by "the greater weight of the evidence" (Black's Law Dictionary at 1201, 7th Ed.).

13. The Florida Medicaid Personal Care Services Coverage Policy ("Policy") incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs Personal Care services available under Florida Medicaid. The Policy provides the following with respect to personal care services and companion care services:

> **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.
> . . .
> **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

. . .

4.2.1 Parental Responsibility

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

. . .

4.2.2 Services Provided by Independent Personal Care Providers

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

. . .

4.3 Early and Period 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 1095(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.

14. The Policy further addresses excluded services as follows:

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 guarding 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 recipients place of residence
- Yard work, gardening, or home maintenance work.

15. 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.

16. Petitioner is under age 21, 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.

17. The Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides the applicable definitions for Florida Statewide Medicaid Managed Care policy. The Definition Policy provides the following definitions applicable to the instant case:

> **2.2 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
>
> **2.64 Instrumental Activities of Daily Living (IADLs)**
> When necessary for the recipient to function independently, including:
> - Grocery shopping
> - Laundry
> - Light housework
> - Meal preparation
> - Money Management
> - Personal hygiene
> - Transportation
> - Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)
>
> **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 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.

18. The Florida Medicaid Authorization Requirements Policy ("Authorization Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

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 error 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.

14. The Consumer-Directed Care Plus Program Coverage, Limitations, and Reimbursement handbook (October 2015) ("CDC+ Handbook"), incorporated by reference in Fla. Admin. Code R. 59G-13.088, describes the CDC+ program as "a Florida Medicaid program that permits certain Consumers to self-direct their own Personal Assistance Services." *See* Respondent's Composite Exhibit 2, pages 54-80, 60. The CDC+ Handbook states the following:

Medical necessity
Medicaid reimburses services that are determined medically necessary and do not duplicate another provider's service.

Rule 59G-1.010, Florida Administrative Code (F.A.C.) defines "medically necessary" or "medical necessity" as follows:

"[T]he medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. 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;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program and not be experimental or investigational;
4. 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; and
5. **Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider."**

"(c) 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."

. . .

Personal Care Assistance

Description

Assistance with eating, meal preparation, bathing, dressing, personal hygiene, and activities of daily living. Also includes light housekeeping when these activities are essential to the health, safety, and welfare of the Consumer and when no one else is available to perform them. Personal Care Assistance may not be used solely for supervision.

RCE 2, pages 71, 80.

15. 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.

16. Petitioner is under age 21, and therefore eligible for EPSDT services. However, a state may place appropriate limits on a service based on such criteria as medical necessity. *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.

17. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines the commonly used terms as follows:

> **2.2 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
>
> . . .
> **2.64 Instrumental Activities of Daily Living (IADLs)**
> IADLs include:
> - 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)

. . .

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.

Respondent's Composite Exhibit 2, pages 16-27.

18. The Florida Medicaid Authorization Requirements Policy (June 2016) ("Authorization Requirements Policy"), incorporated by reference in 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 30-36. The Authorization Requirements Policy states as follows:

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.J.M., 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**.

Respondent's Composite Exhibit 2, pages 32-34.

19. The evidence admitted and testimony presented established that Respondent denied Petitioner's request for 8 hours per day of Personal Care services based on medical necessity. *See* supra ¶ 6 and ¶ 8. Respondent explained that the requested services were not "[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment", and the request was "in excess of the patient's needs". *See* supra ¶ 3. Respondent relied upon Petitioner's submitted information in making their medical necessity determination.

See supra ¶ 3-4.

20. 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 the recipient to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability." *See* supra ¶ 13. These services are authorized when the parent is not able to provide ADL or IADL care. *Id*. The Florida Medicaid program mandates that the recipient's parent must participate in providing care to the fullest extent possible. *Id*. The Florida Medicaid program prohibits Personal Care services intended for babysitting. *See* supra ¶ 14. "The Personal Care services must also be medically necessary. *See* supra ¶ 13. Under EPSDT, the Personal Care Policy and the CDC+ Handbook, Personal Care services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. *See* supra ¶ 17.

21. Here, Recipient was previously enrolled in school between the hours of 7 am and 1 pm *See* ¶ 6. Petitioner [redacted].

22. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner did not prove by a preponderance of the

evidence that additional personal care services was medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that additional personal care services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, upon consideration of admitted evidence, both parties' sworn testimony, and the applicable laws and policies, the undersigned Hearing Officer concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's denial of personal care services was incorrect.

DECISION

Respondent's denial of 8 hours of Personal Care services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of 8 hours per day of Personal Care services is **DENIED**.

DONE and ORDERED this 30th day of May in Tallahassee, Leon County, Florida.

LYNNE RINGERS
23-FH0434
2023.05.30 11:16:58 -04'00'

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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:

[redacted]

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