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

FILED
Sep 05, 2023, 12:09 pm
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

AHCA Case No.: 23-FH0565
Plan ID No.: [redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing in this matter on August 16, 2023, at 1:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

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

For the Respondent: Kimberly Bouchette
Clinical Appeals Coordinator
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for a specialty bed with accessories (Durable Medical Equipment Code E1399 – miscellaneous) was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [redacted] [redacted]"), Petitioner's Authorized Representative and [redacted] appeared on behalf of Petitioner.

Kimberly Bouchette, Clinical Appeals Coordinator, appeared on behalf of Sunshine State Health Plan, Inc. ("Sunshine" or "Respondent"). Dr. Maria Samerson ("Dr. Samerson"), Medical Director for Sunshine, attended as a witness for Respondent. Nicolas Crosby and Tamara Jean Louis appears as observers for Respondent.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and twenty-two (122)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "MFH packet [Petitioner's surname].pdf." Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 1.

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine, which is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the hearing, Petitioner is a [redacted]-old [redacted] diagnosed with [redacted]. *See* Respondent's Composite Exhibit 1 at page 16. Petitioner receive Behavior Analysis services. *Id.* at 34.

3. Petitioner requested authorization for a Cubby Basic Bed with lockable wheels, Technology Hub, and waterproof mattress protector (Code E1399). *Id*. at 14. A Cubby Bed is a 360-degree enclosed sleeping environment with a zippered opening that can only be controlled by the caregiver. *Id*. at 17.

4. On [redacted], Petitioner's nurse practitioner, Jessica Shotwell ("Ms. Shotwell"), provided a letter or medical necessity, which states as follows in pertinent part:

> [Petitioner] requires direct and continuous supervision by an adult. Due to [redacted] diagnosis and behaviors, the requested bed will provide a controlled environment that supports healthy behaviors to improve [redacted] sleep hygiene and patient safety.
> . . .
> [redacted] is [redacted] but [redacted] is [redacted]. [redacted] was started on [redacted] because of some of [redacted], and it has helped [redacted]. But [redacted] has a history of [redacted], and because of [redacted] age and size, [redacted] would often [redacted] when getting up.

Id. at 16-17.

5. On January 23, 2023, Respondent issued a Notice of Adverse Benefit Determination ("NABD") denying Petitioner's request for a code E1399 specialty bed and accessories. *Id*. at 4 - 7. The NABD stated the basis for the denial as follows, in pertinent part:

> We determined that your requested services are not medically necessary because the services do not meet the reason(s) checked below: (*See* Rule 59G-1.010).
> . . .
> Individualized, specific, and consistent with the symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs.
> . . .
> The facts we sued to make our decision are: These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment), Centene Clinical Policy on DME and O&P, CP.MP.107, Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook and the current therapy advisor.
>
> Rationale: The request for equipment, Cubby Basic Bed and accessories including Technology Safety Hub accessory is denied for lack of medical necessity (need). There is insufficient (not enough) clinical information noting that less intensive alternatives (including bed alarms, placing mattress on floor, removal of all safety hazards, child locks, environmental modifications) to improve your child's safety have been tried and ruled out, including why they could not meet your medical needs. Additionally (more), the requested Technology Hub safety bed accessory is a convenience item and not primarily medical in nature.

Id. at 4 - 5.

6. On [redacted], Ms. Shotwell provided a second letter stating as follows, in pertinent part:

> [Petitioner] has a diagnosis of [redacted]. I am requesting that you would appeal the denial for the Cubby Bed. [redacted], has attempted multiple other ways to keep [redacted] safe at night, which have not worked. [redacted] has attempted to put [redacted] mattress on the floor in [redacted] room and in their room. The have used a toddler bed in [redacted] room and in their room, and they have also had [redacted] in [redacted] room with a baby monitor, so they could possibly hear [redacted] and a baby gate across [redacted] door. Each of these trials resulted in [redacted], even [redacted]. [redacted] has resorted to co-sleeping, between [redacted] and [redacted].
> . . .
> [Petitioner] has also been placed on [redacted] for [redacted], which makes [redacted] and [redacted]. [redacted] is [redacted] when [redacted] wakes up in the middle of the night and is [redacted]. . . . All of this places [redacted] at a [redacted] [redacted] is also [redacted] and cannot be heard when [redacted] is [redacted]

Id. at 22.

7. On February 2, 2023, Petitioner requested a plan appeal. On February 23, 2023, Respondent issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial. The NPAR provides, in pertinent part:

> On 02/22/2023, after consideration of the information you provided to Sunshine Health in support of your plan appeal, Sunshine Health hereby denies your plan appeal. As a result, [redacted] will not receive the Cubby Basic Bed and accessories including Technology Safety Hub accessory, effective 02/22/2023.
>
> The reason for our decision was the previous denial to authorize equipment (Cubby Basic Bed and accessories including Technology Safety Hub accessory) is upheld as not medically necessary. Clinical documentation does not note member with medical necessity of any of the following: Daily seizure activity, as defined above; Uncontrolled perpetual involuntary movement related to a medical diagnosis; Self injurious behavior, such as head banging that warrants the requested bed system. There is no mention of modifications to encourage calming behaviors and sleep, or established routines addressing sensory needs and/or behavior modification have not been tried and failed. Confinement is not medically necessary for child's [redacted] Additionally, the technology hub accessories requested are not medical in nature as they are not

> specific to member's needs, can be furnished commercially and will not ameliorate members noted behavior. Criteria: CP.MP.107 Durable Medical Equipment, Enclosed Beds; FLORIDA MEDICAID DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLY SERVICES COVERAGE AND LIMITATIONS HANDBOOK. This decision was made with regards to EPSDT. This decision was made by a Medical Director who is a Board Certified Physician in Pediatric Medicine.

Id. at 28 – 29.

8. On March 16, 2023, Petitioner's Authorized Representative timely requested a Fair Hearing based on Respondent's denial. The Fair Hearing was set for May 26, 2023, at 12:00 p.m. EST, and all parties were duly notified. At Petitioner's request, the hearing date was re-set for August 16, 2023, at 1:00 p.m. and all parties were duly notified.

9. At the hearing, [redacted] testified that Petitioner is [redacted] testified that the [redacted], letter from Ms. Shotwell details the efforts made to prevent Petitioner from [redacted]. [redacted] testified that they have tried using a toddler bed, using a baby gate, putting Petitioner's mattress on the floor, and having Petitioner sleep with [redacted] parents. [redacted] testified that none of these strategies have kept Petitioner from [redacted].

10. Dr. Samerson testified that Petitioner's request and documentation was reviewed by a utilization management nurse and two Medical Directors. Dr. Samerson agrees with the denial because there was insufficient clinical information showing the specific environmental modifications, such as removing dangerous items, that had been tried and failed. Dr. Samerson noted that confinement is not generally considered appropriate for [redacted]. Further, if Petitioner needs confinement, then a medical statement from Petitioner's physician would be needed stating that Petitioner is required to be confined for a minimum of 18 hours per day, not

just overnight sleeping. Finally, Dr. Samerson asserted that the requested Technology Hub accessory is in excess of Petitioner's need, and no information was provided as to how a Technology Hub would reduce or eliminate [redacted]. Further, no evidence was submitted to show that the requested enclosed bed would reduce or eliminate [redacted].

11. In making its determination, Sunshine relied upon its internal Clinical Policy: Durable Medical Equipment and Orthotics and Prosthetics Guidelines Reference Number CP.MP.107 (06/22) ("Clinical Policy"), which states as follows in pertinent part:

> **Other Equipment**
> **Enclosed Beds**
> Requests will be reviewed by a medical director and/or therapy advisor to determine medical necessity, based on all of the following:
> A. Standard bed or standard hospital bed must be unable to meet the positioning needs due to disability;
> B. Less intensive alternatives to improve the member's/enrollee's safety have been tried and ruled out (To include documentation of why they could not meet medical needs). Considerations include, but are not limited to:
>
> 1. Bed rails;
> 2. Mattress placed on the floor;
> 3. Removal of all safety hazards;
> 4. Bed alarms;
> 5. Video/audio monitors;
> 6. Child protection devices such as locks on doors, windows, cabinets, furniture anchors, gates at steps and doors;
> 7. Physician-directed medication to address seizures, behaviors and sleep;
> 8. Environmental modification to encourage calming behaviors and sleep;
> 9. Established routines addressing sensory needs and/or behavior modification to assist with improved naptime or night time behaviors and sleep;
>
> C. Medical diagnosis to include, but not limited to:
>
> 1. Cerebral palsy;
> 2. Developmental delay;
> 3. Genetic or neurological disorder that would cause vertigo, disorientation, or uncontrolled movement of the body or extremities;
> 4. Uncontrolled seizure disorder;
> 5. Severe behavior disorder;

D. Healthcare provider evaluation (typically from an occupational or physical therapist) to include:
   1. Specific information on functional status;
   2. Documentation of home evaluation;
   3. Documentation of education provided to caregivers on proper use of a bed enclosure, noting: they are to be used for medical support, improved safety transitioning in and out of the bed, and improved safety while sleeping;

E. Name of and invoice for the bed or enclosure being requested.

Note: Enclosed beds should not be used as a discipline measure or as a restraint during times of high agitation or aggression. To limit sensory deprivation, enclosed beds should be used at night for sleeping and only for short rests or naps during the day.

Id. at 96 - 97.

CONCLUSIONS OF LAW

12. 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), Florida Statutes.

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

14. Because Petitioner is requesting a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. 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.).

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. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Section 409.905(2), Florida Statutes, 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. Section 2.83 of the Definitions Policy, incorporated by reference into 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 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.

Definitions Policy at page 7.

18. The Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook ("DME Handbook"), incorporated by reference in Fla. Admin. Code R. 59G-4.070, governs requested DME services available under Florida Medicaid. The DME Handbook provides the following:

> **Durable Medical Equipment (DME)**: Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).
> . . .
> **Services Limited to Recipients Under 21 Years of Age**:
> Many durable medical equipment (DME) items and services are limited to recipients under 21 years of age.
>
> To determine whether a service is available to all recipients or limited to recipients under age 21 years of age, refer to the DME and Medical Supply Services Provider Fee Schedules and the specific requirements described in this handbook.
> . . .
> **Service Criteria**:
> All DME medical supplies, and orthotics and prosthetic devices must be:
> - Medically necessary, and
> - Functionally appropriate for the individual recipient, and
> - Adequate for the intended medical purpose, and
> - For conventional use, and
> - For the exclusive use of the recipient.
>
> DME items requested or supplied must not duplicate or perform the same function as other DME equipment or medical supplies currently in the recipient's possession.
> . . .
> **Reimbursement Information:**
> The Medicaid fee reimbursed for durable medical equipment (DME) and medical supplies including labor, travel, delivery, shipping, handling, fees for measuring, casting, fitting, adjusting or dispensing items or products.
> **. . .**
> Introduction
> The DME and Medical Supply Services Provider Fee Schedules are tables of columns listing the Medicaid reimbursable Healthcare Common Procedure Coding System (HCPCS) Level II Procedure Codes, their descriptors, and other information pertinent to each code.
> . . .
> **Hospital Beds, Mattress, and Rails**
> **. . .**

Safety Enclosure Frame and Canopy Coverage and Billing
Medicaid may reimburse for a safety enclosure frame and canopy for recipients under 21 years of age when prescribed by the treating physician or the treating physician's ARNP or physician assistant as medically necessary for the recipient's self-protection.

The frame and canopy do not need prior authorization, but must be billed with a hospital bed procedure code listed on the DME and Medical Supply Services Provider Schedules.

Note: See the DME and Medical Supply Services Provider Fee Schedules for the appropriate HCPCS procedure code and scheduled fee.

Safety Enclosure Frame and Canopy Documentation Requirements
The following safety enclosure frame and canopy documentation, with the authorized prescriber's signature, must be included in the recipient record:

- A medical statement that the recipient **is confined to bed and will be in the enclosed bed for at least 18 hours a day** (emphasis added); and
- Proof of medical necessity for continued care in the home; and
- Supporting medical documentation that states the recipient would be institutionalized without the enclosed bed; and
- Supporting information that the enclosed bed will provide effective treatment

DME Handbook at 1-1, 2-3, 2-5, 2-53.

19. Petitioner is a Medicaid recipient who is under 21 years of age. Thus, the provisions of the EPSDT program apply to the request for DME services in this case.

20. The Durable Medical Equipment Fee Schedule lists the durable medical equipment and medical supplies covered for all Medicaid recipient. The Durable Medical Equipment Fee Schedule includes a procedure cost and the maximum age that an enrollee is eligible to receive equipment. Prior authorization based on medical necessity is required for requests for specialized items (code E1399) that are not listed on the fee schedule. *See* Durable Medical Equipment and Medical Supply Services Provider Fee Schedule at pages 2 and 29.

21. The DME Handbook states that Medicaid reimburses for DME that is medically necessary, and functionally appropriate for the individual recipient, and adequate for the intended medical purpose, and for conventional use, and for the exclusive use of the recipient. *See* supra ¶ 18. In

this case Respondent denied Petitioner's request for a Cubby Bed and accessories because the DME did not meet all five medical necessity criteria. Specifically, the requested DME was not individualized, specific, consistent with symptoms or diagnosis of illness or injury and is in excess of the patient's needs. *See* supra ¶ 5, 7, 17.

22. On [redacted], and [redacted], Ms. Shotwell provided letters in support of Petitioner's specialty bed request. *See* supra ¶ 4 and 6. However, 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. *See* supra ¶ 17.

23. In this case, Petitioner must establish that the requested durable medical equipment meets medical necessity criteria. In order to qualify under the DME Handbook for a safety enclosure frame and canopy, the documentation requirements must be met. These requirements include a medical statement, with the authorized prescriber's signature, that the recipient is confined to bed and will be in the enclosed bed for at least 18 hours a day (emphasis added). *See* supra ¶ 18. In this case, no evidence was introduced to show that Petitioner requires at least 18 hours a day of confinement.

24. Instead, the documentation of record and [redacted] testimony were that Petitioner needs confinement during sleep hours. [redacted] asserted that Petitioner is [redacted] *See* supra ¶ 9. However, as Dr. Samerson testified, Petitioner did not present documentation as to the specific, less intensive alternatives to improve Petitioner's safety that have been tried and ruled out (including

documentation of why they could not meet Petitioner's medical needs). *See* supra ¶ 10, 11. For example, no explanation was given as to whether bed rails were used to prevent Petitioner from [redacted]. There was not documentation provided as to the removal of all safety hazards or the use of bed alarms, and video/audio monitors. *See* supra ¶ 11. Similarly, no evidence was presented to show that the requested DME is appropriate to treat Petitioner's [redacted] Petitioner did not present a healthcare provider evaluation (typically from an occupational or physical therapist) of Petitioner's functional status or a home evaluation. *See* supra ¶ 11. Thus, the record does not reflect that the requested Cubby Bed and accessories is not in excess of Petitioner's needs.

25. For the foregoing reasons, Petitioner did not show that a Cubby Bed and accessories is individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the Petitioner's needs. Therefore, the requested DME does not meet medical necessity criteria. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that the requested DME is necessary "to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services." Therefore, in light of both parties' testimony, both parties' admitted evidence, and the applicable laws and policies, the undersigned Hearing Officer finds that Petitioner has *not* proven by a preponderance of the evidence that Respondent's denial was incorrect in this matter.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of medical equipment is **AFFIRMED**. Petitioner's request for medical equipment is **DENIED**.

DONE and **ORDERED** this 5th day of September 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
23-FH0565
2023.09.05
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LAURA GALLAGHER, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

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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AHCA Medicaid Hearing Unit
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