



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

FILED

Jul 10, 2023, 10:56 am
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0787

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 31, 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 Respondent proved by a preponderance of the evidence that Respondent’s decision to terminate Petitioner’s prescribed pediatric extended care (“PPEC”) services was correct.

PRELIMINARY STATEMENT

All parties and witnesses appeared telephonically. Petitioner’s Authorized Representative and [REDACTED] at [REDACTED], [REDACTED] (“[REDACTED]”), appeared on behalf

of Petitioner. Petitioner's [REDACTED] [REDACTED] [REDACTED] (" [REDACTED] "), appeared as a witness for Petitioner. Cherie Baker, Regional Director for [REDACTED], appeared as a witness for Petitioner.

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 Florida ("eQHealth") and Kepro, attended as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a five (5)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH0787 Petitioner's Evidence.pdf". Absent an objection from the Respondent, the undersigned admitted the five (5)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and seventy-six (276)-page evidence packet and a forty-six (46)-page evidence packet. The two hundred and seventy-six (276)-page packet appears in the Office of Fair Hearings document management system as the file title "[REDACTED] FH 05.31.2023.pdf". The forty-six (46)-page evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH0787 AHCA Evidence (Pages 1 - 46 of 46).pdf". Absent an objection from the Petitioner, the undersigned admitted the two hundred and seventy-six (276)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1") and the forty-six (46)-page evidence packet into evidence as Respondent's Composite Exhibit 2 ("RCE 2").

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 RCE 2 at page 2.

2. Petitioner is [REDACTED] ([REDACTED] - [REDACTED]) old. See RCE 1 at page 16. Petitioner is diagnosed with [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 17. As of May 1, 2023, Petitioner weighs [REDACTED] pounds and in the [REDACTED] percentile per Centers for Disease Control (“CDC”) growth chart. *Id.*

3. Petitioner is prescribed the following medications: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 20. Petitioner’s Medication Administration Record (“MAR”) indicates that [REDACTED], in the period between [REDACTED] and [REDACTED] *Id.* at 275. Petitioner received [REDACTED] in [REDACTED] and [REDACTED] was completed from [REDACTED], to [REDACTED]. *Id.* at 20. Petitioner has not had any [REDACTED], nor any [REDACTED] [REDACTED] *Id.* Petitioner uses a [REDACTED]. *Id.*

4. Petitioner requested continuation of PPEC services, specifically, 520 units of code T1026 (partial day services) and 130 units of code T1025 (full day services). In a Notice of Outcome (“NOO”), dated March 27, 2023, Respondent terminated all units. *Id.* at 25 – 27. The NOO explained the basis for the termination 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. Reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment available statewide.

The NOO further provided:

Submitted information does not support the medical necessity for requested services.

Clinical Rationale for Decision: [REDACTED] with a history of [REDACTED]. The patient is [REDACTED] with [REDACTED] and [REDACTED] and [REDACTED] from [REDACTED], uses [REDACTED]s, is [REDACTED] has not had any [REDACTED]. Nursing needs consist of [REDACTED] and monitoring.

...
Id. at 25 – 26.

5. On April 10, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On April 28, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for May 31, 2023, at 10:00 a.m. EST.

6. Dr. Kunis is the Medical Director for eQHealth. Dr. Kunis established the following at Fair Hearing:

- a. eQHealth uses nurses and doctors to review plans in accordance with the medical necessity guidelines established by AHCA. The reviewers took into account Petitioner's multiple medical conditions and list of prescribed medications. There are no episodes of [REDACTED] associated with either [REDACTED] or [REDACTED] in the medical record provided. There are no recent [REDACTED] or [REDACTED] in the medical records provided.

- b. Petitioner's medical conditions are being followed by [REDACTED] [REDACTED] teams, accordingly. Petitioner is receiving [REDACTED] from [REDACTED] due to [REDACTED] [REDACTED]. See RCE 1 at page 252. Petitioner appears to have a [REDACTED] [REDACTED] for which the recent [REDACTED] needs additional review from Petitioner's [REDACTED] provider. *Id.* at 259.
- c. In making their determination, eQHealth reviewed and considered a [REDACTED] doctor visit regarding Petitioner's [REDACTED], dated [REDACTED], wherein the doctor treated Petitioner with [REDACTED]. See PCE 1 at page 1. Dr. Kunis contends that this was an [REDACTED] which will happen to children throughout their lifetime, but it is not cause for routine, chronic care from a nursing team. In Dr. Kunis's medical opinion, an [REDACTED] to treat an [REDACTED] could be administered by a parent or nurse during the acute illness time period. During [REDACTED], the parent must provide as much care as possible requiring some medication administration if necessary.
- d. Although Petitioner has complex issues due to [REDACTED] multiple medical conditions, including those related to [REDACTED] and [REDACTED] eQHealth's position is that the termination of PPEC services should be upheld.

7. [REDACTED] is the [REDACTED] of [REDACTED] at [REDACTED] [REDACTED] testified to the following at Fair Hearing:

- a. [REDACTED] contends that Petitioner needs skilled nursing care due to Petitioner's [REDACTED] issues, including [REDACTED] Petitioner's [REDACTED]

██████ need to be supervised and monitored ██████. ██████ suggests that a regular day care cannot assist Petitioner with putting on ██████ ██████. ██████.

8. ██████ testified to the following at Fair Hearing:

- a. ██████ asserts that ██████ has tried to put Petitioner in a regular daycare, but they are unable to ██████, not ██████. Petitioner will be getting ██████ which may eventually lead to ██████ Petitioner is attempting to drink ██████ but not ██████. Petitioner ██████. Petitioner still has a ██████ since ██████, so the ██████. See *supra* PCE 1 at page 3 – 5. Petitioner is receiving ██████ with ██████ PPEC provider. ██████ believes Petitioner needs the PPEC support, specifically for ██████ and ██████, for ██████ safety and wellbeing.

CONCLUSIONS OF LAW

9. 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 (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

11. Because Respondent terminated a previously approved service, 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 Prescribed Pediatric Extended Care Services Coverage Policy (February 2018) (“PPEC Policy”), incorporated by reference in Fla. Admin. Code. R. 59G-4.260, governs PPEC services available under Florida Medicaid. The PPEC Policy provides as follows:

1.0 Introduction

1.1 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.

...

1.3.7 Medically Necessary/Medical Necessity

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

...

2.0 Eligible Recipient

...

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 stable by a physician and who are not a threat to self or others

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers 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 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 non-emergency 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 sectioned 1905(a) of the Social Security Act, 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 covered 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 cover the following as part of this service benefit:

- A full day and a partial day of PPEC services on the same date of service, for the same recipient
- Early intervention services when billed separately
- Food or formulas
- Supportive or contracted services as defined in section 400.902, F.S.
Transportation services

...

See pages 38 – 43 of RCE 2.

13. Rule 59A-13.007(4)(a), F.A.C. states the following:

(4) Each child admitted for service to a PPEC center must meet at least the following criteria:

(a) Infants and children considered for admission to the PPEC center will be those who are medically or technologically dependent. . . .

...

Further, section 400.902, F.S described “medically dependent or technologically dependent child” as follows:

[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.

14. Rule 59G-4.290, F.A.C. defines skilled nursing as follows:

(3) Skilled Services Criteria.

- a) To be classified as requiring skilled nursing or skilled rehabilitative services in the community or in a nursing facility, the recipient must require the type of medical, nursing or rehabilitative services specified in this subsection.
- b) Skilled Nursing. To be classified as skilled nursing service, the service must meet all of the following conditions:
 1. Ordered by and remain under the supervision of a physician;
 2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.
 3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effect performance;
 4. **Required on a daily basis;**
 5. Reasonable and necessary to the treatment of a specified documented illness or injury; and,

6. Consistent with the nature and severity of the individual's condition or the disease state or stage.
- c) Examples of services that qualify as skilled nursing services:
1. Intravenous medication or fluids.
 2. Intramuscular or subcutaneous injection and hypodermoclysis when:
 - a. Administered by licensed nursing personnel at least 5 times weekly, excluding daily insulin administration; and,
 - b. Observation is necessary to assess the recipient's response to treatment or to identify adverse reactions.
 3. Management and monitoring medication regime on a daily basis:
 - a. For drugs whose dosage requirements may rapidly change;
 - b. For drugs prone to cause adverse reactions, severe side effects or unfavorable reactions; and,
 - c. For residents with unstable reactions.
 4. Levin tube and gastrostomy feedings; excluding feedings performed by residents, family members, or friends.
 5. Administration of medical gases, aerosolized medication or oxygen which is started, monitored and regulated by professional staff.
 6. Naso-pharyngeal and tracheotomy aspiration, excluding tracheotomy care in self-care residents.
 7. Insertion, replacement, and sterile irrigation of catheters when:
 - a. Medically necessary or required for reasons other than to maintain satisfactory catheter functioning and dryness;
 - b. The medical need is documented by the physician;
 - c. Continuous irrigation, frequent insertion, special care or observation is required because of bleeding, infection, obstruction, or heavy sediment formations; and,
 - d. Care of a recently inserted supra-pubic catheter, inserted within 2-4 weeks, is required.
 8. Colostomy and ileostomy care:
 - a. When medically necessary and required during early postoperative period;
 - b. During the period of initial self-care training, or
 - c. when complications are present and documented in the medical record.
 9. Treatment of decubitus ulcers when:
 - a. Deep or wide without necrotic center;
 - b. Deep or wide with layers of necrotic tissue, or
 - c. Infected and draining.
 10. Treatment of widespread infected or draining skin disorders.

11. Application of dressings involving prescription medication and aseptic techniques when documented as required on a daily basis. Excludes simple dressings involving non-infected cases, simple skin breaks, and healed postoperative incisions.
12. Heat treatments prescribed by a physician as daily treatment for a specific condition.
13. Rehabilitation nursing procedures required on a daily basis as necessary to restore functioning, including teaching and adaptive aspects of nursing.

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 this 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 Florida Medicaid Definitions Policy (August 2017) (“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.

...

See supra RCE 2 at 23.

18. The Florida Medicaid Authorization Requirements Policy (June 2016) ("Authorization Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

1.1 Description

This policy contains general requirements for providers to obtain authorization to render Florida Medicaid services, when applicable.

...

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 ■ 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.

...

See supra RCE 2 at 32 – 34.

19. In the NOO, dated March 27, 2023, Respondent terminated Petitioner’s PPEC services. *See* ¶ 4. The NOO explained that the basis of the termination was that the services were not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment”, were “in excess of the patient’s needs”, and were not “reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment available statewide”. *See* ¶ 4.

20. The role of PPEC services is to provide patients “who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision.” *See* ¶ 13. According to Rule 59G-4.290, F.A.C., skilled nursing requires that the service be, *inter alia*, sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse; required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effect performance; **required on a daily basis**; and consistent with the nature and severity of the individual’s condition. *See* ¶ 14 (emphasis added). As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria

as outlined in Fla. Admin. Code R. 59G-1.010. See ¶ 15. The Definitions Policy maintains a component of medical necessity 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 ¶ 17.

21. In the instant case, Dr. Kunis established at Fair Hearing that Petitioner does not require the duties of specialized treatment or skilled nursing services on a daily basis. According to Dr. Kunis’s testimony, eQHealth reviewers took into account Petitioner’s multiple medical conditions and list of prescribed medications when making their determination. See ¶ 4, 6. Further, Petitioner’s medical conditions are being followed by [REDACTED] [REDACTED], accordingly. See ¶ 4, 6 – 7. For example, Petitioner is receiving [REDACTED] from [REDACTED] [REDACTED] provider to support Petitioner’s [REDACTED]. See ¶ 6 – 7. Petitioner’s [REDACTED] and [REDACTED] are being followed by Petitioner’s [REDACTED] provider. See ¶ 6. Additionally, there are no episodes of [REDACTED] [REDACTED]. See ¶ 3 – 4. There are [REDACTED] in the medical records provided. See ¶ 3 – 4.

22. [REDACTED] and [REDACTED] argued that a regular day care cannot assist Petitioner with putting on [REDACTED] [REDACTED] with the same level of care as at the PPEC center. See ¶ 7 – 8. [REDACTED] argued that Petitioner’s [REDACTED] need to be supervised and monitored during [REDACTED]. See ¶ 7. Petitioner’s MAR log indicates that [REDACTED] was administered once at PPEC in [REDACTED], in the period between [REDACTED] and [REDACTED]. See ¶ 3. Basic monitoring and administration of medications are not among the criteria under Rule 59G-4.290, F.A.C. for


the purpose of qualifying as requiring skilled nursing services. See ¶ 14. The record does not show that assisting with putting on [REDACTED] is a skilled nursing service. As discussed, the record does not clearly demonstrate that the nature and severity of Petitioner's medical conditions warrant intervention by a registered nurse on a daily basis. See ¶ 21. All in all, the undersigned finds that Respondent presented sufficient, credible evidence to demonstrate that PPEC services are in excess of Petitioner's needs.

23. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Respondent proved by a preponderance of the evidence that continuing PPEC services was not medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that the PPEC services are not medically necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent 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 PPEC services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

DONE AND ORDERED this 10th day of July, 2023 in Tallahassee, Leon County, Florida.

Kimberly Roche

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KIMBERLY ROCHE, 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.

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