



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

FILED

Jul 20, 2023, 3:04 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH0877

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Medicaid Fair Hearing in the above-styled case on May 31, 2023, at 1:00 p.m., Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Sandra Durden
Medical Healthcare Program
Analyst Agency for Health Care
Administration

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

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

Petitioner's [REDACTED] attended the hearing as a witness for Petitioner.

Sandra Durden, Medical/Health Care Program Analyst for the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Respondent.

Dr. Chris Kunis, M.D. ("Dr. Kunis"), Medical Director at eQHealth Solutions, Inc. ("eQHealth"), appeared as a witness for the Respondent.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and forty-two (142)-page evidence packet and a forty-nine (46)-page evidence packet. The one hundred and forty-two (142)-page evidence packet appears in the Office of Fair Hearings' document management system as file titles "[REDACTED] FH 05.312023 1-78.pdf", "[REDACTED] FH 05.312023 79-106.pdf", and "[REDACTED] FH 05.312023 107-142.pdf." The forty-six (46)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "23-FH0877 PPEC AGENCY EVIDENCE.pdf". Absent an objection from the Petitioner, the undersigned admitted the forty-six (46)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1") and the one hundred and forty-two (142)-page evidence packet into evidence as Respondent's Composite Exhibit 2 ("RCE 2").

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a three (3)-page evidence packet. The three (3)-page evidence packet appears in the Office of Fair Hearings' document management system as the file title "23-FH0877 [REDACTED] -Evidence.pdf". Absent an objection from the Respondent, the undersigned admitted the three (3)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

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 Respondent's Composite Exhibit 2 at page 31. The Agency, through contractual agreement, authorized eQHealth to make Medical Necessity determinations for services requiring prior authorizations. *Id.*

2. Petitioner is a [REDACTED] ([REDACTED] [REDACTED] old [REDACTED] at the time of the present hearing.

See RCE 2 at page 16. Petitioner is diagnosed with the following: [REDACTED]
[REDACTED]

[REDACTED]. *Id.* at 17 and 40.

3. Petitioner is not ventilator dependent, nor does [REDACTED] use a BiPap, CPap, tracheotomy. *Id.*

at 17 and 44. Petitioner uses [REDACTED]. *Id.* at 44.

Petitioner does not have a gastrostomy tube or nasogastric tube. *Id.* at 21 and 44. Petitioner

does not have seizures, and Petitioner has no need for wound care. *Id.* at 21 and 45. Petitioner

resides with [REDACTED] and older [REDACTED] [REDACTED] is involved in care. *Id.* at 18. Petitioner's

current medications are: [REDACTED]

[REDACTED]. *Id.* at 18 and 41. Petitioner continues to

follow-up with [REDACTED] and [REDACTED] receives [REDACTED]. *Id.* at 18. Petitioner's nursing

needs consist of daily/PRN medications and monitoring. *Id.* at 26.

4. Petitioner receives [REDACTED], [REDACTED] and [REDACTED]

at the PPEC center [REDACTED] per week. *Id.* at 117.

5. Petitioner was [REDACTED]. *Id.* at 26. Petitioner's overall

status is [REDACTED]

[REDACTED]" *Id.* at 43.

6. Petitioner visited [redacted] primary care physician, [redacted] at the [redacted]. [redacted], who specializes in [redacted], noted Petitioner's current outpatient medications were [redacted]. [redacted] wrote in [redacted] follow-up notes on the visit, as follows:

Today we had the pleasure of evaluating [Petitioner] at the [redacted]. [redacted] [Petitioner] is a [redacted] with history of [redacted]. [redacted] I am glad to see [Petitioner] is doing well with [redacted]. [redacted] has a normal [redacted] exam with no findings of concern on [redacted] from today shows [redacted]. [Petitioner] is cleared from a [redacted] stand point, no need for routine follow up. Discussed health supervision guidelines for children with [redacted]. Discussed the importance of yearly [redacted] screening and also screening for [redacted]. No [redacted] activity restrictions. No [redacted]. Thank you very much for allowing me to participate in the care of this lovely young [redacted]. If [redacted] examination should change in any way, please do not hesitate to contact me.

Sincerely,
[redacted]
[redacted]
[redacted]

Page 125 of RCE 2.

7. Petitioner requested the continuation of partial day and full day PPEC services for the certification period of April 5, 2023, through October 1, 2023. *Id.* at 16.

8. On April 6, 2023, eQHealth sent Petitioner a Notice of Outcome ("NOO") terminating

Petitioner's PPEC services. *Id.* at 25 - 27. The Notice explained that the requested services were terminated in whole or in part because they were not medically necessary and explained as follows:

Specifically the requested services are not medically necessary under the following standard(s):

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness 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 is available statewide.

The rationale for our decision is as follows:

PR Principal Reason – Denial:

...

Clinical Rational for Decision: [REDACTED] with a history of [REDACTED]. The patient requires [REDACTED], is on a [REDACTED], was [REDACTED] has not [REDACTED]. Nursing needs consist of daily/PRN meds and monitoring.

Deny all PPEC units. The patient lacks sufficient skilled nursing to warrant PPEC care.

Dated of Action is 4/6/2023.

Pages 25 - 26 of RCE 2.

9. On April 17, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner due to Respondent's termination of PPEC services. On May 15, 2023, the undersigned scheduled the hearing for May 31, 2023, at 1:00 p.m., and all parties were duly notified.

10. Dr. Kunis' testimony established that Petitioner's PPEC services were terminated because, based on the documentation submitted by the PPEC provider, Petitioner no longer

met the criteria for medical necessity. Dr. Kunis stated that upon his review of Petitioner's PPEC records, the Petitioner is receiving no scheduled medications at PPEC and no longer has a need for skilled nursing services. Consistent with Dr. Kunis' testimony, Petitioner's medication administration records show that Petitioner required [REDACTED] in a period of [REDACTED], and [REDACTED] while at PPEC. *Id.* at 138. Dr. Kunis noted that Petitioner's records show that [REDACTED] had a [REDACTED], when [REDACTED]. *Id.* at 115. Dr. Kunis testified that such an episodic illness does not justify the medical necessity of PPEC services, rather parents are expected to provide as much care as they can for the child during the illness. Dr. Kunis testified that Petitioner is stable with no heightened risks for serious complications, that [REDACTED] was discharged from [REDACTED] does not require [REDACTED], and there no on-going skilled nursing care at PPEC has been prescribed. Dr. Kunis further testified that attendance at PPEC is not required for Petitioner's [REDACTED], [REDACTED], or [REDACTED] because they can be done outside the PPEC. Dr. Kunis testified that Petitioner is scheduled for [REDACTED] to ward off [REDACTED]: however, Dr. Kunis noted that there is now a [REDACTED] for children. Dr. Kunis testified that the criteria for PPEC services is based on what a child's skilled nursing needs are, not what medical doctor may be needed to treat a child, [REDACTED] [REDACTED]. Dr. Kunis acknowledged that Petitioner is a complex patient whose Petitioner's care coordinating team will continue to monitor Petitioner's medical records, and every six months the medical necessity for PPEC services will be reviewed.

11. [REDACTED] testified that [REDACTED] [REDACTED] Petitioner, is still on [REDACTED]

[REDACTED], but when Petitioner has [REDACTED]
[REDACTED] testified that Petitioner has issues
with [REDACTED] in that during [REDACTED]
[REDACTED] further testified that Petitioner sleeps with
[REDACTED]
[REDACTED] explained that Petitioner has a very [REDACTED]
[REDACTED], and that although [REDACTED] will be [REDACTED] ([REDACTED]
of age soon, [REDACTED] is like a [REDACTED] as [REDACTED] is unable to [REDACTED]
[REDACTED]. [REDACTED] referred to the [REDACTED] letter
from Petitioner's physician, [REDACTED], wherein [REDACTED] writes that "[Petitioner] will benefit
from being on PPEC to continue with [REDACTED], [REDACTED], and [REDACTED]." [REDACTED]
notes that while [REDACTED] wrote about the types of therapies Petitioner needs, [REDACTED]
understood [REDACTED] to also suggest that Petitioner should visit a PPEC doctor. See Petitioner's
Composite Exhibit 1 at 3.

12. [REDACTED] testified that [REDACTED] Petitioner continues to have medical complications
and that they have gotten recommendations from Petitioner's [REDACTED]
to consult with a PPEC doctor to stay with PPEC. [REDACTED] testified that Petitioner's [REDACTED]
[REDACTED], and that [REDACTED]
[REDACTED] further testified that Petitioner has been referred
to an [REDACTED]. [REDACTED] referred to [REDACTED]'s
[REDACTED] letter and notes that the doctor focused more on Petitioner's therapies aspect
instead of [REDACTED] overall health. *Id.*

CONCLUSIONS OF LAW

13. 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).

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

15. The burden of proof in this proceeding is governed by Fla. Admin Code R. 59G-1.100(17)(g), which provides as follows:

The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee, when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

16. In the instant case, Respondent terminated Petitioner's PPEC services. As such, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to 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.)

17. The PPEC Policy, incorporated by reference in Fla. Admin. Code R. 59G- 4.260, governs PPEC services available under Florida Medicaid. The PPEC Policy provides the following:

17.1 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.

....

2.2 Who Can Receive

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

- Require continuous therapeutic interventions or skilled nursing supervision, as described in section 400.902, F.S. and in Rule 59A-13.007, F.A.C.
- Are determined medically stable by a physician and who are not a threat to self or others

Some services may be subject to additional coverage criteria as specified in section

....

4.0 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 nonemergency transportation is provided
- Medical services
- Nursing services
- Personal care services
- Psychosocial services
- Respiratory therapy services

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

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

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

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

Some services may be reimbursed through another Florida Medicaid-covered service. Please refer to the service-specific coverage policy for more information.

....

7.0 Authorization

7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid's General Policies on authorization requirements.

7.2 Specific Criteria

Providers must obtain authorization from AHCA, or its designee, every 180 days or more frequently if there is a change in the recipient's condition requiring an alteration in services.

Providers must submit a discharge request to AHCA, or its designee, to terminate a recipient's services. The discharge request must include both of the following:

- Last date services were provided to the recipient
- Number of units of service used during the current authorization period (through the discharge date)

18. Section 400.902(6), Florida Statute, defines "medically dependent or technologically dependent child" as "a child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse."

19. Since the Petitioner is under twenty-one years old, the Early and Periodic Screening, Diagnosis, and Treatment ("EPSDT") requirements apply to the request for PPEC services.

See 42 U.S.C. §§ 1396d(r)(1)-(S). Section 409.905, Florida Statutes, states:

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.—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.

20. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. The Definitions Policy, which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines "medically necessary" or "medical necessity" as follows:

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.

21. The 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. It states the following:

1.2 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

...

1.3.1 Authorization

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

...

1.3.6 Provider

The term used to describe any entity, facility, person, or group that has been approved for enrollment or registered with Florida Medicaid.

1.3.7 Quality Improvement Organization

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

...

2.0 Authorization Requirements

2.4.2 Requests for Additional Information

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

...

3.0 Determination Process

3.1 Review Criteria

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

3.2 Review Process

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

3.2.1 Continued Authorization Requests

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

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

Florida Medicaid Authorization Requirements Policy, pages 1-3.

22. In the instant case, Petitioner requested PPEC services for the certification period of April 5, 2023 through October 1, 2023. *See supra* ¶ 7. As established on the record by the testimony and evidence, eQHealth terminated Petitioner's PPEC services, because the PPEC services were not medically necessary. *See supra* ¶ 8.

23. Florida Medicaid covers PPEC services that: are determined medically necessary; do not duplicate another service; and meet the criteria as specified in the PPEC Policy. *See supra* ¶ 17. PPEC provides "skilled nursing supervision and therapeutic interventions in a non-

residential setting to medically dependent or technologically dependent recipients." *See supra* ¶ 17.

24. In this case, there was no testimony or evidence that Petitioner requires "skilled nursing supervision and therapeutic interventions" at a PPEC facility. The documentation regarding Petitioner's medical status, *see supra* ¶¶ 2 – 6, 10, reflects that Petitioner does not meet the definition of a "medically dependent or technologically dependent child" as Petitioner is not "a child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse." *See supra* ¶18. Specifically, Petitioner is not ventilator dependent, nor does [REDACTED] use a Bi-Pap, C-Pap, tracheotomy, and [REDACTED]. *See supra* ¶ 3. Petitioner does not have seizures; a gastrostomy tube or nasogastric tube; or wound care issues. *See supra* ¶ 3. Petitioner is presently [REDACTED]

[REDACTED] *See supra* ¶ 6. Additionally, Petitioner's medications can be administered by Petitioner's parents at home. *See supra* ¶ 6. Petitioner's [REDACTED], [REDACTED], [REDACTED] and [REDACTED] can be provided outside of the PPEC facility. *See supra* ¶¶ 4, 10.

25. Section 2.83 of the Definitions Policy mandates that to be medically necessary, "[t]he medical or allied care, goods, or services furnished or ordered must - [b]e 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." *See supra* ¶ 20. Based upon the

aforementioned facts and evidence, *see supra* ¶ 24, Respondent demonstrated that the request for PPEC services was in excess of what Petitioner needs. Thus, Respondent established that the requested PPEC services are not medically necessary, as defined in Fla. Admin. Code R. 59G-1.010, and required by section 1.3.7 of the PPEC Policy. Looking at all the evidence relevant to the particular needs of Petitioner, the PPEC services at issue are not necessary to correct or ameliorate a defect or a physical and mental illness or condition.

26. In light of the parties' testimony, Respondent's Composite Exhibit 2, Petitioner's Composite Exhibit 1, the PPEC Policy, the Authorization Requirements Policy, and the Definitions Policy, Respondent proved by a preponderance of the evidence that Respondent's termination of Petitioner's PPEC services was correct.

DECISION

Respondent's termination of Petitioner's PPEC services for the certification period of April 5, 2023, through October 1, 2023, is **AFFIRMED**. Petitioner's request for PPEC services is hereby **DENIED**.

DONE and **ORDERED** this 20th day of July, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH0877
2023.07.20
09:43:23 -04'00'

**DEBBIE WINICKI, Hearing Officer Agency for
Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308**

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:



AHCA Medicaid Hearing Unit
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