



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

FILED

Jul 26, 2023, 11:56 am

OFFICE OF FAIR HEARINGS

████████████████████,

PETITIONER,

AHCA Case No.: 23-FH0950

vs.

**AGENCY FOR HEALTH CARE
ADMINISTRATION,**

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned scheduled a Medicaid Fair Hearing for May 23, 2023, which hearing was continued at the request of Petitioner. The undersigned rescheduled and convened a telephonic Medicaid Fair Hearing in the above-styled case on June 8, 2023, at 9:00 a.m., Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

████████████████████

Petitioner’s Authorized Representative

For the Respondent:

Marielisa Amador
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] (“[REDACTED] [REDACTED]”), Petitioner’s Authorized Representative, appeared on behalf of Petitioner.

Marielisa Amador, 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 two hundred and twenty-three (223)-page evidence packet and a forty-six (46)-page evidence packet. The two hundred and twenty-three (223)-page evidence packet appears in the Office of Fair Hearings’ document management system as file titles “[REDACTED] FH 05.032023.pdf.” The forty-six (46)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file title “Agency Evidence Legal Authorities 23-FH0950.pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and twenty-three (223)-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”).

Petitioner did not submit any documents as evidence.

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 1 at page 25. The Agency, through contractual agreement, authorized eQHealth to make Medical Necessity determinations for services

requiring prior authorizations. *Id.*

2. Petitioner is an [REDACTED] ([REDACTED] [REDACTED] old [REDACTED] at the time of the present hearing. *See* RCE 1 at page 21. Petitioner is diagnosed with the following: [REDACTED]

[REDACTED]. *Id.* at 22 and 68.

3. Petitioner is not ventilator dependent, nor does [REDACTED] use a BiPap/CPAP, oxygen or, tracheotomy. *Id.* at 49 - 50. Petitioner does not have a gastrostomy tube or nasogastric tube. *Id.*

4. Petitioner's current medications are: [REDACTED]; and [REDACTED]. *Id.* at 23. The [REDACTED] medicine [REDACTED] is a [REDACTED]. Petitioner had [REDACTED] in [REDACTED] that lasted [REDACTED], but no other [REDACTED] have occurred [REDACTED].

Id. Petitioner's nursing needs consist of daily medications given when or if needed ("PRN") and monitoring. *Id.*

5. Petitioner receives [REDACTED] two (2) times a week and [REDACTED] three (3) times a week at the PPEC center. *Id.* at 70. Petitioner attends public [REDACTED] school at the [REDACTED] - [REDACTED] level. *Id.* at 66. Petitioner attends PPEC after school. *Id.*

6. Petitioner was [REDACTED]. *Id.* at 41. The FL HH Assessment [REDACTED] dated [REDACTED], describes Petitioner's overall status as "[REDACTED] [REDACTED]." *Id.* at 47.

7. Petitioner requested the continuation of partial day and full day PPEC services for the certification period of March 26, 2023, through September 21, 2023. *Id.* at 28. Petitioner has

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's [REDACTED] was not administered at the PPEC center [REDACTED], and that Petitioner's [REDACTED] [REDACTED], [REDACTED], was keeping the [REDACTED] under control. *Id.* at 210 - 215. Dr. Kunis testified that Petitioner's [REDACTED] does not justify the medical necessity of PPEC services, even if a [REDACTED] happened at school or in an afterschool program environment. In that case, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. Dr. Kunis contends that 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 acknowledged that Petitioner is a [REDACTED].

11. [REDACTED] testified that Petitioner is on [REDACTED] continuously, and that while Petitioner attends school, there is no skilled nursing care in the school setting, and at the afterschool program. Petitioner would not have any one to administer [REDACTED] of [REDACTED] at an afterschool program if [REDACTED] had a seizure while there. Further, at PPEC, the nurses were doing more than just monitoring Petitioner: they would have to administer [REDACTED] prescribed [REDACTED] if [REDACTED] parents worked late, or if [REDACTED] had a

██████████. ██████████ informed the undersigned that Petitioner has relocated with ██████████ family out of Florida, and the last day of treatment for PPEC services was ██████████.

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).

13. 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."

14. 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.

15. 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.)

16. 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:

16.1 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)

17. 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."

18. 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.

19. 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.

20. 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.

21. In the instant case, Petitioner requested PPEC services for the certification period of March 26, 2023, through September 1, 2023. *See supra* ¶ 7. Petitioner has relocated out of the State of Florida with [REDACTED] family, and [REDACTED] last day of treatment in Florida for PPEC services was [REDACTED]. *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.

22. 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* ¶ 16. PPEC provides “skilled nursing supervision and therapeutic interventions in a non-residential setting to medically dependent or technologically dependent recipients.” *See supra* ¶ 16.

23. 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* ¶ 16. Specifically, Petitioner is not ventilator dependent, nor does he use a Bi-Pap, C-Pap, oxygen, or tracheotomy. *See supra* ¶ 3. Petitioner does not have gastrostomy tube or nasogastric tube; or wound care issues. *See supra* ¶ 3. Petitioner had [REDACTED] in [REDACTED] that lasted [REDACTED], but no other [REDACTED] have occurred in the [REDACTED]. *See supra* ¶ 3. Petitioner’s overall condition is presently [REDACTED].” *See supra* ¶ 6. Additionally, Petitioner’s medications can be administered by Petitioner’s parents at home. *See supra* ¶ 6. Petitioner’s [REDACTED], [REDACTED], and [REDACTED] can be provided outside of the PPEC facility. *See supra* ¶¶ 4, 10.

24. 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;" and "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." *See supra* ¶ 19. Based upon the aforementioned facts and evidence, *supra* ¶ 23, 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.

25. In light of the parties' testimony, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, 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 March 26, 2023, through September 21, 2023, is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of PPEC services is hereby **DENIED**.

DONE and **ORDERED** this 26th day of July, 2023, in Tallahassee, Leon County, Florida.



Debbie K. Winicki
23-FH0950
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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:



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