

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



FILED

Sep 13, 2023, 8:45 am

OFFICE OF FAIR HEARINGS

[REDACTED],
PETITIONER,

AHCA Case No.: 23-FH1252

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on July 27, 2023, at 1:02 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]
Petitioner’s Authorized Representative

For the Respondent:

Diana Hearod
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 prescribed pediatric extended care (“PPEC”) services was correct.

PRELIMINARY STATEMENT

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

RN, Director of Nursing at [REDACTED], appeared as a witness for Petitioner. Ms. Brenda Lombardo (“Ms. Lombardo”), Director of Operations for [REDACTED], appeared as a witness for Petitioner.

Diana Hearod, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as the representative for Respondent. Dr. Chris Kunis, Medical Director with eQHealth Solutions of Florida, Inc. (“eQHealth”) and Kepro, attended as the witness for Respondent.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-seven (137)-page evidence packet. The one hundred and thirty-seven (137)-page evidence packet appears in the Office of Fair Hearings’ document management system as “[REDACTED] FH 07.27.2023.pdf.” Absent an objection from the Petitioner, the undersigned admitted the one hundred and thirty-seven (137)-page evidence packet into evidence as Respondent’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-seven (47)-page evidence packet. The forty-seven (47)-page evidence packet appears as “23-FH1252_PPEC_AHCA EVIDENCE PKT_47 Pages.pdf [Petitioner’s name].pdf.” Absent an objection from the Petitioner, the undersigned admitted the forty-seven (47)-page evidence packet into evidence as Respondent’s Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the agency to review prior authorization requests for services. See Respondent’s Composite Exhibit 2 at page 2.

2. As of the Fair Hearing, Petitioner is [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. See Respondent's Composite Exhibit 1 at page 16, 20, 53-82. Petitioner lives with [REDACTED] who does not work outside the home. *Id.* at 20. Petitioner is diagnosed with the following: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 17 and 39.

3. Petitioner is prescribed the following medications: [REDACTED] [REDACTED]. *Id.* at 90, 98, 137. The PPEC Medication Administration Records ("MARS") show that Petitioner received [REDACTED] at PPEC with no administration of [REDACTED]. *Id.* at 20, 93 - 95.

4. The FL Home Health Assessment Tool, dated May 5, 2023, states that Petitioner is "stable with no heightened risk(s) for serious complications and death." *Id.* at 42. As Dr. Kunis established, Petitioner has not have [REDACTED]. *Id.* at 17. Petitioner does not use [REDACTED]. *Id.* at 44, 118-119. Petitioner does not use [REDACTED], does not have [REDACTED], does not [REDACTED], and does not [REDACTED]. *Id.* at 44-47, 123-124. Petitioner is dependent on others for [REDACTED] and requires assistance with [REDACTED], [REDACTED], g [REDACTED] [REDACTED]. Petitioner sees a [REDACTED] 4 times per week at PPEC. *Id.* at 48.

5. Petitioner requested continuation of PPEC services for the certification period of May 27, 2023, through November 22, 2023. *Id.* at 34. In a Notice of Outcome ("NOO"), dated May 15,

2023, Respondent terminated Petitioner's PPEC services. *Id.* at 34-35. The NOO explained the basis of the termination as follows:

[REDACTED]

...

The NOO further stated:

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

Clinical Rationale for Decision: Request is for PPEC services for this [REDACTED] with [REDACTED], [REDACTED]. [REDACTED] No need for skilled nursing. Deny this request.

Id.

6. On May 25, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On July 5, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for July 27, 2023, at 1:30 p.m. EST. As established by Dr. Kunis' testimony, Petitioner received administrative approval of PPEC services, or continuation of benefits, pending the outcome of the Fair Hearing. *Id.* at 20.

7. Dr. Kunis testified that Petitioner is [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 53-82. Petitioner has [REDACTED] [REDACTED] and has recently had [REDACTED]. Petitioner wears [REDACTED]. Petitioner receives [REDACTED] at PPEC, but these services can be provided elsewhere. Petitioner's medication can be administered by a lay person and does not require a

skilled nurse to administer. Based on the information provided, Dr. Kunis asserted that Petitioner does not have a medical need for skilled nursing services at this time.

8. [REDACTED] testified that Petitioner is [REDACTED], [REDACTED], needs assistance to [REDACTED]. [REDACTED] asserted that PPEC services are necessary to prevent future hospitalizations. Ms. Ziembra testified that Petitioner needs assistance with all ADLs and needs medication administration. [REDACTED] asserted that [REDACTED] needs constant supervision because [REDACTED] is [REDACTED]. Ms. Lombard testified that Petitioner is [REDACTED] and needs supervision due to [REDACTED].

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 Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).

11. Because Respondent terminated an existing service, 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.)

12. The Prescribed Pediatric Extended Care Services Coverage Policy (February 2018) ("PPEC Policy") establishes the provision and coverage of PPEC services under Florida Medicaid. The PPEC Policy states as follows:

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.

...

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

...

1.3 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.

...

1.3.7 Medically Necessary/Medical Necessity

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

...

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

...

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

13. Fla. Admin. Code Rule 59A-13.007(4)(a) 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, Florida Statutes, describes “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. Fla. Admin. Code R. 59G-4.290 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 eligible for EPSDT services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d).

17. 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.

18. The Florida Medicaid Definitions Policy (“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.

Respondent's Composite Exhibit 2 at page 23.

19. In the NOO, dated September 12, 2022, Respondent terminated Petitioner's PPEC services. *See supra* ¶ 4. The NOO explained that the basis of the termination was that the request was not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment", was "in excess of the patient's needs", and was 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 is available statewide. *See supra* ¶ 4. Respondent explained that Petitioner does not require skilled nursing services. *See supra* ¶ 4.

20. PPEC services are intended for patients with who "require continuous therapeutic interventions or skilled nursing supervision." *See supra* ¶ 12. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. As provided in the Definitions Policy, a component of medical necessity is 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 supra* ¶ 17. Dr. Kunis provided credible and persuasive testimony that Petitioner does not require skilled nursing services. *See supra* ¶ 7. The record reflects that Petitioner is not receiving daily prescription medications that would require a skilled nurse to administer. *See supra* ¶ 3, 6.


Petitioner is not using a [REDACTED]. See supra ¶ 3. Petitioner does not use [REDACTED], [REDACTED], [REDACTED], or [REDACTED]. See supra ¶ 3. In all, there is no indication that Petitioner continues to require skilled nursing services at this time. The testimony of Petitioner's witnesses establishes that Petitioner does continue to have some medical needs, supra ¶ 8, but the record does not reflect that Petitioner requires daily skilled nursing services or continuous therapeutic interventions at this time. See supra ¶ 7. Therefore, the record demonstrates that PPEC services are in excess of Petitioner's needs.

21. Upon consideration of the testimony provided Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence that PPEC services are no longer medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that PPEC services are not 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 Petitioner's PPEC services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

DONE and ORDERED this 13th day of September 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher
23-FH1252
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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]
[REDACTED]

**AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com**