



FILED

Aug 29, 2023, 8:31 am

OFFICE OF FAIR HEARINGS

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

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1255

vs.

**AGENCY FOR HEALTH CARE
ADMINISTRATION,**

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 8, 2023, at 9:03 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Lee Ann Williams
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. Petitioner's Authorized Representative and Director of [REDACTED] PPEC (" [REDACTED] "), [REDACTED] (" [REDACTED] "), appeared on behalf of

the Petitioner. The following attended as witnesses for Petitioner: Dr. Jamelah Tucker (“Dr. Tucker”), Medical Director of [REDACTED]; and [REDACTED], Petitioner’s [REDACTED].

Lee Ann Williams, 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, Inc./Kepro appeared as a witness for Respondent.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-four (134)- page evidence packet and a forty-six (46) page evidence packet. The evidence packets appear in the Office of Fair Hearings document management system as “[REDACTED] FH 07.19.2023.pdf” and “Agency Evidence Legal Authorities 23-FH1255.pdf”, respectively. Absent an objection from the Petitioner, the undersigned admitted the one hundred and thirty-four (134)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the 46-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

At the hearing, Petitioner requested that the record be held open to submit medical records. On August 9, 2023, Petitioner timely submitted a 10-page packet. The packet appears in the Office of Fair Hearings document management system as file title “23-FH1255 Evidence.pdf”. Petitioner’s packet is hereby admitted into evidence as Petitioner’s Exhibit 1 (“PE 1”).

At the hearing, Respondent was allowed to submit any comments or objections to Petitioner’s post-hearing submission. On August 16, 2023, Respondent timely submitted a one (1) page document that appears in the Office of Fair Hearings’ document management system as

file title "Letter to AHCA Bene. [REDACTED].pdf". Respondent's letter is admitted into evidence as Respondent's Exhibit 2 ("RE 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 page 2 of RCE 2.

2. Petitioner was [REDACTED] at the date of the Fair Hearing. See page 16 of RCE 1. Petitioner is diagnosed with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 17.

3. Petitioner requested continuation of PPEC services, specifically 624 units of code T1026 (Partial day services) and 156 units of code T1025 (Full day services). In a Notice of Outcome ("NOO"), dated May 19, 2023, Respondent terminated Petitioner's PPEC services. See pages 23 – 25 at RCE 1. The NOO explained the basis of 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 under treatment, and not in excess of the patient's needs.

...

The NOO further stated:

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

Clinical rationale for Decision: Request is for PPEC for this [REDACTED]
[REDACTED]
[REDACTED]. No need for skilled nursing. Deny this request.

...

Pages 23 - 24 of RCE 1.

4. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Reconsideration Determination (“NRD”), Respondent upheld its decision. *Id.* at 38 – 40. The NRD explained the basis of the decision as follows:

The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically the services must be:

Individualizes, 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.

...

PR Recon Determination: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

Nursing needs consist of monitoring and supervision.

Uphold denial of all PPEC units. The submitted documentation was reviewed. The patient lacks sufficient skilled nursing needs to warrant PPEC care.

...

Page 39 of RCE 1.

5. On May 24, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On July 19, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 8, 2023, at 9:00 a.m. EST.

6. Dr. Kunis is a Medical Director at eQHealth. Dr. Kunis testified to the following:

a. Petitioner is [REDACTED]. Petitioner is [REDACTED]
[REDACTED]

- b. Petitioner is [REDACTED].
 - c. The nursing needs consist of supervision and monitoring. There does not appear to be any skilled nursing to warrant continuation of services at the PPEC.
7. [REDACTED] is the Director of Nursing at [REDACTED] PPEC. [REDACTED] testified to the following:
- a. [REDACTED] believes that Petitioner still needs nursing services as Petitioner has [REDACTED].
 - b. Petitioner has had a [REDACTED] in the past few months.
8. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following:
- a. Petitioner has problems with [REDACTED]. [REDACTED] administers [REDACTED] ever other morning. Petitioner has an [REDACTED], but does not it need it much.
 - b. [REDACTED] took Petitioner [REDACTED], because [REDACTED]. [REDACTED].
 - c. [REDACTED] took Petitioner to the doctor on [REDACTED], because [REDACTED] was not [REDACTED].
 - d. Petitioner usually receives [REDACTED].
9. Dr. Tucker is the Medical Direct of [REDACTED] PPEC. Dr. Tucker testified to the following:
- a. Petitioner is medically complex because [REDACTED] requires [REDACTED].
 - b. Determining whether [REDACTED] is required requires supervision.
 - c. Nurses are available to assist if there is [REDACTED].
 - d. Petitioner has not [REDACTED] at the PPEC center.

10. On [REDACTED], Petitioner was [REDACTED]. The medical notes state as follows:

Briefly, [Patient] is a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

...

Page 4 of PE 1.

11. Petitioner visited [REDACTED] on [REDACTED]. The medical notes state as follows:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

...

Page 8 of PE 1.

12. In response to the medical notes, Respondent wrote a letter that states as follows:

Additional records submitted by the petitioner were reviewed.

1. The first visit in [REDACTED] failed to show illness by examination and did not require any follow-up visit.

2. The second visit in [REDACTED] showed a [REDACTED].
[REDACTED].

[REDACTED] is common occurrence and do not warrant PPEC services be continued.

...

Page 1 of RE 2.

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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 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).

15. 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.)

16. The 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

17. 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.

18. Rule 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.

19. 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.

20. 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).

21. 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.

22. The Florida Medicaid 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.

23. In the NOO, dated May 19, 2023, Respondent terminated Petitioner’s PPEC services. *See* ¶ 3. The NOO explained that the basis for the termination was that PPEC services were not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment” and were “in excess of the patient’s needs”. *Id.*

24. PPEC services are intended for patients who “require continuous therapeutic interventions or skilled nursing supervision”. *See* ¶ 16. 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 such

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 ¶ 22. As shown by the record, Petitioner is diagnosed with [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. See ¶ 2. As testified to by Dr. Kunis, Petitioner is [REDACTED]. See ¶ 6. Dr. Kunis opined that Petitioner is not in need of skilled nursing services as Petitioner requires only supervision and monitoring. *Id.* Here, Dr. Kunis’ opinion is supported by the record. As testified to by [REDACTED], Petitioner’s medication is administered at home. See ¶ 8. Further, Dr. Tucker explained that the PPEC nurses supervise to determine whether [REDACTED] is needed, and thus far [REDACTED] has been administered at the PPEC. See ¶ 9. Rule 59G-4.290 gives examples of skilled nursing, such as “intravenous medication”, “levin tube and gastronomy feedings” and “colostomy and ileostomy care”. See ¶ 18. Supervision and monitoring are not listed among skilled nursing services. *Id.*

25. Upon consideration of the testimony provided, evidence submitted, and applicable polices, 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 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 denial is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and ORDERED this 29th day of August, 2023, in Tallahassee, Leon County, Florida.

Joseph Mabry
23-FH1255
2023.08.29
08:05:25 -04'00'

JOSEPH MABRY, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

Copies Furnished To:

[REDACTED]

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