



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

FILED

Sep 05, 2023, 12:17 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1257

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 June 27, 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 Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

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

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED], appeared on behalf of 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. Rakesh Mittal, M.D. (“Dr. Mittal”), Physician Consultant for eQHealth Solutions, Inc. (“eQHealth”), appeared as a witness for the Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a sixty-two (62)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “23-FH1257 Support Documents.pdf.” Absent an objection, the evidence packet was admitted into evidence as Petitioner’s Composite Exhibit 1.

Petitioner also sent to the Office of Fair Hearings a two (2)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “23-FH1257 Evidence.pdf.” Absent an objection, the evidence packet was admitted into evidence as Petitioner’s Exhibit 2.

Lastly, Petitioner sent to the Office of Fair Hearings an additional two (2)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “23-FH1257 Supporting Documents(2).” Absent an objection, the evidence packet was admitted into evidence as Petitioner’s Exhibit 3.

Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and ten (310)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “[REDACTED] FH 06.27.2023 1-141.pdf,” “[REDACTED] FH 06.27.2023 142-234.pdf,” “[REDACTED] FH 06.27.2023 235-307.pdf,” and “[REDACTED] FH 06.27.2023 308-310.pdf.” Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent’s Composite Exhibit 1.

Respondent also sent to the Office of Fair Hearings and Petitioner a forty-six (46)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "AHCA Evidence pkt.pdf." Absent an objection from Petitioner, the undersigned admitted the 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. See Respondent's Composite Exhibit 1 at page 16. 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 2. The Agency, through contractual agreement, authorized eQHealth to make Medical Necessity determinations for services requiring prior authorizations. *Id.*

2. Petitioner is [REDACTED]. See Respondent's Composite Exhibit 1 at page 16. Petitioner's diagnoses include [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED]. *Id.* at 17.

3. The Florida Home Health Assessment Tool, dated May 8, 2023, reflects that Petitioner's overall health status [REDACTED]. *Id.* at 56. Petitioner is not [REDACTED], does not require [REDACTED] nor does [REDACTED] use [REDACTED], [REDACTED], [REDACTED]. *Id.* at 57-58. Petitioner does not have a [REDACTED]. *Id.* at 58. Petitioner does not have [REDACTED]. *Id.* at 59. Further, Petitioner does not have [REDACTED]. *Id.* at 60. Petitioner is able to [REDACTED]. *Id.* at 61.

4. Petitioner requested PPEC services for the certification period of April 28, 2023, through October 24, 2023. *Id.* at 18.

5. On May 10, 2023, eQHealth sent Petitioner a Notice of Outcome (“NOO”) denying PPEC services. *Id.* at 25-27. The NOO explained that the requested services were denied in whole or in part because they were not medically necessary and explained as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administrative Code, 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:

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

Clinical rationale for Decision: [REDACTED]

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

Date of action is 5/10/20223.

Id.

6. On May 15, 2023, eQHealth sent Petitioner a Notice of Reconsideration Determination (“NRD”) upholding the denial of PPEC services. The NRD stated the basis for the denial 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:

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.

The medical basis for the reconsideration decision is as follows:

PR Recon Determination: Reconsideration request and the submitted clinicals were reviewed. Child is [REDACTED] No need for skilled nursing. Uphold the initial denial of PPEC stay.

Id. at 40-41.

7. On May 25, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner due to Respondent’s denial of PPEC services. On June 8, 2023, the undersigned scheduled the hearing for June 27, 2023, at 1:00 p.m., EST, and all parties were duly notified.

8. Petitioner’s physician [REDACTED] (“[REDACTED]”) provided a letter, dated June 21, 2023, which states as follows, in pertinent part:

[Petitioner] has a diagnosis of [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] There are not services that are readily available [at] non-specialized daycare. [REDACTED] is currently attending [REDACTED] and is able to receive the services [REDACTED] needs. We kindly ask that [REDACTED] be allowed to continue at [REDACTED] to ensure [REDACTED] continued health and safety.

Petitioner’s Exhibit 2.

9. Petitioner is prescribed the following medications: [REDACTED]
[REDACTED]

[REDACTED] See Petitioner's Exhibit 3 and Respondent's Composite Exhibit 1 at page 310.

10. [REDACTED] testified as follows:

a. Petitioner receives [REDACTED] prescription medication at PPEC and at home.

b. [REDACTED] asserted that PPEC services should be approved because they are recommended by Petitioner's physician. [REDACTED] testified that the description of Petitioner's health as [REDACTED] is inaccurate and does not correctly convey the Petitioner's [REDACTED]. Further, [REDACTED] testified that Petitioner's plan of care is incomplete and left out information detailing the treatment currently received.

c. [REDACTED] corrected the following inaccuracies in Petitioner's Florida Home Health Survey: Petitioner's [REDACTED]
[REDACTED]; the description of Petitioner's [REDACTED]
[REDACTED]; the description of Petitioner's [REDACTED]
[REDACTED] does not correspond with evaluations conducted by other health professionals; Petitioner does use [REDACTED]; and Petitioner does receive [REDACTED]. *Id.* at 58 - 61.

D. [REDACTED] works outside the home. [REDACTED] asserted that, due to the several types of therapy that the Petitioner currently receives, the family has faced difficulty finding a day-care setting that could appropriately accommodate [REDACTED] needs.

11. Dr. Mittal's testimony established the following:

- a. Petitioner's prescribed medication is given by mouth and can be administered by any responsible adult. The medications do not require a skilled nurse to administer.
- b. Petitioner has [REDACTED]. *Id.* at 17.
- c. A [REDACTED] conducted Petitioner did not indicate that the Petitioner faces any significant problems when [REDACTED]. *Id.* at 81-86.
- d. A summary of a follow-up cardiological visit indicated that Petitioner has exhibited no concerning symptoms of [REDACTED] and that [REDACTED] physician was comfortable seeing [REDACTED] again in six-months. *Id.* at 109-113.
- e. Petitioner [REDACTED]. Although Petitioner is currently receiving care for [REDACTED] [REDACTED], these types of care do not specifically require PPEC to administer.
- f. Dr. Mittal reviewed the methods currently utilized to monitor the condition of Petitioner's [REDACTED] but noted that these methods do not require skilled nursing. The follow-up clinic notes from Petitioner's [REDACTED] [REDACTED], stated that Petitioner was doing well and had not experienced worsening symptoms of [REDACTED]. *Id.* at 229-233.
- g. The care that the Petitioner requires does not necessitate skilled nursing to be properly administered and therefore does not require PPEC services.

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, Petitioner requested a new service. As such, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. 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:

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.

....

2.2 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)

Respondent's Composite Exhibit 2 at pages 40-43.

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 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.

Respondent's Composite Exhibit 2 at page 23.

20. The Florida Medicaid 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.

Respondent's Composite Exhibit 2 at pages 32-34.

21. In the instant case, Petitioner's provider requested PPEC services for the certification period of November 20, 2019, through May 17, 2020. *See supra* ¶ 4. As established on the record by the testimony and evidence, eQHealth denied Petitioner's request because the services were not medically necessary. *See supra* ¶ 5 and 6.

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, Dr. Mittal provided credible and persuasive testimony that there was no

evidence demonstrating that Petitioner requires “skilled nursing supervision and therapeutic interventions” at a PPEC facility. See supra ¶ 11. Further, the documentation regarding Petitioner’s medical status, supra ¶¶ 2 – 3 and 11, reflects that [REDACTED] 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, the Petitioner is not [REDACTED], nor does [REDACTED] use [REDACTED], [REDACTED], [REDACTED], or [REDACTED]. See supra ¶ 3. Petitioner is not [REDACTED], does not require [REDACTED] nor does [REDACTED] use [REDACTED], [REDACTED], [REDACTED]. See supra ¶ 3. Petitioner does not have a [REDACTED]. See supra ¶ 3. Petitioner does not have [REDACTED]. See supra ¶ 3. Further, Petitioner does not have [REDACTED]. See supra ¶ 3. Petitioner is able to [REDACTED]. See supra ¶ 3. Petitioner’s prescribed medication is given by mouth and can be administered by any responsible adult. The medications do not require a skilled nurse to administer. See supra ¶ 9, 11. Finally, the follow-up clinic notes from Petitioner’s [REDACTED], stated that Petitioner was doing well and had not experienced worsening symptoms of [REDACTED]. See supra ¶ 11.

23. 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 ¶ 19. Based upon the aforementioned facts and evidence, supra ¶ 22, the undersigned finds that Petitioner did not

show that the request for PPEC services was not in excess of what Petitioner needs. Thus, Petitioner failed to establish that the requested PPEC services are medically necessary, as defined in Fla. Admin. Code R. 59G-1.010, and required by section 1.3.7 of the PPEC Policy.

24. [REDACTED] asserted that Petitioner's request should be approved because PPEC services were recommended by Petitioner's physician. See supra ¶ 4. However, 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 ¶ 19.

25. In light of the both parties' testimony, Petitioner's Composite Exhibit 1, Petitioner's Exhibit 2, Petitioner's Exhibit 3, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the PPEC Policy, the Authorization Requirements Policy, and the Definitions Policy, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of PPEC services was incorrect.

DECISION

Respondent's denial of PPEC services for the certification period of October 3, 2022, through March 31, 2023, is **AFFIRMED**. Petitioner's request for PPEC services is hereby **DENIED**.

DONE and ORDERED this 5th day of September 2023, in Tallahassee, Leon County, Florida.

Laura Gallagher

23-FH1257

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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
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