



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

**FILED**

Sep 08, 2023, 3:34 pm

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH1360

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned scheduled and convened a telephonic Medicaid Fair Hearing in the above-styled case on July 11, 2023, at 1:00 p.m., Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Diana Hearod  
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, appeared on behalf of Petitioner.

Diana Hearod, 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.

Certified Interpreters, Katarina, I.D. number 411170, and Julian, I.D. number 225478, provided Spanish and English language interpretation services during the hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and sixty (260)-page evidence packet and a forty-six (46)-page evidence packet. The two hundred and sixty (260)-page evidence packet appears in the Office of Fair Hearings’ document management system as file title “[REDACTED] FH 07.11.2023.pdf.” The forty-six (46)-page evidence packet appears in the Office of Fair Hearings’ document management system as the file title “23-FH1360\_PPEC\_AHCA Evidence Packet\_46 pages\_[Petitioner’s Name].pdf”. Absent an objection from the Petitioner, the undersigned admitted the two hundred and sixty (260)-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”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a forty-five (45)-page evidence packet that appears in the Office of Fair Hearings’ document management system as file title “23-FH1360 Evidence.pdf.” As stipulated by the Respondent, the undersigned admitted the forty-five (45)-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 RCE 1 at page 28. The Agency, through contractual agreement, authorized eQHealth to make Medical Necessity determinations for services requiring prior authorizations. *Id.*

2. Petitioner is a [REDACTED], at the time of the present hearing. *Id.* at 21.

Petitioner is diagnosed with the following: [REDACTED]  
[REDACTED], [REDACTED], [REDACTED], [REDACTED],  
[REDACTED], [REDACTED], and [REDACTED]. *Id.* at 22.

3. Petitioner is not [REDACTED], nor does [REDACTED]  
[REDACTED] *Id.* at 62. Petitioner does not have a [REDACTED]. *Id.* at  
63.

4. Petitioner's current medications are [REDACTED]  
[REDACTED]  
[REDACTED]. *Id.* at 23. There are no  
scheduled medicines for Petitioner at the PPEC center; [REDACTED] nursing needs consist of monitoring  
and supervision. *Id.* at 23 - 24. Petitioner receives [REDACTED] that are managed by  
mental health specialists. *Id.* at 22, 75. Petitioner receives [REDACTED]  
[REDACTED] at the PPEC center. *Id.* at 75. Petitioner attends [REDACTED]  
[REDACTED] at PPEC. *Id.* Petitioner has a home health aide in the afternoons, and is

approved for thirty (30) hours per week of applied behavior analysis. *Id.*

5. Petitioner lives with [REDACTED]. *Id.* at 61- 62. There are [REDACTED] members of Petitioner’s household. *Id.* at 216. The [REDACTED] works outside of the home. *Id.* at 61.

6. Petitioner was [REDACTED]. *Id.* at 24, 76. Petitioner had an [REDACTED], at the PPEC center, that lasted [REDACTED]. *Id.* at 22. Petitioner’s [REDACTED] reported that Petitioner had a [REDACTED]. *Id.* at 76. According to the Florida Home Health Assessment Tool, dated December 29, 2022, (“FL HH Assessment”), Petitioner’s overall status as being [REDACTED]. *Id.* at 60.

7. Petitioner requested the continuation of partial day and full day PPEC services for the certification period of May 3, 2023, through October 29, 2023. *Id.* at 28.

8. On May 2, 2023, eQHealth sent Petitioner a Notice of Outcome (“Notice”) terminating Petitioner’s PPEC services. *Id.* at 28 - 30. The Notice explained that the requested services were terminated 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.

The rationale for our decision is as follows:

PR Principal Reason – Denial:

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

Clinical Rational for Decision: Request is for PPEC services for [REDACTED]  
[REDACTED]  
[REDACTED]. No medical necessity for skilled nursing. Deny this request.

Dated of Action is 5/2/2023.

Pages 28 - 29 of RCE 1.

9. Petitioner requested reconsideration of the Notice of Outcome, and on June 9, 2023, eQHealth sent Petitioner a Notice of Reconsideration Determination (“NRD”) upholding the termination of Petitioner’s PPEC services. *Id.* at 43 - 45. The NRD explained that the requested services were terminated because they were not medically necessary and explained 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.

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 medical basis for the reconsideration decision is as follows:

PR Recon Determination: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] Nursing needs consist of monitoring and supervision, scheduled medications.

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

Page 44 of RCE 1.

10. On June 7, 2023, [REDACTED] requested a Fair Hearing on behalf of Petitioner due to Respondent's termination of PPEC services. The undersigned scheduled and convened a telephonic Medicaid Fair Hearing in the above-styled case on July 11, 2023, at 1:00 p.m., Eastern Standard Time ("EST"), and all parties were duly notified.

11. Dr. Kunis' testimony established that Petitioner's PPEC services were terminated because based on the documentation submitted by the PPEC provider showing that Petitioner no longer met the criteria for medical necessity. Dr. Kunis stated that based 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. Dr. Kunis testified that his and his peers' review of Petitioner's medical records, indicate that Petitioner is [REDACTED] requires [REDACTED] with [REDACTED] activities of daily living (ADLs), and that [REDACTED] has [REDACTED], but none that require skilled nursing care at this time. Dr. Kunis acknowledged that Petitioner receives managed [REDACTED] that are handled by a [REDACTED] outside of PPEC. Dr. Kunis further acknowledged that Petitioner receives [REDACTED], [REDACTED], and [REDACTED] at the PPEC center, but contends that those therapies could be given outside of the PPEC center that would not require skilled nursing care. Petitioner has not had any reported [REDACTED]. Dr. Kunis testified that the [REDACTED]. Dr. Kunis testified that although Petitioner receives [REDACTED] at the PPEC, these [REDACTED] and could be given to Petitioner by [REDACTED] parents before or after [REDACTED] PPEC stays. Dr. Kunis concluded that Petitioner's nursing needs appear to consist of

monitoring and supervision, therefore, Petitioner lacks sufficient skilled nursing needs to warrant PPEC care.

12. [REDACTED] testified that Petitioner has [REDACTED] that need skilled care, but that Petitioner has not seen [REDACTED] in a while because the [REDACTED] left the health facility where he used to practice, but that Petitioner has an appointment in [REDACTED] to see a [REDACTED]. [REDACTED]'s testimony established that [REDACTED] main concern is that Petitioner will not take [REDACTED] medications from [REDACTED] before they leave for PPEC in the mornings because [REDACTED] is half asleep at that time, and [REDACTED] aggressively resists taking them from [REDACTED]. [REDACTED] further testified that Petitioner needs [REDACTED] medications twelve (12) hours apart, early in the morning and at bedtime, or 8:00 a.m. and 8:00 p.m., and that schedule does not comport with [REDACTED] work schedule, since [REDACTED] drops him off at PPEC at 7:00 a.m. each morning. [REDACTED] acknowledged that Petitioner has a home health aide for the afternoons, but that aide cannot administer medications to Petitioner. [REDACTED] further testified that Petitioner needs [REDACTED] [REDACTED] at PPEC; that [REDACTED] has [REDACTED] and since [REDACTED] is [REDACTED] [REDACTED]. [REDACTED] contends that Petitioner needs the skilled nursing care that [REDACTED] receives at PPEC.

#### **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:

- **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 Florida Medicaid Definitions Policy (August 2017) ("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.

Definitions Policy at page 7.

21. The Florida Medicaid Authorization Requirements Policy (June 2016) (“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 May 3, 2023, through October 29, 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, 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* ¶ 17.

Specifically, Petitioner is not [REDACTED], nor does [REDACTED] use a [REDACTED] [REDACTED]. *See supra* ¶ 3. Petitioner does not have [REDACTED]; or

[REDACTED]. *See supra* ¶ 3. Petitioner had an [REDACTED]

[REDACTED] *See supra* ¶ 6.

[REDACTED]. *See supra* ¶ 6.

Petitioner's overall condition is presently [REDACTED]

[REDACTED].” *See supra* ¶ 6. Petitioner's medications are scheduled to be

administered once or twice a day, in the mornings and/or the evenings. *See supra* ¶¶ 4, 11, 12.

Petitioner receives [REDACTED] morning medicines at the PPEC center: however, Petitioner's morning medications could be administered by Petitioner's parents at home before they arrive at PPEC.

*See supra* ¶ 4, 11. Petitioner's nursing needs consist of monitoring and supervision. *See supra*

¶ 4.

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;” 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* ¶ 20. Based upon the aforementioned facts and evidence, *supra* ¶ 24, Respondent demonstrated that the request for PPEC services was in excess of Petitioner’s 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 1, 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 May 3, 2023, through October 29, 2023, is **AFFIRMED**. Petitioner's appeal based on Respondent’s termination of PPEC services is hereby **DENIED**.

**DONE and ORDERED** this 8th day of September, 2023 in Tallahassee, Leon County, Florida.



Debbie K. Winicki  
23-FH1360  
2023.09.08 11:09:50 -04'00'

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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:**

[REDACTED]  
[REDACTED]

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