



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

FILED

Oct 17, 2023, 12:53 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH1576

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 16, 2023, at 1:00 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Diana Hearod
Medicaid Program Analyst, Fair Hearing Liaison
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, [REDACTED] (“[REDACTED]”), appeared on behalf of the Petitioner. Jaclyn Roslyn (“Ms. Roslyn”), Director of

Nursing at [REDACTED] PPEC (“[REDACTED]”), appeared as a witness for the Petitioner.

Diana Hearod (“Ms. Hearod”), Medical Healthcare 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. (“eQHealth”), appeared as a witness for Respondent.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and forty-seven (147)-page evidence packet and a forty-seven (47)-page evidence packet. The evidence packets appear in the Office of Fair Hearings’ document management system as “[REDACTED] FH08.16.2026.pdf” and “23-FH1576_PPEC AHCA EVIDENCE PKT_47 Pgs._[Petitioner].pdf”, respectively. Absent an objection from the Petitioner, the undersigned admitted the one hundred and forty-seven (147)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the forty-seven (47)-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 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. RCE 1 at 16.
2. Petitioner is [REDACTED] ([REDACTED] old. *Id.*
3. Petitioner has been diagnosed with [REDACTED]
[REDACTED]. *Id.* at 16-17.

4. 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 5, 2023, Respondent terminated Petitioner’s PPEC services. *Id.* at 23-24. The NOO explained the basis of the termination as follows:

[T]he 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:

Principal reason-Denial:

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

Clinical rationale for decision: request is for PPEC for this almost [REDACTED] old with [REDACTED]. Child is [REDACTED]; no scheduled meds at PPEC; [REDACTED] can be given by any responsible adult [REDACTED] for resolved [REDACTED]. No need for skilled nursing. Deny this request.

Id. at 23-24.

5. On June 27, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On July 12, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 16, 2023, at 1:00 p.m., EST.

6. Dr. Kunis is a medical director of EQ health. Dr. Kunis testified as follows:

- a. Petitioner is a [REDACTED]-old child with [REDACTED]
[REDACTED] The child does not have constant [REDACTED]
- b. The child is [REDACTED].

- c. The child has [REDACTED] and has remained stable since [REDACTED]
[REDACTED]
- d. Per the nursing review, behavior is the major concern, and Petitioner has been referred for BA services.
- e. On p. 117 of RCE 1, the child's medications are listed. None of these medications listed require skilled nursing to administer.
- f. The medical records recommend medical daycare; however, they note that the child's behavior is a major concern.
- g. Primary care visit notes [REDACTED] and [REDACTED] has been prescribed, but [REDACTED] is likely not receiving those medications due to manufacturing delays.
- h. [REDACTED] has been controlling [REDACTED] [REDACTED] activity.
- i. It is Dr. Kunis' opinion that Petitioner's [REDACTED] does not require skilled nursing level monitoring.

7. [REDACTED] is the child's [REDACTED] and designated representative. [REDACTED] testified as follows:

- a. [REDACTED] believes [REDACTED] child should remain in PPEC due to [REDACTED]
[REDACTED]. The signs of an impending [REDACTED] can be best assessed in PPEC.
- b. Exceptional Student Education or "ESE" school will not be able to accommodate the child's needs.
- c. [REDACTED] believes [REDACTED] child's doctors have recommended for [REDACTED] child to stay in PPEC.

- d. [REDACTED] believes Petitioner has not been accepted into regular school due to [REDACTED]
[REDACTED]
 - e. The medication affects [REDACTED] [REDACTED] and [REDACTED] needs [REDACTED].
 - f. [REDACTED] child is still at risk for a [REDACTED].
8. Ms. Roslyn is the director of nursing at [REDACTED], the PPEC center that Petitioner attended. Ms. Roslyn testified to the following:
- a. She has known Petitioner for [REDACTED].
 - b. Petitioner looks more stable on paper than [REDACTED] actually is.
 - c. Petitioner's [REDACTED] are managed by medications being given on time every day. PPEC staff has to carry Petitioner off of the bus when [REDACTED] arrives in the morning because the medication makes [REDACTED] sleepy.
 - d. Regular daycare does not offer a safe place for Petitioner to sleep [REDACTED]
[REDACTED]. because of [REDACTED] after being given [REDACTED] [REDACTED]
 - e. Petitioner has issues with [REDACTED] due to [REDACTED] and [REDACTED]
Petitioner gets [REDACTED] and [REDACTED] due to [REDACTED] [REDACTED].
 - f. Petitioner is given time to nap so that [REDACTED] does not fall and hit [REDACTED] head. Hitting [REDACTED] head could cause a [REDACTED] The nurses help [REDACTED] stay safe when [REDACTED] [REDACTED]
and [REDACTED] puts [REDACTED] at risk of [REDACTED]
 - g. She does not recommend private duty nursing because Petitioner can be safe medically, and happy socially and emotionally, in the PPEC setting.

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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 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”), incorporated by reference in Fla. Admin. Code R. 59G-4.260, 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

Needs record citation.

13. Fla. Admin. Code R. 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, 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.

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. 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.

18. The Florida Medicaid Definitions Policy (August 2017) (“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.

19. Petitioner’s PPEC services were terminated based upon the services no longer being medically necessary. *See* ¶ 4. In order to be medically necessary, 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.” *See* ¶ 4. Skilled nursing was deemed to be in excess of Petitioner’s needs. *See* ¶ 4, 5, 6.

20. Dr. Kunis testified that the Petitioner is maintained on medication for [REDACTED] and has been stable with [REDACTED] since having [REDACTED]. Further, Dr. Kunis stated that skilled nursing care is not required to administer Petitioner's medications. See ¶ 6.

21. Petitioner has the following diagnoses: [REDACTED]. See ¶ 3.

22. Petitioner's [REDACTED] requires Petitioner to wear a [REDACTED]. See ¶ 6.

23. According to Fla. Admin. Code R. 59G-4.290, Skilled Services Criteria, an example of services where skilled nursing is necessary is: "[o]bservation is necessary to assess the recipient's response to treatment or to identify adverse reactions." See ¶ 14.

24. The testimony of Ms. Roslyn, the Petitioner's nurse, was notable in that it gave substantive, first-hand knowledge of Petitioner's day-to-day activities and needs in the PPEC setting from a nursing perspective. See ¶ 8.

25. Ms. Roslyn's testimony was credible and persuasive in this case. She has known Petitioner for [REDACTED]. Within 30 minutes of administering the [REDACTED] becomes [REDACTED]. Petitioner is [REDACTED] from [REDACTED] when [REDACTED] arrives at the PPEC center and is carried off the bus to keep [REDACTED] from [REDACTED]. See ¶ 8.

26. Throughout [REDACTED] day at PPEC, Petitioner is monitored for the effects of the medication that is administered while at PPEC. If [REDACTED] is noted to be [REDACTED], the nurses allow [REDACTED] time to sleep. Due to [REDACTED] combined with the


██████████ Petitioner is at risk for ██████████. See ¶ 8.

27. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Respondent did not prove by a preponderance of the evidence that PPEC services were no longer medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has not demonstrated that PPEC services are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent did not prove 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 PPEC services is **REVERSED**. Petitioner's appeal based on Respondent's denial is **GRANTED**.

DONE and ORDERED this 17th day of October 2023, in Tallahassee, Leon County, Florida.

 Lynne Ringers
23-FH1576
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LYNNE RINGERS, 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:



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