



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

FILED

Nov 08, 2023, 11:04 am

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

AHCA Case No.: 23-FH1632

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

AMENDED FINAL ORDER¹

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on September 6, 2023, at 10:03 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Diana Hearod
Medical/Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to terminate Petitioner’s prescribed pediatric extended care (“PPEC”) services was correct.

PRELIMINARY STATEMENT

¹ Amended to add a Notice of a Right to Judicial Review statement on the last page of the order.

All parties and witnesses appeared telephonically. Petitioner’s Authorized Representative and [REDACTED] [REDACTED] (“[REDACTED]”), appeared for Fair Hearing on behalf of Petitioner. Director of Nursing at [REDACTED], Laret Harvey (“Ms. Harvey”), appeared for Fair Hearing as a witness for Petitioner. Petitioner’s [REDACTED] [REDACTED] (“[REDACTED]”), appeared for Fair Hearing as a witness for Petitioner.

Diana Hearod, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared for Fair Hearing on behalf of Respondent. Chris Kunis, M.D. (“Dr. Kunis”), Medical Director for eQHealth Solutions Florida (“eQHealth”) and Kepro, appeared for Fair Hearing as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a sixty-two (62)-page evidence packet. The evidence packet appears in the Office of Fair Hearings document management system as the file titles “23-FH1632 Supporting documents.pdf²,” “23-FH1632 Supporting documents(2)pdf.pdf³,” “23-FH1632 Supporting documents(3)pdf.pdf⁴,” “23-FH1632 Supporting documents(4).pdf⁵,” “23-FH1632 Supporting documents(5).pdf⁶,” “23-FH1632 Supporting documents(6).pdf⁷,” “23-FH1632 Supporting Documents(7).pdf⁸,” and “23-FH1632 Supporting Documents(Final).pdf⁹.” Absent an objection from the Respondent, the undersigned admitted the sixty-two (62)-page evidence packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

² This file was received on September 6, 2023, and contains pages 1-4 of PCE 1.

³ This file was received on September 6, 2023, and contains pages 5-11 of PCE 1.

⁴ This file was received on September 6, 2023, and contains pages 12-19 of PCE 1.

⁵ This file was received on September 6, 2023, and contains pages 20-27 of PCE 1.

⁶ This file was received on September 6, 2023, and contains pages 28-35 of PCE 1.

⁷ This file was received on September 6, 2023, and contains pages 36-43 of PCE 1.

⁸ This file was received on September 6, 2023, and contains pages 44-51 of PCE 1.

⁹ This file was received on September 6, 2023, and contains pages 52-62 of PCE 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and thirty-nine (239)-page evidence packet and a forty-seven (47)-page evidence packet. The two hundred and thirty-nine (239)-page packet appears in the Office of Fair Hearings document management system as the file titles "[REDACTED] FH 08.22.2023 1-183.pdf" and "[REDACTED] FH 08.22.2023 184-239.pdf." The forty-seven (47)-page evidence packet appears in the Office of Fair Hearings document management system as the file title "23-FH1632_PPEC_AHCA EVIDENCE _47 pgs_[PETITIONER].pdf". Absent an objection from the Petitioner, the undersigned admitted the two hundred and thirty-nine (239)-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").

The undersigned Hearing Officer held the record open until September 13, 2023, for Respondent to file any comments or objections to Petitioner's Composite Exhibit 1 ("PCE 1"). On September 13, 2023, Respondent filed a one (1)-page response to Petitioner's Composite Exhibit 1, which is hereby admitted into evidence as Respondent's Composite Exhibit 3 ("RCE 3"). The one (1)-page response appears in the Office of Fair Hearings document management system as the file title "Letter to AHCA [REDACTED].pdf."

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 2 at page 2.

2. Petitioner is [REDACTED] ([REDACTED]-[REDACTED]) old. See RCE 1 at page 16. Petitioner is diagnosed with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 17, 41, 102. As of [REDACTED], Petitioner weighs [REDACTED]. *Id.*

3. Petitioner is prescribed the following medications: [REDACTED] if needed for [REDACTED] over [REDACTED]; [REDACTED], as needed; [REDACTED] as needed; [REDACTED], as needed; and [REDACTED], as needed. *Id.* at 18, 42, 106. Petitioner has not had [REDACTED] [REDACTED] *Id.* Petitioner's [REDACTED] indicates Petitioner experienced "[REDACTED]" [REDACTED] once in [REDACTED] and once in [REDACTED]. *Id.* at 19, 112. In the period between [REDACTED] and [REDACTED], Petitioner's Medication Administration Record ("MAR") indicates that [REDACTED] and [REDACTED] were administered [REDACTED] each at PPEC in [REDACTED], [REDACTED] [REDACTED] in [REDACTED] [REDACTED] [REDACTED] in [REDACTED], and [REDACTED] and [REDACTED] [REDACTED] each in [REDACTED]. *Id.* at 114-120. Petitioner attends PPEC of [REDACTED] five (5) days per week, and receives [REDACTED] [REDACTED] at the PPEC center. *Id.* at 17, 48.

4. Petitioner requested continuation of PPEC services for the certification period of June 11, 2023, to June 21, 2023, specifically, 32 units of code T1026 (partial day services) and 8 units of code T1025 (full day services). In a Notice of Outcome ("NOO"), dated June 30, 2023, Respondent was unable to make a decision for these services. *Id.* at 25-27. The NOO explained the basis for this outcome as follows:

We are not able to make a decision for the services requested by your provider for the following dates and units because of a TECHNICAL REASON. The reason is in the "Technical Reason" column below:

The Technical Reason column provided:

The request for these dates of services was submitted to us too late.

...

Id. at 26.

5. Petitioner requested continuation of PPEC services for the certification period of June 22, 2023, to December 7, 2023, specifically, 484 units of code T1026 (partial day services) and 121 units of code T1025 (full day services). In a Notice of Outcome (“NOO”), dated June 30, 2023, Respondent terminated all units. *Id.* at 26-28. The NOO explained the basis for 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 or injury 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 NOO further provided:

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

Clinical Rationale for Decision: [REDACTED] with a history of [REDACTED]. The patient [REDACTED], has not [REDACTED]. Nursing needs consist of monitoring and supervision.

...

Id. at 27.

6. On June 30, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On July 26, 2023, the undersigned issued an Order Scheduling Fair Hearing and Prehearing Instructions, setting the hearing for August 22, 2023, at 10:00 a.m. EST. On August 14, 2023, the undersigned issued, *sua sponte*, an Order of Continuance and Second Order Scheduling

Hearing and Prehearing Instructions, setting the hearing for September 6, 2023, at 10:00 a.m. EST.

7. Dr. Kunis is the Medical Director for eQHealth. Dr. Kunis established the following at Fair Hearing:

- a. eQHealth uses nurses and physicians to review plans in accordance with the medical necessity guidelines established by AHCA. The reviewers took into account Petitioner's multiple medical conditions, PPEC plan of care, and administration of medications. See ¶ 5.
- b. In Dr. Kunis's medical opinion, [REDACTED]," or [REDACTED] [REDACTED] generally have a [REDACTED]. The [REDACTED] log indicates no [REDACTED] recently. See ¶ 3. The physician plan of care and clinical summary provides that Petitioner has been weaned off [REDACTED]. *Id.* at 20, 107. Dr. Kunis provides his medical opinion that [REDACTED] may occur as a result of other medical conditions.
- c. Dr. Kunis contends that since Petitioner's MAR log indicates [REDACTED] prescribed medications are as needed, they can be administered outside of PPEC, considering [REDACTED] [REDACTED] medication has been terminated. See ¶ 3.
- d. Dr. Kunis argues that Petitioner's additional therapies can be provided outside of PPEC, and supervision can be provided by any responsible adult.

8. [REDACTED] testified to the following at Fair Hearing:

- a. [REDACTED] asserts that aside from Petitioner's [REDACTED] [REDACTED], [REDACTED] is also [REDACTED]. See PCE 1 at 5-6. Petitioner was born with [REDACTED]

██████████ and ██████████ but have been controlled since birth with medication. *Id.* Petitioner has been weaned off ██████████, prior to the ██████████. *See* RCE 1 at 62, 82-87.

- b. ██████████ expressed concern that Petitioner's ██████████ may lead to ██████████ *Id.* at 62-63. Petitioner has ██████████, on standby that ██████████ carries with ██████████ to and from PPEC in case of a ██████████ There have been no administrations of ██████████ to Petitioner. *See* ¶ 3. Petitioner's ██████████ ██████████ experienced at birth are not present.

9. Ms. Harvey is the Director of Nursing at PPEC of ██████████. Ms. Harvey testified to the following at Fair Hearing:

- a. Ms. Harvey contends that due to Petitioner's ██████████ disorder, ██████████ is ordered to be given ██████████ as needed. Ms. Harvey argues that during the initial intake for PPEC Petitioner's ██████████ described Petitioner's ██████████ as ██████████ PPEC staff have noticed Petitioner's ██████████. PPEC staff monitor for ██████████ No ██████████ seizures have been observed at PPEC.
- b. Petitioner is able to ██████████ or by ██████████. *Id.* at 49. Petitioner is ██████████ and ██████████. *Id.* at 48. Petitioner ██████████ as ██████████ is ██████████. *Id.* at 46.

10. ██████████ is Petitioner's ██████████

- a. ██████████ contends that ██████████ noticed Petitioner displayed ██████████ ██████████ prior to the ██████████ study. ██████████ believes PPEC supports Petitioner's needs.

11. Petitioner submitted test notes from a [REDACTED]

[REDACTED] performed at [REDACTED], and [REDACTED]

[REDACTED]. See PCE 1 at 1-62. The test notes provide as follows:

[REDACTED]

Impression:

This is an [REDACTED] due to:

1. [REDACTED].
2. [REDACTED].
3. [REDACTED].

Interpretation:

The findings indicate the presence of [REDACTED] to [REDACTED] and [REDACTED], most frequent [REDACTED].

[REDACTED]

Impression:

This is an [REDACTED]

1. [REDACTED].
2. [REDACTED].
3. [REDACTED].

Interpretation:

The findings indicate the presence of [REDACTED] and heightened potential for [REDACTED], most frequent [REDACTED].

Assessment:

[REDACTED] with h[istory] of [REDACTED] is having [REDACTED] for evaluation of [REDACTED] spells characterized as [REDACTED] did not have any of [REDACTED] typical spells during the course of [REDACTED] as described above.

Recommendations:

1. Will not start any [REDACTED]. Explained to [REDACTED] and [REDACTED] that [REDACTED] does have an [REDACTED] which is likely secondary to [REDACTED] however no evidence of [REDACTED]
2. Results of [REDACTED] discussed with [REDACTED]
3. [REDACTED]

4. Discontinue intensive [REDACTED]
5. Recording events on phone may help future decision making.
6. Discussed importance of medication compliance, the patient is taking [REDACTED] medication without difficulty [REDACTED] and [REDACTED] denies any issues with compliance at home
7. Discussed with [REDACTED] to contact [REDACTED] with further questions or concerns.
8. [REDACTED] for discharge home
9. Follow up with [REDACTED]

...

See PCE 1 at 58-60.

12. On September 13, 2023, Dr. Kunis, on behalf of Respondent, filed a one (1)-page response to Petitioner's Composite Exhibit 1. The response states as follows:

This hearing occurred as scheduled in relation to the denial of the PPEC services. Additional evidence has been submitted for my review related to [REDACTED] study after the hearing. The impression is there is [REDACTED] which remains in the [REDACTED] and the area did [REDACTED]. The [REDACTED] noted may come from several medical conditions including [REDACTED] which was not proven by the [REDACTED] testing. [REDACTED] can occur many times throughout the day and usually last for about [REDACTED] and are a [REDACTED]. [REDACTED] can be completely normal for an [REDACTED] and is a way for [REDACTED] and may also be day dreaming. [REDACTED] is one of the many signs of [REDACTED] as mentioned in the documents. Children with [REDACTED] will sit quietly and [REDACTED] frequently. The conclusion in the report stated the child is to remain off the [REDACTED] medication and be followed up as directed.

My conclusion is this does not warrant PPEC services as being medically necessary and recommend denial of PPEC be upheld.

...

See RCE 3.

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 (2019). 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).

15. Because Respondent terminated a previously approved service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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 Florida Medicaid Prescribed Pediatric Extended Care Services Coverage Policy (February 2018) (“PPEC Policy”), incorporated by reference in Fla. Admin. Code. R. 59G-4.260, governs PPEC services available under Florida Medicaid. The PPEC Policy provides as follows:

1.0 Introduction

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.

...

2.0 Eligible Recipient

...

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

...

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 non-emergency 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 sectioned 1905(a) of the Social Security Act, 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

...

See RCE 2 at pages 38-43.

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, F.A.C. 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 EPSDT applies to this request for services. However, a state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). 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.

21. 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.

...

See RCE 2 at 23.

22. The Florida Medicaid Authorization Requirements Policy (June 2016) ("Authorization Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

1.1 Description

This policy contains general requirements for providers to obtain authorization to render Florida Medicaid services, when applicable.

...

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.

...

See RCE 2 at 32-34.

23. In the NOO, dated June 30, 2023, Respondent terminated Petitioner's PPEC services. See ¶ 4-5. The NOO explained that the basis of the termination was that the services were not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment", were "in excess of the patient's needs", and were not "reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide". See ¶ 5. Respondent has burden of proof to show by a preponderance of evidence that the Respondent's determination was correct. See ¶ 15.

24. The role of PPEC services is to provide patients "who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision." See ¶ 17. According to Rule 59G-4.290, F.A.C., skilled nursing requires that the service be, *inter alia*, sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse; required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effect performance; **required on a daily basis**; and consistent with the nature and severity of the individual's condition. See ¶ 18 (emphasis added).

As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria

as outlined in Fla. Admin. Code R. 59G-1.010. See ¶ 19-20. The Definitions Policy maintains a component of medical necessity that services must be “[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.” See ¶ 21.

25. In the instant case, according to Dr. Kunis’s testimony, eQHealth reviewers took into account Petitioner’s multiple medical conditions, PPEC plan of care, and administration of medications when making their determination. See ¶ 5, 7. Petitioner’s medical history include

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See ¶ 2. Petitioner’s prescription medications include [REDACTED], if needed for [REDACTED] over [REDACTED]; [REDACTED], as needed; [REDACTED], as needed; [REDACTED], as needed; and [REDACTED], as needed. See ¶ 6. According to the MAR log, [REDACTED] and [REDACTED] were administered [REDACTED] at PPEC in [REDACTED] [REDACTED] in [REDACTED], [REDACTED] in [REDACTED], and [REDACTED] and [REDACTED] in [REDACTED] [REDACTED]. See ¶ 3. The [REDACTED] submitted by the PPEC center indicates Petitioner experienced “[REDACTED] [REDACTED]” [REDACTED] in [REDACTED] for [REDACTED] and [REDACTED] in [REDACTED] for [REDACTED] seconds. See ¶ 3. There are no recent [REDACTED]. See ¶ 3.

26. Ms. Harvey, [REDACTED], and [REDACTED] all testified to their observation of Petitioner experiencing [REDACTED].” See ¶ 8-10. Dr. Kunis provided his medical opinion that [REDACTED],” or [REDACTED], generally have a [REDACTED]. See ¶ 7. Ms. Harvey argued that during the initial intake for PPEC, Petitioner’s [REDACTED] described Petitioner’s

██████████ as ██████████. See ¶ 9. However, the record does not indicate that PPEC staff have observed any “██████████” seizures to-date aside from Petitioner’s ██████████. See ¶ 9. In addition, ██████████ testified that Petitioner’s ██████████ experienced at birth are not present and have been controlled with medication. See ¶ 8. The record indicates that ██████████ is ordered for Petitioner in the event of a ██████████. See ¶ 3, 8, 9. The ██████████ also indicates no ██████████. See ¶ 3, 7. There have been no administrations of ██████████ for Petitioner during PPEC. See ¶ 3, 8.

27. Further debate regarding the issue of this case rested on the outcome of Petitioner’s ██████████ performed at ██████████ on ██████████. Most notable of the exam notes provide “[t]he findings indicate the presence of ██████████ to ██████████ ██████████ and heightened ██████████ with ██████████ ██████████.” See ¶ 11. The examiner’s conclusion mentions “[d]iscontinue intensive ██████████ monitoring with ██████████” and “follow up with ██████████” as recommendations post-examination. See ¶ 11. In response to the exam notes, Dr. Kunis states that “impression is there is ██████████ which remains in the ██████████ and the area did not show ██████████.” Moreover, ██████████ can be completely normal for an ██████████ and is a way for an ██████████ to regroup and... is one of the many signs of ██████████ as mentioned in the documents.” See ¶ 12. There is no record that further testing or medications for Petitioner’s ██████████ condition has been suggested, recommended, or prescribed. See ¶ 8, 11, 12.


28. Accordingly, the record does not demonstrate any scheduled medications for Petitioner during PPEC. See ¶ 3, 5, 7. The record demonstrates Petitioner has been weaned off [REDACTED] medication, [REDACTED] in [REDACTED]. See ¶ 5, 7, 8. [REDACTED] which is prescribed on an as-needed basis, [REDACTED] during PPEC. See ¶ 3, 8, 9. Basic monitoring and supervision are not among the criteria under Rule 59G-4.290, F.A.C. for the purpose of qualifying as requiring skilled nursing services. See ¶ 18. Additionally, the therapies Petitioner receives can be provided outside of PPEC. As previously discussed, the record does not clearly demonstrate that the nature and severity of Petitioner's medical conditions warrant intervention by a registered nurse on a daily basis. See ¶ 26-27. All in all, the undersigned finds that Respondent presented sufficient, credible evidence to demonstrate that Petitioner does not require the duties of specialized treatment or skilled nursing services on a daily basis, and thus, are in excess of Petitioner's needs.

29. Upon consideration of the testimony provided, evidence submitted, and applicable policies, 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 the PPEC services are not medically necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent proved by a preponderance of the evidence that Respondent's termination of PPEC services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's termination of PPEC services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

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

 Kimberly Roche
23-FH1632
2023.11.08 08:32:48
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KIMBERLY ROCHE, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop #11
Tallahassee, FL 32308-5407

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AHCA Medicaid Hearing Unit
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