



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

FILED

Jan 10, 2024, 8:25 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH1956

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on December 11, 2023, at 9:04 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

All parties appeared telephonically. Petitioner's Authorized Representative, [REDACTED] ("[REDACTED]"), Director of Nursing for [REDACTED], appeared on behalf of the Petitioner. [REDACTED] ("[REDACTED]"), Petitioner's [REDACTED], attended as a witness for Petitioner.

Diana Hearod ("Ms. Hearod"), Medical/Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Chris Kunis("Dr. Kunis"), Medical Director for eQHealth Solutions, Inc., appeared as a witness for Respondent.

The following appeared to offer translation services for Petitioner: Donaji, interpreter number 406444, and Miguel, interpreter number 383887.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eighty-four (84)-page evidence packet. The evidence packet appears in the Office of Fair Hearing's document management system as file title "23-FH1956 Emailed Correspondence.pdf". Absent an objection from the Respondent, the undersigned admitted the eighty-four (84)-page evidence packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and nineteen (319) page evidence packet and a forty-seven (47) page evidence packet. The three hundred and nineteen (319)-page evidence packet appears in the Office of Fair Hearings' file management system as file titles "[REDACTED] FH 09.28.2023 1-108.pdf", "[REDACTED] FH 09.28.2023 109-153.pdf", "[REDACTED] FH 09.28.2023 154-200.pdf", "[REDACTED] FH 09.28.2023 201-275.pdf", and "[REDACTED] FH 09.28.2023 276-319.pdf". The forty-seven (47)-page evidence packet appears as file title "23-FH1956 – Agency Evidence PPEC 47pgs.pdf". Absent an objection from the Petitioner, the undersigned admitted the three hundred and nineteen (319)-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. See page 2 of RCE 2.

2. Petitioner is [REDACTED]. See page 21 of RCE 1. Petitioner is diagnosed with the following: [REDACTED]; [REDACTED] (“[REDACTED]”); [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; and [REDACTED]. *Id.* at 21-22. Petitioner is currently prescribed the following medications: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] and [REDACTED]. *Id.* at 244.

3. Petitioner is not [REDACTED], nor does [REDACTED] use [REDACTED], or [REDACTED]. *Id.* at 63. Petitioner does not require [REDACTED]. *Id.* at 64. Petitioner does not require [REDACTED]. *Id.* at 63.

4. Petitioner requested continuation of PPEC services, specifically 720 units of code T1026 (Partial day services) and 180 units of code T1025 (Full day services). In a Notice of Outcome (“NOO”), dated July 5, 2023, Respondent terminated Petitioner’s PPEC services. *Id.* at. The NOO explained the basis of the termination as follows:

[T]he requested services are not medically necessary under the following standard(s):

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

...

The NOO further stated:

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

Clinical rationale for Decision: Request is for PPEC services for this [REDACTED]
[REDACTED]
[REDACTED]. Child attends school so PPEC is for after school hours//non school days. These clinicals do not justify the medical necessity of requested PPEC. Deny this request.

...

Pages 29 - 30 of Respondent's Composite Exhibit 1.

5. Petitioner requested reconsideration of the Respondent's decision. In a Notice of Reconsideration Determination ("NRD") dated August 11, 2023, Respondent upheld its decision.

Id. at 44 – 45. The NRD explained the basis of the decision as follows:

PR Recon Determination: The patient is [REDACTED]
[REDACTED]
[REDACTED]. After reconsidering the submitted information, the original decision has to be upheld. There is no need for skilled nursing services; therefore, PPEC has to be denied.

...

Page 44-45 of Respondent's Composite Exhibit 1.

6. On August 11, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On September 6, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for September 28, 2023. On September 21, 2023, Petitioner requested a continuance which was granted. On October 25, 2023, the undersigned issued a Second Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for December 11, 2023, at 9:00 a.m. EST.

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

- a. Petitioner was admitted to [REDACTED]. The [REDACTED] [REDACTED]. See page 243 of RCE 1. The study showed more [REDACTED].
- b. Petitioner had [REDACTED]. See page 299 of RCE 1.
- c. There does not appear to be a need for skilled nursing services. Petitioner is medically complex, but [REDACTED] attends regular school. PPEC services are only being used for observation after school and on holidays.
- d. Additional therapies can be provided outside of the PPEC center. Other services, such as personal care, can be provided while the parents are working.

8. [REDACTED] is the Director of Nursing for [REDACTED]. [REDACTED] testified to the following:

- a. Petitioner still has some [REDACTED] problems. Petitioner had [REDACTED] [REDACTED].
- b. Petitioner is [REDACTED].
- c. [REDACTED] believes that PPEC should continue because Petitioner needs to be monitored.
- d. Petitioner has had medication adjustments.
- e. Petitioner has a [REDACTED]. Petitioner needs assistance with [REDACTED] activities of daily living.
- f. A PPEC nurse observed [REDACTED].
- g. Petitioner is sometimes not willing to take [REDACTED] medications at home.

9. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following:
- a. There are [REDACTED]. [REDACTED] sometimes becomes [REDACTED].
 - b. Petitioner becomes [REDACTED] when adjusting [REDACTED] medication.
 - c. [REDACTED] can administer medications at home.

CONCLUSIONS OF LAW

10. 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).

11. This hearing was held as a *de novo* proceeding pursuant to Fla. Admin. Code R. 59G-1.100(17)(b).

12. 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.)

13. The Florida Medicaid Prescribed Pediatric Extended Care Services Policy ("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

14. 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, Fla. Stat.§ 400.902 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.

15. 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.

16. 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.

17. 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).

18. 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.

19. The Florida Medicaid Definitions Policy, incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs
- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

20. In the NOO, dated July 5, 2023, Respondent terminated Petitioner's PPEC services. See ¶ 4. The NOO explained that the basis for the termination was that PPEC services were not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment" and were "in excess of the patient's needs". *Id.* The NOO further explained that the "clinical do not justify the medical necessity of the requested PPEC". *Id.*

21. 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 ¶ 13. PPEC provides "skilled nursing supervision and therapeutic interventions in a non-residential setting to medically dependent or technologically dependent recipients." *Id.*

22. 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, supra ¶ 2 – 3, 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 ¶ 15. Specifically, Petitioner is not [REDACTED], nor does [REDACTED] use a [REDACTED], [REDACTED], or [REDACTED]. See supra ¶ 3. Petitioner does not have [REDACTED]. *Id.* Petitioner did have [REDACTED]; however, Petitioner's [REDACTED] – that is, not at the PPEC center. See ¶ 7. Petitioner's medications can be administered by [REDACTED] at home. See ¶ 9. In all, Dr. Kunis provided credible testimony that there is not a need for skilled nursing services, as Petitioner's nursing needs consist of observation. See supra ¶ 7. Respondent


demonstrated that PPEC services are “in excess” of the Petitioner’s needs. Petitioner does not meet any of the criteria listed in the Florida Administrative Code for skilled nursing and needs no medication during PPEC services. As such, the record shows that PPEC services are not medically necessary for Petitioner.

23. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence that continuing PPEC services was not medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Respondent has demonstrated that PPEC services are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Respondent proved by a preponderance of the evidence that Respondent’s termination of PPEC services was correct.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent’s denial is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is **DENIED**.

DONE and ORDERED this 10th day of January, 2024, in Tallahassee, Leon County, Florida.

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

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

Copies Furnished To:

[REDACTED]
[REDACTED]

AHCA Medicaid Hearing Unit
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