

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



FILED

Dec 14, 2023, 11:28 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2043

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on November 9, 2023, at 9:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Sandra Durden
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether 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] (" [REDACTED] ") appeared on behalf of Petitioner. [REDACTED], (" [REDACTED] "),

Petitioner's [REDACTED], appeared as a witness for Petitioner. Angela Viilarino appeared on behalf of Petitioner as an observer.

Sandra Durden, ("Ms. Durden") 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.

Petra, interpreter from Language Line Services, identification number 358217, appeared to provide Spanish translation services for Petitioner.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a seventy-two (72)-page evidence packet, an eighty-three (83)-page evidence packet, a seven (7)-page evidence packet and a nine (9)-page evidence packet. The seventy-two (72)-page evidence packet is identified in the Office of Fair Hearings Document Management system as file title: "23-FH2043 Correspondence-FAX.pdf." The eighty-three (83)-page evidence packet is identified in the Office of Fair Hearings Document Management System as file title: "23-FH2043 Correspondence -2-FAX.pdf." The seven (7)-page evidence packet is identified in the Office of Fair Hearings Document Management System as file title: "23-FH2043 Faxed Evidence.pdf." The nine (9) page evidence packet is identified in the Office of Fair Hearings Document Management System as file title: "23-FH2043 Email Correspondence.pdf." Absent an objection from Respondent, the undersigned admitted the Petitioner's evidence packets as follows: the seventy-two (72)-page packet as Petitioner's Composite Exhibit 1 ("PCE1"), the eighty-three (82)-page packet as Petitioner's Composite Exhibit 2 ("PCE2"), the seven (7)-page packet as Petitioner's Composite Exhibit 3 ("PCE3") and the nine (9)-page packet as Petitioner's Composite Exhibit 4 ("PCE 4").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and ninety-two (292)-page evidence packet and a forty-seven (47)-page evidence packet. The two hundred and ninety-two (292)-page packet is identified in the Office of Fair Hearings Document Management System as file titles: "[REDACTED] FH 1-242.pdf", and "[REDACTED] FH 09.25.2023 243-292.pdf." The forty-seven (47)-page evidence packet is identified in the Office of Fair Hearings Document Management System as file title: "23-FH2403 -AHCA EVIDENCE PKT_47 pgs_[RECIPIENT].pdf." Absent an objection from Petitioner, the undersigned admitted the two hundred and ninety-two (292)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1") and the forty-seven (47)-page document 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. RCE 1 at 1. eQHealth is a Quality Improvement Organization ("QIO") contracted by the agency to review prior authorization requests for services. RCE 2 at 2.
2. Petitioner is [REDACTED]. RCE 1 at 21.
3. Petitioner has been diagnosed with [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 21-22.
4. Petitioner requested continuation of PPEC services, specifically 520 units of code T1026 (Partial day services) and 130 units of code T1025 (Full day services). In a Notice of Outcome ("NOO"), dated August 1, 2023, Respondent terminated Petitioner's PPEC services on the basis of medical necessity. *Id.* at 30-31. The NOO explained the termination as follows, in pertinent part:

[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 [REDACTED]. No need for skilled nursing as per clinicals submitted so deny the requested stay.

Id. at 30-31.

5. Petitioner requested a redetermination. In a Notice of Reconsideration Determination ("NRD") dated August 21, 2023, the denial was upheld. The NRD explained the determination as follows, in pertinent part:

[T]he reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically, the services must be:

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

The medical basis for the reconsideration determination is as follows:

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

Id. at 45-46.

6. On August 18, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On September 1, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 5, 2023, at 1:00 p.m., EST. A partial hearing was held on October 5, 2023, however a fire emergency in the undersigned's building caused proceedings to be interrupted. A second Order Scheduling Fair Hearing by Telephone and Prehearing instructions reset the hearing for November 9, 2023, at 9:00 a.m. EST.

7. Dr. Kunis is a medical director at eQHealth. Dr. Kunis testified as follows:

- a. Petitioner is a [REDACTED] child with [REDACTED]. The child is [REDACTED], [REDACTED].
- b. The child has no scheduled medications at PPEC. Any medications that the child needs can be given before or after PPEC.
- c. The child has never received any "as needed" medications for [REDACTED] such as [REDACTED] at PPEC.
- d. Skilled nursing does not include observation of a usually healthy child.
- e. The child lacks sufficient needs to warrant skilled nursing care.

8. [REDACTED] testified as follows:

- a. [REDACTED] is the intake coordinator at [REDACTED] PPEC.
- b. [REDACTED] wants to continue PPEC services until the child has completed [REDACTED] that has been ordered based on [REDACTED].

9. [REDACTED], Petitioner's [REDACTED] testified as follows:

- a. [REDACTED] feels PPEC services will check to see that “all is good” with [REDACTED] child and give [REDACTED] medications. [REDACTED] child’s care is a big responsibility.

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.

...

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.

...

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.

...

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.

Id. at 39-42.

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 describes “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.

Id. at 5.

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). *Id.* at

6.

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.

Id. at 13.

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.

Id. at 23.

20. In this case, Respondent terminated Petitioner’s PPEC services. Respondent issued an NOO dated August 1, 2023, which indicated services were no longer medically necessary. See ¶

4. The NOO stated services were no longer: “Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs. “

21. Petitioner requested a reconsideration. In an NRD dated August 21, 2023, the denial was upheld on the basis of medical necessity. The NOO indicated that 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 ¶ 5.

22. 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. . [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.

23. PPEC services are intended for patients with who “require continuous therapeutic interventions or skilled nursing supervision.” See ¶ 13. 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 ¶ 16. As provided in the Definitions Policy, a component of medical necessity is 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 and reflective of the level of services that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide. “See ¶ 19.

24. Petitioner is a [REDACTED] child with [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. See ¶ 2, 3.

25. Dr. Kunis provided credible and persuasive testimony that there was no evidence to show that Petitioner's condition meets the criteria for skilled nursing services. See ¶ 7. The child is maintained on monitoring, "as needed" medications and has not had [REDACTED]. The child has not required any interventions or medication while at PPEC. See ¶ 7.

26. Additionally, Petitioner is prescribed medications that can be given by a lay person and are not administered at PPEC. See ¶ 7. Petitioner does not use a [REDACTED] [REDACTED]. See ¶ 3. Petitioner does not use [REDACTED] [REDACTED]. See ¶ 3. Further, Petitioner does not meet any of the criteria listed in the Florida Administrative Code for skilled nursing and needs no medication during PPEC services. See ¶ 7,15. Fla. Admin. Code R. 59G-4 lists the criteria for skilled nursing, none of which apply to Petitioner. See ¶ 15.

27. Based on the foregoing, the record demonstrates that the PPEC services at issue no longer meet the following medical necessity criteria: "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 services that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide" See ¶ 19. Thus, the termination of these services by Respondent was warranted.

28. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence

that the PPEC services at issue do not meet medical necessity criteria. 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 termination of PPEC services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and ORDERED this the 14th day of December 2023, in Tallahassee, Leon County, Florida.



Lynne Ringers

23-FH2043

2023.12.14

08:15:44 -05'00'

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:



AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com