



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

FILED

Nov 28, 2023, 10:10 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH2091

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a hearing officer convened a telephonic Fair Hearing on the instant case on October 16, 2023, at 9:00 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Suzanne Chillari
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 decision to terminate prescribed pediatric extended care (“PPEC”) services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED], appeared at the Fair Hearing on behalf of Petitioner.

Suzanne Chillari, Medical Health Care Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as the representative for Respondent. Dr. Chris Kunis (“Dr. Kunis”), Medical Director with eQHealth Solutions of Florida and Kepro, Inc. (“eQHealth”), and Dr. Karen Goldberg (“Dr. Goldberg”), Board Certified Child, Adolescent, and Adult Psychiatrist and Medical Director for eQHealth, attended as witnesses for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a twenty-five (25)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ Case Management system as “23-FH2091 Evidence.pdf”. Absent an objection from Respondent, the undersigned admitted the twenty-five (25)-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 one hundred and forty-six (146)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as files titled “[REDACTED] FH 10.16.2023 1-90.pdf” and “[REDACTED] FH 10.16.2023 91-146.pdf.” Absent an objection from the Petitioner, the undersigned admitted the one hundred and forty-six (146)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-six (46)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ case management system as “Agency Evidence Legal Authorities 23-FH2091.pdf”. Absent an objection from the Petitioner, the undersigned admitted the forty-six (46)-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. See RCE 1 at page 1. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the agency to review prior authorization requests for services. See RCE 2 at page 2.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. See RCE 1 at page

16. Petitioner is diagnosed with the following: [REDACTED] ([REDACTED]), [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 16 – 17.

3. A FL Home Health Assessment Tool assessment was completed for Petitioner. *Id.* at 46 – 54. According to the assessment, Petitioner is stable with no heightened risks for serious complications and death. *Id.* at 47. Petitioner receives [REDACTED] medication. *Id.* at 48. Petitioner does not use a ventilator, BiPAP/CPAP, and has no suctioning needs and does not use nebulizers. *Id.* at 49. Petitioner does [REDACTED]. *Id.* Petitioner does not use enteral feeds, does not receive therapy intravenously, and does not have wounds or stomas. *Id.* at 50 – 51. Petitioner does [REDACTED]. *Id.* at 50.

4. Petitioner requested continuance of PPEC services for the certification period of May 22, 2023, through November 17, 2023. *Id.* at 27. In a Notice of Outcome (“NOO”), dated May 25, 2023, Respondent terminated Petitioner’s PPEC services. *Id.* at 27 – 31. The NOO explained the basis of the termination as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administration Code, Specifically the requested services are not medically necessary under the following standard(s):

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

The rationale for our decision is as follows:

PR Principal Reason – Denial

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

Clinical Rationale for Decision: Request is for PPEC for this [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] These clinicals do not justify medical necessity of PPEC. Deny this request.

Id. at 27 – 28.

5. On August 24, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On September 19, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 16, 2023, at 9:00 a.m. EST. According to the NOO, the current units of PPEC services would continue until the reconsideration decision was made. *Id.* at 28.

6. Dr. Kunis testified as follows:

- a. Petitioner has a history of [REDACTED], [REDACTED], and [REDACTED]
[REDACTED].
- b. Petitioner has [REDACTED] at the PPEC center. See RCE 1 at 20, 22. There is a safety concern relating to the other children at the PPEC center. See RCE 1 at 22.

- c. Petitioner's applied behavior analysis ("ABA") services and medication adjustments have improved Petitioner's behavior issues, but supervision is not a reason for Petitioner to remain in the PPEC center.
- d. Petitioner has had [REDACTED]. Petitioner's medication has been adjusted to [REDACTED].
- e. Petitioner received a [REDACTED].
See RCE 1 at 21.
- f. [REDACTED] stated [REDACTED] was [REDACTED]. *See RCE 1 at 21.*
- g. Petitioner is enrolled in a public school. *See RCE 1 at 17.*
- h. Dr. Kunis reviewed Petitioner's ABA Services Report. *See PCE 1 at 59 – 101.* Petitioner's behaviors have improved significantly. ABA services are necessary for Petitioner. Most of Petitioner's behavior issues can be appropriately controlled in a setting alternative from PPEC.
- i. Petitioner's [REDACTED] can be managed with medication. Petitioner's occasional [REDACTED] are not an indication of requiring PPEC services. eQHealth does not approve PPEC services for occasional [REDACTED].
- j. Dr. Kunis agreed with the previous eQHealth reviewers that PPEC services should be denied.
- k. Petitioner is not receiving any medication at PPEC that cannot be administered at home.

7. Dr. Goldberg testified as follows:

- a. PPEC services are for children with medical issues that require skilled nursing. These are typically children with [REDACTED]. Petitioner started PPEC services at [REDACTED]. See RCE 1 at 99.
 - b. Petitioner had one breakthrough [REDACTED] in [REDACTED]. Petitioner's request for PPEC services is from [REDACTED]. There are no reports of any [REDACTED] from [REDACTED].
 - c. It appears the primary request for PPEC services is for supervision in case Petitioner has a [REDACTED] and to address Petitioner's behavior issues. PPEC services are not for supervision.
 - d. PPEC services are not needed if a child needs ABA services. ABA services should be administered in more natural environments.
 - e. Dr. Goldberg opined that PPEC services are not medically necessary for the authorization dates of [REDACTED]. There is no documentation that Petitioner is having [REDACTED] that require skilled nursing. The medication Petitioner is receiving can be given in a clinic setting outside of PPEC, at home, and/or at school.
8. Petitioner's authorized representative and [REDACTED], [REDACTED], testified:
- a. Petitioner only had one incident of [REDACTED] and [REDACTED] [REDACTED].
 - b. Petitioner's last [REDACTED] was [REDACTED]. Petitioner needs to be constantly supervised because of [REDACTED].
 - c. [REDACTED] feels safe when Petitioner is at the PPEC center.

- d. Petitioner is in school and receives ABA services in the morning at PPEC.
- e. Petitioner has [REDACTED] at home.
- f. Petitioner can receive ABA services in a clinic or at home, but [REDACTED] wants Petitioner to be around people in the community.
- g. [REDACTED] wants Petitioner to receive ABA at PPEC so [REDACTED] has all of [REDACTED] services at the same place. Petitioner feels comfortable at PPEC because [REDACTED] knows all the people. It is convenient for Petitioner to receive [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and ABA services, as well as have a nurse to take care of [REDACTED] in case of a [REDACTED], at the PPEC center.

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), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 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") establishes the provision and coverage of PPEC services under Florida Medicaid. See RCE 2 at 38 – 43. 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

RCE 2 at pages 40 – 42.

13. Fla. Admin. Code Rule 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, Florida Statutes, 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.

RCE 2 at pages 46.

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. Section 409.905(2), Florida Statutes, 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 (“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.

RCE 2 at page 23.

19. In the NOO, dated May 25, 2023, Respondent terminated Petitioner's PPEC services. *See supra* ¶ 4. The NOO explained that the basis of the termination was that the request was not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment". *See supra* ¶ 4. Respondent explained that Petitioner does not require daily skilled nursing services based on the documentation provided. *See supra* ¶ 6, 7.

20. PPEC services are intended for patients who "require continuous therapeutic interventions or skilled nursing supervision." *See supra* ¶ 12. 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 supra* ¶ 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." *See supra* ¶ 18. Dr. Kunis provided credible and persuasive testimony that Petitioner does not require daily skilled nursing services. *See supra* ¶ 6. The record reflects that Petitioner is stable with no heightened risk(s) for serious complications. *See supra* ¶ 3. Petitioner does not receive any prescription medications that require a skilled nurse to administer. *See supra* ¶ 3, 6, 7. Petitioner

is not using a ventilator, BiPAP/CPAP, or oxygen. *See supra* ¶ 3. Petitioner does not use enteral feeds, receive therapy intravenously, or receive wound or stoma care. *See supra* ¶ 3. In all, there is no indication that Petitioner continues to need daily require skilled nursing services. [REDACTED] [REDACTED]'s testimony establishes that Petitioner continues to have medical needs with [REDACTED], *supra* ¶ 8, but the record does not reflect that Petitioner requires daily skilled nursing services or continuous therapeutic interventions at this time. Therefore, based on the foregoing, the PPEC services at issue are "in excess of" Petitioner's needs.


21. [REDACTED] stated that Petitioner only attacked staff one time. *See supra* ¶ 8. However, medically necessary PPEC services are provided to recipients who are medically stable and not a threat to others. *See supra* ¶ 12. Dr. Kunis testified that Petitioner's behavior issues can be appropriately controlled in a setting alternative from PPEC. *See supra* ¶ 6. Dr. Goldberg testified PPEC services are for children with medical issues that require skilled nursing and that there is no documentation that Petitioner is having [REDACTED] that require skilled nursing. *See supra* ¶ 7. [REDACTED] testified that it is convenient for Petitioner to receive [REDACTED], [REDACTED], [REDACTED], and ABA services, as well as have a nurse to take care of [REDACTED] in case of a [REDACTED] at the PPEC center. However, medical necessity criteria require that services "may not be furnished in a manner primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider." *See supra* ¶ 18. Here, it appears the requested PPEC services are primarily intended for the convenience of Petitioner and [REDACTED], [REDACTED]. Through the testimony of Dr. Kunis and Dr. Goldberg, the Respondent demonstrated that the requested services are not medically necessary.

22. Upon consideration of the testimony provided, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable polices, the undersigned concludes that Respondent proved by a preponderance of the evidence that PPEC services are no longer 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 termination of Petitioner's PPEC services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination is **DENIED**.

DONE and ORDERED this 28th day of November 2023, in Tallahassee, Leon County, Florida.

 Kameisha Presley
23-FH2091
2023.11.28
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KAMEISHA PRESLEY, 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]
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