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

FILED

Dec 27, 2023, 12:11 pm

OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

vs.

AHCA Case No.: 23-FH2240
Plan ID [redacted]

SIMPLY HEALTHCARE PLANS, INC.,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on November 1, 2023, at 10:00 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

For the Respondent: Sharon Nealy,
State Fair Hearing Coordinator
Simply Healthcare Plans, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's denial of Durable Medical Equipment ("DME"), namely a Cubby Plus Safety Bed, was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the Fair Hearing telephonically. [redacted], ("[redacted]") the Petitioner's [redacted] and Authorized Representative appeared for the Fair Hearing and testified on behalf of the Petitioner.

Sharon Nealy ("Ms. Nealy"), State Fair Hearing Coordinator for Simply Healthcare Plans, Inc., ("Simply" or "Respondent") appeared at the Fair Hearing as a representative for Respondent. Dr. Rebecca Moles, MD ("Dr. Moles"), Medical Director for Simply appeared as a witness for the Respondent.

Sandra Durden, Medical Healthcare Program Analyst and Fair Hearing Liaison for the Agency for Health Care Administration ("Agency" or "AHCA") appeared for the Fair Hearing as an observer.

Prior to the Fair Hearing, the Petitioner sent the Office of Fair Hearings and the Respondent a seventeen (17) page proposed exhibit that was admitted into evidence without objection, is identified as "Petitioner's Composite Exhibit 1" and is maintained in the Office of Fair Hearings' document management system as "23-FH2240 DAR and Evidence.pdf".

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and one (101)-page evidence package that was admitted into evidence without objection, is identified as "Respondent's Composite Exhibit 1", and is maintained in the Office of Fair Hearings'document management system as "FL [redacted] Packet-[Petitioner]-Updated.pdf".

FINDINGS OF FACT

1. The Petitioner is an enrolled member of Simply. *See* Respondent's Composite Exhibit 1, page 1. Simply is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner is [redacted] and has been diagnosed with [redacted]. Respondent's Composite Exhibit 1, page 12. The Petitioner is currently

undergoing behavior analysis therapy services to "mitigate [redacted] high levels of [redacted] …" *Id.*

3. On August 7, 203, the Petitioner submitted a request for a Cubby Plus Safety Bed. *See* Respondent's Composite Exhibit 1, pages 23. The features included in the request were as follows: fabric canopy, padded anti-wander enclosure, night vision HD camera with speaker, circadian light, and vibration mat" *Id.* at 13.On August 12, Simply issued a Notice of Adverse Benefit Determination ("NABD") denying Petitioner's request for the requested Cubby Plus Safety Bed based on medical necessity. Respondent's Composite Exhibit 1, pages 23-27. The NABD explained the denial of Petitioner's requested Cubby Plus Safety Bed as follows, in pertinent part:

> We made our decision because:
> *(Check all boxes that apply)*
>
> **__X__** We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: *(See Rule 59G-1.010)*
> **____** Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.
> **__X__** Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.
> **____** Must meet accepted medical standards and not be experimental or investigational.
> **____** Must be able to be 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.
> **____** Must be furnished in a manner not primarily intended for convenience of the recipient, caretaker, or provider.
> *(The convenience factor is not applied to the determination of the medically necessary level of private duty nursing (PDN) for children under the age of 21.)*
>
> **____** The requested **service is not a covered benefit**.
>
> **____ Other authority** .

> The facts that we used to make our decision are We cannot cover the requested special safety bed for your child. We have records for your child. We see that there are special needs ([redacted]). You asked for a bed with more features than what is needed. It appears your child needs a safety bed without all the added features that were asked for. We see that there are other types of beds that may be right for your child (different safety bed without excess functions lights electronics, [redacted] control, environmental modification and behavioral modification). This decision is based on Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook pages 2-51 to 2-53 and Simply Healthcare Clinical Guidelines CG-DME-15 Hospital Beds and Accessories. Your reference number is: [redacted]

Id.

4. On August 28, 2023, the Petitioner requested a plan appeal. *See* Respondent's Composite Exhibit 1, page 30. On August 29, 2023, Simply issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial of Petitioner's request for a Cubby Plus Safety Bed. *See* Respondent's Composite Exhibit 1, pages 30-32. The NPAR states the following explanation, in pertinent part:

> On 08/28/2023 we received your timely plan appeal request regarding Simply Healthcare Plans, Inc.'s Notice of Adverse Benefit Determination dated 08/11/2023, NABD Number [redacted] DENYING, the Special Safety Bed provided to [redacted]. We cannot cover the requested special safety bed for your child. We have records for your child. We see that there are special needs ([redacted]). You asked for a bed with more features than what is needed. It appears your child needs a safety bed without all the added features that were asked for. We see that there are other types of beds that may be right for your child (different safety bed without excess functions lights electronics, seizure control, environmental modification and behavioral modification). This decision is based on Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook pages 2-51 to 2-53 and Simply Healthcare Clinical Guidelines CG-DME-15 Hospital Beds and Accessories. Your reference number is: [redacted]
>
> On 08/19/2023, after consideration of the information you provided to Simply in support of your plan appeal, Simply hereby DENIES, your plan appeal. We can not cover your request for a Special Safety Bed (Cubby Plus Safety Bed). We know your child has [redacted] We know your child [redacted]. We know that your child has [redacted]. We know your child [redacted]. You asked for a special bed. This bed you asked for has padding and a canopy that could help your child. The bed you asked for has many other special features (lights, night vision

> camera, vibration matt, app control) that are not needed. There are other things your child could use that could help (padded railings, bed canopy). We do not see that the special bed you asked for will help your child more than these other things. We base this decision on health plan guidelines, and Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook Hospital Beds, Mattresses, and Rails page 2-51 to 2-53 and Simply Healthcare Clinical UM Guideline Hospital Beds and Accessories: [redacted] Your case was looked at by a Internal Medical Director, Board Certified in Internal Medicine for Simply.

Id.

5. On September 8, 2023, the Petitioner requested a Fair Hearing regarding the denial of the Cubby Plus Safety Bed. On September 20, 2023, the undersigned Hearing Officer issued a notice to all parties of record scheduling the Fair Hearing to be conducted by telephone on November 1, 2023, at 10:00 a.m. EST.

6. The Simply Healthcare Clinical Guide CG-DME-15CG-OR-PR-02 for Hospital Beds and Accessories (6/28/23) states in-part as follows:

> **MEDICALLY NECESSARY**
>
> An enclosed crib or enclosed bed is considered **Medically Necessary** for individuals with seizures, disorientation, vertigo and neurological disorders, where the individual needs to be restrained to bed. Clinical documentation must be provided that states less invasive strategies (that is, bed rails, bed rail protection, or environmental modifications) have been tried and have not been successful.
>
> A request for a hospital grade, pediatric crib will be reviewed for **medical necessity** on an individual basis.
>
> **Not Medically Necessary**
>
> If the above criteria are not met, the hospital bed will be considered **not medically necessary.**
> **. . .**

See Respondent's Composite Exhibit 1, pages 32 and 33. (Emphasis in the original.)

7. The Petitioner's Authorized Representative testified that [redacted] is currently sleeping in [redacted] bed because [redacted] has [redacted] own beds, and is undergoing behavior analysis services for [redacted] four (4) hours per day, Monday through Friday. The Authorized Representative testified the smart features of the bed will help [redacted] to relax and fall asleep, including the mood lighting. On cross-examination, the Authorized Representative testified the safety bed is only for overnight use and that [redacted] wakes up at night but has never left the home at night. Finally, the Petitioner testified that [redacted] would accept another safety bed for [redacted] without all the extra features in lieu of the Cubby Plus Safety Bed.

8. Dr. Moles testified for the Respondent that the Cubby Smart Plus Safety Bed was denied because the extra features, including the night vision camera, the vibration mattress, and lights are excessive and not medically necessary. In addition, Dr. Moles testified that the smart features of the Cubby Smart Plus Safety Bed do not fall within the definition of durable medical equipment, including the lighting and the night vision camera. Finally, Dr. Moles testified that it appears that a safety bed is medically necessary for the Petitioner and that the Respondent might approve one for the Petitioner if it didn't include all of the extra features that are not medically necessary and not considered as durable medical equipment.

9. The Petitioner's pediatrician [redacted] provided a letter of medical necessity for the Petitioner stating "… it is medically necessary that [Petitioner] receive a Cubby Bed Smart Bed Plus with the fabric canopy, padded anti-wander enclosure, night vision HD camera with speaker, circadian light, vibration mat, and foam flame resistant mattress to assist in [redacted] care." *See* Respondent's Composite Exhibit 1, page 13.

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 Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).

12. The burden of proof in this proceeding is governed by Fla. Admin. Code R. 59G-1.100(17)(g), which provides as follows:

> The burden of proof is on the party asserting the affirmative of an issue, except as otherwise required by statute. The burden of proof is on the Agency or plan, whichever is applicable, when the issue presented is the suspension, reduction, or termination of a previously authorized service. The burden of proof is on the recipient or enrollee when the issue presented is the denial or a limited authorization of a service. The party with the burden of proof shall establish its position to the satisfaction of the Hearing Officer by a preponderance of the evidence.

13. Because Petitioner is requesting a new service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Petitioner. 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.).

14. 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).

15. 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. 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. Petitioner's requests for DME are governed by the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010) ("DME Handbook"), which is incorporated by reference in Fla. Admin. Code R. 59G-4.070. The DME Handbook provides the following, in pertinent part:

> **Purpose**
> The purpose of the DME and Medical Supply Services Program is to promote, maintain, or restore health and minimize the effects of illness, disability, or a disabling condition.
>
> **Durable Medical Equipment (DME)**
> Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).
> . . .
> **Service Criteria**
> All DME, medical supplies, and orthotics and prosthetic devices must be:
> - **Medically necessary**, and
> - Functionally appropriate for the individual recipient, and
> - Adequate for the intended medical purpose, and

- For conventional use, and
- For the exclusive use of the recipient.

DME items requested or supplied must not duplicate or perform the same function as other DME equipment or medical supplies currently in the recipient's possession

. . .

Medical Necessity

Medicaid reimburses for services that do not duplicate another provider's service and are determined to be medically necessary. Per 59G-1.010, F.A.C., to be medically necessary, services must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe 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; and
- 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.

. . .

Safety Enclosure Frame and Canopy Coverage and Billing

Medicaid may reimburse for a safety enclosure frame and canopy for recipients under 21 years of age when prescribed by the treating physician or the treating physician's ARNP or physician assistant as medically necessary for the recipient's self-protection.

The frame and canopy do not need prior authorization, but must be billed with a hospital bed procedure code listed on the DME and Medical Supply Services Provider Schedules.

Note: See the DME and Medical Supply Services Provider Fee Schedules for the appropriate HCPCS procedure code and scheduled fee.

Safety Enclosure Frame and Canopy Documentation Requirements

The following safety enclosure frame and canopy documentation, with the authorized prescriber's signature, must be included in the recipient record:

- A medical statement that the recipient is confined to bed and will be in the enclosed bed for at least 18 hours a day; and
- Proof of medical necessity for continued care in the home; and
- Supporting medical documentation that states the recipient would be institutionalized without the enclosed bed; and
- Supporting information that the enclosed bed will provide effective treatment or prevent self-harm or self-injury when the recipient bites or chews.

DME Handbook pages 1-1, 1-2, 2-5, 2-9 and 2-53. (Emphasis added.)

19. The Florida Medicaid Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule. The Florida Medicaid Definitions Policy 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.**

(Emphasis added).

20. The Petitioner requested a DME and more specifically a Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app. *See* supra ¶ 3. In the NABD and in the NPAR, Respondent denied Petitioner's request for a Cubby Plus Safety Bed (Smart Bed) and additional features as not medically necessary and in excess of the Petitioner's medical needs. *See* supra ¶ 3 and 4. This medical necessity requirement is referenced in the Florida Medicaid DME Handbook, the EPSDT guidelines, the Respondent's Healthcare Clinical Guide CG-DME-15CG-OR-PR-02 for Hospital Beds and Accessories, and the Florida Medicaid Definitions Policy. *See* supra ¶ ¶ 6, 16, 17, 18 and 19.

21. As Petitioner bears the burden of proof, Petitioner must show that Respondent's decision was incorrect. *See* supra ¶ 12. Thus, Petitioner must demonstrate by a preponderance of the evidence that a Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app are "…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". *See* supra ¶ 18 and 19. The Respondent's Medical Director, Dr. Mole provided credible testimony as to the information submitted to Simply that although a safety bed is medically necessary for the Petitioner, a Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way

communications, a vibrating mattress, and smartphone app is in excess of the Petitioner's needs and is therefore not medically necessary for the Petitioner. *See* supra ¶ 8.

22. In this case, [redacted] provided a letter that a Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app is medically necessary for the Petitioner herein. *See* supra ¶ 9. However, section 2.83 of the Definitions Policy mandates that "[t]he 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." *See* supra ¶ 19. Therefore, the letter from [redacted] does not, *in itself* , make the requested Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app medically necessary.

23. In this case, Petitioner did not establish that by a preponderance of the evidence that a Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app was 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. The undersigned Hearing Officer finds that Petitioner did not establish that a Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app meets the Respondent's criteria or the Florida Medicaid program's criteria, and the requested DME is medically necessary.

24. Based on the totality of the circumstances, evidence, testimony and the applicable Florida policies, the Petitioner has not established that a Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app is medically necessary under Florida Medicaid and Respondent's Clinical Guidelines. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the requested DME is necessary to correct or ameliorate a defect or a physical and mental illness or condition. Therefore, the undersigned Hearing Officer concludes that Petitioner did not prove by a preponderance of the evidence that Respondent's decision to deny the requested Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of the requested Cubby Plus Safety Bed (Smart Bed) that includes a technology hub with special lighting, a temperature sensor, a night vision video camera, two-way communications, a vibrating mattress, and smartphone app is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 27th day of December 2023, in Tallahassee, Leon County, Florida.

Alan J. Leifer
23-FH2240
2023.12.27
11:01:15 -05'00'

ALAN J. LEIFER, 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]

Simply Healthcare Plans, Inc.
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AHCA Medicaid Hearing Unit
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