



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

FILED

Dec 28, 2023, 11:18 am

OFFICE OF FAIR HEARINGS

[Redacted]

PETITIONER,

AHCA Case No.: 23-FH2293

Plan ID No.: [Redacted]

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on October 26, 2023, at 10:03 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[Redacted]

Petitioner’s Authorized Representative

For the Respondent:

Kimberly Bouchette
Clinical Appeals Coordinator
Sunshine State Health Plan, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent’s decision to deny Petitioner’s request for medical equipment and supplies (Cubby Bed) was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED] (" [REDACTED]"), appeared for Fair Hearing to provide testimony on behalf of the Petitioner, and did not call any witnesses.

Kimberly Bouchette ("Ms. Bouchette"), Clinical Appeals Coordinator for Sunshine State Health Plan, Inc. ("Sunshine") appeared for Fair Hearing as representative for Respondent. Dr. Julie Shamma ("Dr. Shamma"), Medical Director for Sunshine, appeared for Fair Hearing as a witness for Respondent. Nicholas Crosby ("Mr. Crosby"), Physical Therapist and Therapy Advisor for Sunshine, appeared for Fair Hearing as a witness for Respondent.

Marielisa Amador, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for Fair Hearing as an observer.

Petitioner did not introduce any exhibits at the hearing. Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-six (136)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner].pdf." Absent an objection from the Petitioner, the undersigned admitted the one hundred and thirty-six (136)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

At the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty (160)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file title "Florida Medicaid DME handbook.pdf¹."

¹ The undersigned Hearing Officer took administrative notice of this packet absent an objection from the Petitioner.

The one hundred and sixty (160)-page evidence packet is hereby admitted into evidence a Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of Sunshine Medicaid Managed Care (“MMA”) plan. See RCE 1 at page 2. Sunshine is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED]. *Id.* at 55. Petitioner’s medical history includes [REDACTED], [REDACTED] (“[REDACTED]”), [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. *Id.* at 11, 63. As of [REDACTED] Petitioner weighs approximately [REDACTED] and is in the [REDACTED] based on Centers for Disease Control and Prevention (“CDC”) chart; is [REDACTED]

[REDACTED]
Id. at 26, 36. Petitioner is prescribed the following medications: [REDACTED]
[REDACTED]. *Id.* at 26, 46, 69. Petitioner receives [REDACTED] (“[REDACTED]”) at [REDACTED]. *Id.* at 17. Petitioner receives applied behavior analysis (“ABA”) therapy at [REDACTED]. *Id.* at 43.

3. Petitioner’s Board Certified Behavior Analyst (“BCBA”), Alexandra Weinmann, wrote a recommendation later dated March 21, 2023, for Petitioner to receive a Cubby Bed. The letter states as follows:

[Petitioner] is a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[Petitioner] lives with [REDACTED], and they report that [REDACTED]
[REDACTED]. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[Petitioner] would benefit from the Cubby Bed in the following ways:

1. The enclosed environment will decrease [REDACTED], due to the zippered opening which can only be controlled by caregiver to ensure user will remain safe.
2. Being placed in an enclosed environment for safety where previous falls have been experienced from a standard bed.
3. Being placed in an enclosed environment for safety due to impulsive unregulated behaviors.
4. Being placed in a soft-enclosed environment to eliminate entrapment from safety rails and bars.
5. It incorporates a two-way communication system with speaker and mic for communicating to de-escalate a behavior or provide other verbal cues user requires.
6. It has an ability to input soothing sounds for low stimulation and sensory regulation.
7. It assists in creating an environment for sensory regulation to moderate the user's behaviors.
8. It can be controlled by the caregiver through an app that can adjust the settings to create a soothing, safe environment to deescalate emotions and behaviors.

At this stage in [Petitioner]'s development, to prevent injuries, decrease [REDACTED], [REDACTED]
[REDACTED], it would benefit [Petitioner] to have a Cubby Bed.

Id. at 16.

4. Petitioner requested durable medical equipment (Cubby Bed). Petitioner's request was denied in the Notice of Adverse Benefit Determination ("NABD") dated June 5, 2023. *Id.* at 4-7.

The NABD explained the basis of the denial as follows:

- ✓ 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 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 facts that we used to make our decision are:

Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook; Early and Periodic Screening, Diagnostic and Treatment Services; Centene Clinical Policy on Durable Medical Equipment and Orthotics and Prosthetics Guidelines, CP.MP.107.

The request for Cubby, technology hub and waterproof mattress is denied for lack of medical need. We are unable to determine medical need of the request. Submitted letter of medical need is unreadable. Reconsideration of this request can be done when updated, complete clinical information is submitted for review.

Id. at 4-5.

5. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated July 20, 2023, upholding the denial. *Id.* at 79-82. The NPAR explained as follows:

The reason for our decision was the appeal request for Cubby, technology hub and waterproof mattress is denied for lack of medical necessity. We are unable to determine medical necessity of the requested DME at this time. There is insufficient clinical information noting that less intensive alternatives to improve patient safety have been tried and ruled out (including removal of all safety hazards, environmental modifications, mattress on floor, bed alarms, video/audio monitors, child protection devices such as child locks on doors, windows, cabinets, furniture anchors, gates at steps and doors, physician directed medication to address behaviors and sleep, environmental modifications to encourage calming behaviors and sleep, or established routines addressing sensory needs and/or behavior modification to assist with improved naptime or night time behaviors and sleep), including why they could not meet the member's medical needs. Additionally, it is unclear how the requested enclosed safety bed will correct or ameliorate the members [REDACTED]. Confinement is not medically necessary for a child's [REDACTED] behavior at night, and should not be used as a discipline measure or as a restraint during times of high agitation or [REDACTED]. The requested Technology Hub Safety and Sensory accessory is a convenience item and not medically necessary. The member is not confined to

bed and will not be in the enclosed bed for at least 18 hours a day. There was no home assessment confirming if the member's home will safely accommodate the requested custom enclosed safety bed. Rationale: CP.MP.107 Durable Medical Equipment, Enclosed Beds, FLORIDA MEDICAID DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLY SERVICES COVERAGE AND LIMITATIONS HANDBOOK, EPSDT, and clinical judgment. This decision was made by a Medical Director who is Board Certified Physician in Pediatrics.

Id. at 79-80.

6. On September 15, 2023, Petitioner requested a Fair Hearing to challenge the denial of the durable medical equipment (Cubby Bed). On September 29, 2023, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for October 26, 2023, at 10:00 a.m. EST.

7. [REDACTED] is Petitioner's [REDACTED] [REDACTED]. [REDACTED] testified to the following:

- a. [REDACTED] referenced [REDACTED] appeal letter that outlines the alternatives tried, including [REDACTED]
[REDACTED]. *Id.* at 22-23. The locks and electrical outlets are placed higher than usual due to Petitioner's height. The pool is secured by a gate even though Petitioner is a gifted swimmer. [REDACTED]
[REDACTED] argued that Petitioner continues to use [REDACTED]
[REDACTED].
- b. [REDACTED] also referenced the letter of medical necessity authored by Petitioner's occupational therapist regarding Petitioner's issues with [REDACTED]
[REDACTED]. *Id.* at 17.
- c. At school, Petitioner has the help of [REDACTED] ABA therapist, but does not have this support at night. [REDACTED] explained that Petitioner still [REDACTED] from [REDACTED]

room. Petitioner [REDACTED]. *Id.* at 36. [REDACTED] asserted that Petitioner is getting too big for [REDACTED] bed and has destroyed three crib mattresses and tents. *Id.* Previously, Petitioner has [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] argued that Petitioner does not want to be held and needs a safe space to lash out.

d. [REDACTED] argued that Petitioner's medications help during the day but not at night. Petitioner continues to wake up at least once a night between 1-3 a.m. and wakes up everyone in the home. *Id.* at 36-37. [REDACTED] expressed concern that Petitioner has poor sleep despite taking medications and poor sleep hygiene. *Id.* at 22-23.

e. Petitioner takes weeks or months before [REDACTED] can adjust to change, such as getting into the school routine since August.

f. [REDACTED] referenced the recommendation by Petitioner's BCBA outlining the Cubby Bed's proposed benefits. *See* ¶ 3. [REDACTED] argued that if Petitioner has better sleep and space to calm down when [REDACTED] [REDACTED] would be able to better control [REDACTED]. [REDACTED] contended that the circadian rhythm lights affixed on the Cubby Bed would be beneficial to help Petitioner get back into a good rhythm.

g. [REDACTED] also referenced the letter of medical necessity authored by Petitioner's occupational therapist regarding Petitioner's issues with [REDACTED] [REDACTED]. *See* RCE 1 at 17.

h. [REDACTED] indicated that parent-child therapy has been helpful.

- i. Petitioner uses a therapy listening app in morning on way to school. Petitioner continues to do [REDACTED] therapy and is consistent with [REDACTED] medications.
 - j. [REDACTED] argued that the home assessment was completed on May 8, 2023, by “[REDACTED]” and was found appropriate. *Id.* at 55-58.
8. Dr. Shamma a Medical Director for Sunshine. Dr. Shamma testified to the following:
 - a. Sunshine took into consideration the request for the [REDACTED] recipient with multiple medical conditions including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. See ¶ 2, 3.
 - b. Dr. Shamma argued that it is unclear how safety bed will correct [REDACTED] [REDACTED] as this behavior cannot be prevented when enclosed inside a Cubby Bed. Dr. Shamma opined that confining a child is not medically necessary to prevent [REDACTED] or as a form of [REDACTED]. Dr. Shamma provided [REDACTED] medical opinion that padding crib rails is an alternative measure when Petitioner hits [REDACTED].
 - c. Dr. Shamma provided [REDACTED] medical opinion that music can be therapeutic as a calming technique, and Petitioner can use wireless speakers to listen to music. Dr. Shamma asserted that music emitting from a bed is not medically necessary.
 - d. In review of the recommendation letter by Petitioner’s BCBA, Dr. Shamma explained that in regard to the proposed safety benefit numbers 1 and 3, the Cubby Bed is not medically necessary to prevent [REDACTED] and can impact a child’s emotional wellbeing without feeling of confinement. Dr. Shamma further pointed this out with past occurrences when Petitioner [REDACTED] while in the clinic

with a parent and at home with family. See RCE 1 at 13, 16, 17. Moreover, Dr. Shamma opined that this equipment will not stop Petitioner from [REDACTED]. Although Petitioner can unlock security locks, Dr. Shamma argued that a Cubby Bed is not the appropriate way to address or prevent this behavior. Dr. Shamma explained that the benefits listed as numbers 5, 6, 7, and 8 are not medically necessary features as device wireless or plugs can be placed out of reach.

- e. In the clinic notes dated [REDACTED] the pediatrician indicates her assessment, plan, and notes on how to assist the family help with Petitioner sleep pattern, including a follow-up visit in six months. *Id.* at 34. In the follow-up visit on [REDACTED] the physician noted more of Petitioner's [REDACTED], and ordered prescribed meds, an increase of the [REDACTED]. *Id.* at 43-46.
- f. Dr. Shamma argued that a Cubby Bed serves for many purposes but not for confinement, or to prevent [REDACTED], since confinement is not a less effective way to decrease [REDACTED]. See ¶ 9. Petitioner attends daycare and therefore is out of bed for a majority of the day.
- g. Dr. Shamma contended that continuing ABA therapy, [REDACTED], and medication management are less costly methods.
- h. Dr. Shamma argued that [REDACTED] is vital to decrease [REDACTED]. See RCE 1 at 28.

9. The Centene Corporation Clinical Policy: Durable Medical Equipment and Orthotics and Prosthetics Guidelines (December 2021) (“CP.MP.107”) provides as follows in regard to durable medical equipment and supplies:

Policy/Criteria

It is the policy of health plans affiliated with Centene Corporation® that durable medical equipment, orthotics, and prosthetics are **medically necessary** when the applicable criteria are met.

OTHER EQUIPMENT	CRITERIA	HCPCS
Enclosed Beds ^{17,18,19,20,21,22}	<p>Requests will be reviewed by a medical director and/or therapy advisor to determine medical necessity, based on all of the following:</p> <ul style="list-style-type: none"> A. Standard bed or standard hospital bed must be unable to meet the positioning needs due to disability; B. Less intensive alternatives to improve the member’s/enrollee’s safety have been tried and ruled out (To include documentation of why they could not meet medical needs). Considerations include, but are not limited to: <ul style="list-style-type: none"> 1. Bed rails; 2. Mattress placed on the floor; 3. Removal of all safety hazards; 4. Bed alarms; 5. Video/audio monitors; 6. Child protection devices such as locks on doors, windows, cabinets, furniture anchors, gates at steps and doors; 7. Physician-directed medication to address seizures, behaviors and sleep; 8. Environmental modification to encourage calming behaviors and sleep; 9. Established routines addressing sensory needs and/or behavior modification to assist with improved naptime or night time behaviors and sleep; 	<p>E0316 E1399</p> <p>E0328 or E0329 (when combined with E0316 or E1399)</p>

OTHER EQUIPMENT	CRITERIA	HCPCS
	<p>C. Medical diagnosis to include, but not limited to:</p> <ol style="list-style-type: none"> 1. Cerebral palsy; 2. Developmental delay; 3. Genetic or neurological disorder that would cause vertigo, disorientation, or uncontrolled movement of the body or extremities; 4. Uncontrolled seizure disorder; 5. Severe behavior disorder; <p>D. Healthcare provider evaluation (typically from an occupational or physical therapist) to include:</p> <ol style="list-style-type: none"> 1. Specific information on functional status; 2. Documentation of home evaluation; 3. Documentation of education provided to caregivers on proper use of a bed enclosure, noting: they are to be used for medical support, improved safety transitioning in and out of the bed, and improved safety while sleeping; <p>E. Name of and invoice for the bed or enclosure being requested.</p> <p>Note: Enclosed beds should not be used as a discipline measure or as a restraint during times of high agitation or aggression. To limit sensory deprivation, enclosed beds should be used at night for sleeping and only for short rests or naps during the day.</p>	

Background

DME items have the following characteristics:

- The equipment is prescribed by a physician;
- The equipment meets the definition of DME;
- The equipment is necessary and reasonable for the treatment of an illness or injury;
- The equipment is manufactured primarily for use in the home environment, but is not limited to use in the home.

...

Medical Equipment

Medical equipment is defined as equipment primarily and customarily used for medical purposes and is not generally useful in the absence of illness or injury. In most instances, no documentation will be needed to support whether a specific item of equipment is medical in nature. However, some cases will require documentation to determine whether the item constitutes medical equipment. This documentation would include the advice of local medical organizations and facilities and specialists in the field of physical medicine and rehabilitation. If the equipment is new on the market, it may be necessary, prior to seeking professional advice, to obtain information from the supplier or manufacturer explaining the design, purpose, effectiveness and method of using the equipment

in the home as well as the results of any tests or clinical studies that have been conducted.

...

Id. at 116, 122-123, 128-129.

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), Florida Statutes (2022). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

12. 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.)

13. Petitioner's request for a medical equipment and supplies is governed by the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook ("DME and Medical Supply Handbook"). The DME and Medical Supply Handbook provides the following:

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.

...

See RCE 2 at 13, 14, 45, 49.

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). 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.

15. 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). 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.

16. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

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

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

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

Definitions Policy at page 7.

17. Petitioner requested durable medical equipment (Cubby Bed). See ¶ 4. In the NABD dated June 5, 2023, Respondent denied Petitioner’s request citing the lack of medical necessity. See ¶ 4. Specifically, Respondent explained that it was “unable to determine medical need of the request.” See ¶ 4. In the NPAR dated July 20, 2023, Respondent upheld its denial citing the same rationale. See ¶ 5. As Petitioner bears the burden of proof, Petitioner must show that Respondent’s decision was incorrect. See ¶ 12.

18. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010 for Medicaid-covered benefits. See ¶ 14-15. The Definitions Policy requires that medically necessary services 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” and “reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide.” See ¶ 16. According to the DME and Medical Supply Handbook, all DME must be medically necessary, functionally appropriate for the individual recipient, adequate for the intended medical purpose, for conventional use, and for the exclusive use of the recipient. See ¶ 13.

19. In the instant case, Petitioner is [REDACTED]. See ¶ 2. Petitioner’s medical history includes [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED],

[REDACTED], and [REDACTED]. See ¶ 2. Petitioner receives [REDACTED], ABA therapy, parent-child interaction therapy, and takes prescribed medication. See ¶ 2, 7, 8. Dr. Shamma testified that the request for the Cubby Bed and the submitted records were reviewed in consideration of Petitioner's multiple medical conditions including [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. See ¶ 8. Respondent used the CP.MP.107 and DME and Medical Supply Handbook in making their decision whether the request for a Cubby Bed was medically necessary. See ¶¶ 4, 5, 8. The request was denied after determining that medical necessity could not be met. See ¶¶ 4, 5.

20. At Fair Hearing, [REDACTED] referenced [REDACTED] appeal letter that outlines the alternatives tried, including [REDACTED]. See ¶ 7. [REDACTED] testified that [REDACTED] expressed concern that Petitioner has poor sleep despite taking medications and poor sleep hygiene. See ¶ 7. Petitioner's medications help during the day but not at night. See ¶ 7. Petitioner continues to wake up at least once a night between 1-3 a.m. and wakes up everyone in the home. See ¶ 7. At school, Petitioner has the help of [REDACTED] ABA therapist, but does not have this support at night at home. See ¶ 3, 7. [REDACTED] testified that Petitioner continues to engage in [REDACTED] despite the alternatives tried, such as [REDACTED], [REDACTED], [REDACTED]. See ¶ 7. Overall, [REDACTED]'s argument is that if Petitioner has better sleep with the Cubby Bed and space to calm down when [REDACTED] [REDACTED] would be able to better control [REDACTED]. See ¶ 7. Dr. Shamma argued that it is unclear how safety bed will correct [REDACTED] as this behavior cannot be prevented when enclosed inside a Cubby Bed. See ¶ 8. Dr. Shamma argued that a Cubby Bed

serves for many purposes but not for confinement, or to prevent [REDACTED], since confinement is not a less effective way to decrease [REDACTED]. See ¶ 8. Further, Respondent's CP.MP.107 maintains under the criteria for durable medical equipment, "[e]nclosed beds should not be used as a discipline measure or as a restraint during times of high agitation or [REDACTED]." See ¶ 9. Dr. Shamma provided [REDACTED] medical opinion regarding alternative measures to address Petitioner's needs such as padding the crib rails, calming music techniques, continuing ABA therapy, [REDACTED], and medication management, and especially, [REDACTED]. See ¶ 8. As such, the undersigned concludes that the Cubby Bed is not reflective of service for which equally effective and more conservative or less costly treatment to address Petitioner's behavior concerns.


21. [REDACTED] pointed to the recommendation letters by Petitioner's BCBA and occupational therapist regarding Petitioner's issues with [REDACTED], lack of safety control, and the Cubby Bed's purported benefits. See ¶ 7. [REDACTED] presented testimony that Petitioner has tried multiple alternative treatments to address Petitioner's behavior concerns. See ¶ 7. It appears from the record that the request for the Cubby Bed is largely speculative as to the expected efficacy with Petitioner's behavioral concerns. See ¶¶ 3, 7. Dr. Shamma opined that confining a child is not medically necessary to prevent [REDACTED] or as a form of [REDACTED]. See ¶ 8. Furthermore, the fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service. See ¶¶ 13, 16. Therefore, a letter from either provider does not, in itself, make the requested additional services medically necessary. Nonetheless, neither letter provides sufficient justification of how the Cubby Bed is "not in excess of [Petitioner]'s needs".

22. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested medical equipment and supplies (Cubby Bed) is medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that the requested service is necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of medical equipment and supplies (Cubby Bed) was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of medical equipment and supplies (Cubby Bed) is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of medical equipment and supplies (Cubby Bed) is **DENIED**.

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

 Kimberly Roche
23-FH2293
2023.12.28 08:05:32
-05'00'

KIMBERLY ROCHE, 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]
[REDACTED]

Sunshine State Health Plan, Inc.
SunshineHealth_MFH@centene.com

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com

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2727 Mahan Drive, Mail Stop #3
Tallahassee, FL 32308
Voice: (850) 412-3661
TTY: (800) 955-8771



Spanish ATENCIÓN: si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al 1-(888) 419-3456 (TTY: 1-800-955-8771).

French Creole Atansyon: Si w pale Kreyòl Ayisyen, gen sèvis èd pou lang ki disponib gratis pou ou. Rele 1-(888) 419-3456 (TTY: 1-800-955-8771).

Vietnamese CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số 1-(888) 419-3456 (TTY: 1-800-955-8771).

Portuguese ATENÇÃO: Se fala português, encontram-se disponíveis serviços linguísticos, grátis. Ligue para 1-(888) 419-3456 (TTY: 1-800-955-8771).

Chinese 注意 : 如果您使用繁體中文, 您可以免費獲得語言援助服務。請致電 1-(888) 419-3456 (TTY: 1-800-955-8771)

French ATTENTION: Si vous parlez français, des services d'aide linguistique vous sont proposés gratuitement. Appelez le 1-(888) 419-3456 (ATS: 1-800-955-8771).

Tagalog PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa 1-(888) 419-3456 (TTY: 1-800-955-8771).

Russian ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните 1-(888) 419-3456 (телетайп: 1-800-955-8771).

Arabic

ملحوظة: إذا كنت تتحدث العربية، فإن خدمات المساعدة اللغوية متاحة لك بالمجان. اتصل برقم 1-(888) 419-3456 (التحويلة: 1-800-955-8771)

Italian ATTENZIONE: In caso la lingua parlata sia l'italiano, sono disponibili servizi di assistenza linguistica gratuiti. Chiamare il numero 1-(888) 419-3456 (TTY: 1-800-955-8771).

German ACHTUNG: Wenn Sie Deutsch sprechen, stehen Ihnen kostenlos sprachliche Hilfsdienstleistungen zur Verfügung. Rufnummer: 1-(888) 419-3456 (TTY: 1-800-955-8771).

Korean 주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. 1-(888) 419-3456 (TTY: 1-800-955-8771) 번으로 전화해 주십시오.

Polish UWAGA: Jeżeli mówisz po polsku, możesz skorzystać z bezpłatnej pomocy językowej. Zadzwoń pod numer 1-(888) 419-3456 (TTY: 1-800-955-8771).

Gujarati નોંધ: જો તમે ગુજરાતી બોલતા હો, તો નિ:શુલ્ક ભાષા સહાય સેવાઓ તમારા માટે ઉપલબ્ધ છે. ફોન કરો 1-(888) 419-3456 (TTY: 1-800-955-8771).

Thai เรียบน: ถ้าคุณพูดภาษาไทยคุณสามารถใช้บริการช่วยเหลือทางภาษาได้ฟรี โทร 1-(888) 419-3456 (TTY: 1-800-955-8771).