



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

FILED

Apr 12, 2024, 12:39 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH3149

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on February 7, 2024, at 9:41 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Diana Hearod
Medical Health Care Program Analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent’s decision to terminate prescribed pediatric extended care (“PPEC”) services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative, appeared on behalf of Petitioner. [REDACTED] (“[REDACTED]”), Counselor with

██████████, appeared as a witness for Petitioner. ██████████ (“██████████”), Administrator at ██████████, and ██████████ (“██████████”), Director of Nursing at ██████████ appeared as witnesses for Petitioner.

Diana Hearod, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as the representative for Respondent. Dr. Chris Kunis, Medical Director with eQHealth Solutions of Florida, Inc. (“eQHealth”) and Kepro, attended as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings forty-three (43)-pages of documents. The documents appear in the Office of Fair Hearings’ document management system as “23-FH3149 Supporting documents-evidence.pdf” (4 pages), and “23-FH3149 DAR and Supporting Documents.pdf” (39 pages). Without objection, the undersigned admitted the documents into evidence as Petitioner’s Composite Exhibit 1. Citations to pages numbers in the exhibit will refer to the page numbers of the combined exhibit.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty-six (166)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as “██████████ FH 02.07.2024 1-97.pdf” and “██████████ FH 02.07.2024 98-166.pdf.” Absent an objection from the Petitioner, the undersigned admitted the evidence packet into evidence as Respondent’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a forty-seven (47)-page evidence packet. The evidence packet appears as “23-3149_PPEC AHCA Evidence _pages 47_[Petitioner’s name].pdf.” Absent an objection from the Petitioner, the undersigned admitted the evidence packet into evidence as Respondent’s Composite Exhibit 2.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the agency to review prior authorization requests for services. See Respondent’s Composite Exhibit 2 at page 2.

2. Petitioner is [REDACTED] and experienced [REDACTED]. See Respondent’s Composite Exhibit 1 at page 16, 64. Petitioner’s diagnoses include: [REDACTED]
[REDACTED] *Id.* at 18, 60. Petitioner receives physical therapy (“PT”), occupational therapy (“OT”), and speech therapy (“ST”). See Petitioner’s Composite Exhibit 1 at page 26 (Physician Plan Of Care for PPEC Services, page 2).

3. Petitioner is prescribed the following medications: [REDACTED]
[REDACTED]
[REDACTED]. Petitioner does not use a ventilator, BiPAP/CPAP, or oxygen, and has no monitors or suctioning needs. See Respondent’s Composite Exhibit 1 at page 65. Petitioner does not use enteral feeds, [REDACTED], does not receive therapy intravenously, and does not receive wound or stoma care. *Id.* at 66-68.

4. Petitioner requested continuation of PPEC services for the certification period of December 2, 2023, through May 29, 2024. *Id.* at 20. In a Notice of Outcome (“NOO”), dated November 29, 2023, Respondent terminated Petitioner’s PPEC services. *Id.* at 31-33. The NOO explained the basis of the termination as follows:

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

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

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.

...

The NOO further stated:

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

Clinical Rationale for Decision: [REDACTED]

[REDACTED] Nursing needs consist of monitoring and supervision.

Deny all PPEC units. The patient lacks sufficient skilled nursing needs to warrant PPEC care.

Id. at 31-32.

5. On November 28, 2023, Petitioner requested reconsideration. *Id.* at 51. On December 15, 2023, Respondent issued a Notice of Reconsideration Determination (“NRD”) upholding the termination. *Id.* at 46-47. The NRD states 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 decision is a follows:

PR Recon Determination: Reconsideration request and the submitted clinicals were reviewed. [REDACTED]. Uphold the initial denial of PPEC services.

Id.

6. On December 14, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On January 8, 2024, hearing officer Debbie Winicki issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 7, 2024, at 9:30 a.m. The undersigned issued an amended Scheduling order on January 31, 2024. Petitioner received administrative approval for continued PPEC services pending the outcome of the Fair Hearing. *Id.* at 20.

7. Petitioner provided a letter of medical necessity, dated December 21, 2023, from Petitioner’s neurologist [REDACTED] (“[REDACTED]”). The letter states, in pertinent part:

[REDACTED]
[REDACTED]
[REDACTED] Due to these diagnoses, it is medically necessary that [REDACTED] has PPEC services.

See Petitioner’s Composite Exhibit 1 at page 4. In an undated Letter of Medical Necessity Regarding Treatment, [REDACTED] wrote “to express the urgent need for speech and behavioral therapy for [Petitioner].” See Petitioner’s Composite Exhibit 1 at page 3.

8. Dr. Kunis testified that PPEC services are intended for children who need skilled nursing services on a daily basis. Here, Petitioner was weaned off of [REDACTED], in [REDACTED], and [REDACTED] tolerated it well. Petitioner remains [REDACTED]. As for [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED] Petitioner is able [REDACTED] and is receiving PT, OT, and ST at the PPEC center. Therapy services can be provided at any outpatient setting and attendance at PPEC is not required to obtain therapies. Dr. Kunis reviewed the care team coordination notes, the nursing and medical notes, emergency room record, and other medical records. Dr. Kunis testified that

Petitioner's medications are administered twice a day and can be taken at home/given by a lay person. Based on the documentation provided, Dr. Kunis concluded that Petitioner has no need for daily skilled nursing services at this time.

9. [REDACTED] testified that [REDACTED] is not functioning at an age-appropriate level. [REDACTED] stated that petitioner has [REDACTED]. [REDACTED] asserted that Petitioner will not adjust to regular daycare due to [REDACTED] frequent [REDACTED]. [REDACTED] only identified the following skilled nursing needs: adhering to the [REDACTED] regimen and monitoring for safety. [REDACTED] testified that Petitioner continued to need therapy interventions. [REDACTED] testified that Petitioner is frequently [REDACTED].

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 (2019). 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 Florida Administrative Code Rule ("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 Prescribed Pediatric Extended Care Services Coverage Policy (February 2018) (“PPEC Policy”) establishes the provision and coverage of PPEC services under Florida Medicaid. The PPEC Policy states as follows:

1.1 Description

Florida Medicaid prescribed pediatric extended care (PPEC) services provide skilled nursing supervision and therapeutic interventions in a non-residential setting to medically dependent or technologically dependent recipients.

...

2.2 Who Can Receive

Florida Medicaid recipients under the age of 21 years requiring medically necessary PPEC services and who:

- Require continuous therapeutic interventions or skilled nursing supervision, as described in section 400.902, F.S., and in Rule 59A-13.007, F.A.C.
- Are determined stable by a physician and who are not a threat to self or others

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

...

1.3.7 Medically Necessary/Medical Necessity

As defined in Rule 59G-1.010, F.A.C.

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

...

5.0 Exclusion

5.1 General Non-Covered Criteria

Services related to this policy are not covered when any of the following apply:

- The service does not meet the medical necessity criteria listed in section 1.0
- The recipient does not meet the eligibility requirements listed in section 2.0
- The service unnecessarily duplicates another provider’s service

14. Fla. Admin. Code 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.

15. Fla. Admin. Code R. 59G-4.290 defines skilled nursing as follows:

(3) Skilled Services Criteria.

- a) To be classified as requiring skilled nursing or skilled rehabilitative services in the community or in a nursing facility, the recipient must require the type of medical, nursing or rehabilitative services specified in this subsection.
- b) Skilled Nursing. To be classified as skilled nursing service, the service must meet all of the following conditions:
 - 1. Ordered by and remain under the supervision of a physician;
 - 2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.
 - 3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effect performance;
 - 4. Required on a daily basis;
 - 5. Reasonable and necessary to the treatment of a specified documented illness or injury; and,
 - 6. Consistent with the nature and severity of the individual’s condition or the disease state or stage.
- c) Examples of services that qualify as skilled nursing services:
 - 1. Intravenous medication or fluids.
 - 2. Intramuscular or subcutaneous injection and hypodermoclysis when:
 - a. Administered by licensed nursing personnel at least 5 times weekly, excluding daily insulin administration; and,

- b. Observation is necessary to assess the recipient's response to treatment or to identify adverse reactions.
- 3. Management and monitoring medication regime on a daily basis:
 - a. For drugs whose dosage requirements may rapidly change;
 - b. For drugs prone to cause adverse reactions, severe side effects or unfavorable reactions; and,
 - c. For residents with unstable reactions.
- 4. Levin tube and gastrostomy feedings; excluding feedings performed by residents, family members, or friends.
- 5. Administration of medical gases, aerosolized medication or oxygen which is started, monitored and regulated by professional staff.
- 6. Naso-pharyngeal and tracheotomy aspiration, excluding tracheotomy care in self-care residents.
- 7. Insertion, replacement, and sterile irrigation of catheters when:
 - a. Medically necessary or required for reasons other than to maintain satisfactory catheter functioning and dryness;
 - b. The medical need is documented by the physician;
 - c. Continuous irrigation, frequent insertion, special care or observation is required because of bleeding, infection, obstruction, or heavy sediment formations; and,
 - d. Care of a recently inserted supra-pubic catheter, inserted within 2-4 weeks, is required.
- 8. Colostomy and ileostomy care:
 - a. When medically necessary and required during early postoperative period;
 - b. During the period of initial self-care training, or
 - c. when complications are present and documented in the medical record.
- 9. Treatment of decubitus ulcers when:
 - a. Deep or wide without necrotic center;
 - b. Deep or wide with layers of necrotic tissue, or
 - c. Infected and draining.
- 10. Treatment of widespread infected or draining skin disorders.
- 11. Application of dressings involving prescription medication and aseptic techniques when documented as required on a daily basis. Excludes simple dressings involving non-infected cases, simple skin breaks, and healed postoperative incisions.
- 12. Heat treatments prescribed by a physician as daily treatment for a specific condition.

13. Rehabilitation nursing procedures required on a daily basis as necessary to restore functioning, including teaching and adaptive aspects of nursing.

16. States must provide Early and Periodic Screening, Diagnostic, and Treatment (“EPSDT”) services to Medicaid-eligible children under age 21 when requested under the Medicaid state plan. See 42 U.S.C. § 1396a(a)(43); 42 U.S.C. § 1396d(a)(4). According to 42 U.S.C. § 1396d(r)(5), EPSDT services mean, in relevant part, the following items and services:

Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illness and conditions discovered by the screen services, whether or not such services are covered under the state plan.

17. Petitioner is under age 21, and therefore eligible for EPSDT services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d).

18. 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.

19. 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.

Respondent's Composite Exhibit 2 at page 23.

20. In the NOO, dated November 29, 2024, 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", was "in excess of the patient's needs", and was not "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." *Id.* Respondent explained that Petitioner does not require skilled nursing services. *Id.*

21. PPEC services are intended for patients with who "require continuous therapeutic interventions or skilled nursing supervision." *See supra* ¶ 8, 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. 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 ¶ 19. Dr. Kunis provided credible and persuasive testimony that Petitioner does not require daily skilled nursing services. See supra ¶ 8. The record reflects that Petitioner is **not** receiving daily prescription medications that would require a skilled nurse to administer. See supra ¶ 3, 5, 8. Petitioner is not using a ventilator, BiPAP/CPAP, or oxygen. See supra ¶ 3. Petitioner does not use enteral feeds, experience seizures, receive therapy intravenously, or receive wound or stoma care. See supra ¶ 3. The recommendations from Petitioner's physician primarily emphasize the need for Petitioner to continue to have therapies. See supra ¶ 7. As Dr. Kunis testified, therapy services can be provided at any outpatient setting and attendance at PPEC is not required to obtain therapies. See supra ¶ 8. Based on the foregoing, the record reflects that the daily skilled nursing services or continuous therapeutic interventions provided at PPEC are not "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment," and are "in excess of the patient's needs." See supra ¶ 4, 5, 8.

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. 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 12th day of April 2024, in Tallahassee, Leon County, Florida.

Laura Gallagher

23-FH3149



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LAURA GALLAGHER, 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]

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