

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



FILED

Mar 28, 2024, 1:04 pm
OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 23-FH3183

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 February 21, 2024, at 1:02 p.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Linda Latson

Registered Nurse Specialist and Fair Hearing Liaison
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.

Linda Latson, (“Ms. Latson”), Registered Nurse Specialist and Fair Hearing Liaison for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as the representative for Respondent. Dr. Chris Kunis, MD (“Dr. Kunis”), Medical Director with eQHealth Solutions of Florida, Inc. (“eQHealth”), attended as a witness for Respondent.

Spanish translator Ramone, #411481 appeared for translation purposes, however, all parties and witnesses acknowledged that they were fluent in English and understood spoken English and did not require any translation. The individual that requested translation services, [REDACTED], did not attend the Fair Hearing. [REDACTED], spoke with [REDACTED] and stated that [REDACTED] would not be attending the Fair Hearing as [REDACTED] needed to report to work. The Spanish translator was released.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent an eight (8) page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as “23-FH3183 Evidence.pdf.” Absent an objection from the Respondent, the undersigned admitted the eight (8) page evidence packet into evidence as Petitioner’s Composite Exhibit 1.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and forty-three (343)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as “[REDACTED] FH 02.21.2024 1-92.pdf,” “[REDACTED] FH 02.21.2024 93-135.pdf,” “[REDACTED] FH 02.21.2024 136-176.pdf,” “[REDACTED] FH 02.21.2024 177-220.pdf,” “[REDACTED] FH 02.21.2024 221-256.pdf,” and “[REDACTED] FH 02.21.2024 257-343.pdf.” Absent an objection from the Petitioner, the undersigned admitted the

three hundred and forty-three (343) page 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 forty-seven (47) page evidence packet appears in the Office of Fair Hearings' case management system as "23-FH3183 AHCA Evidence PPEC Services 47 Pages.pdf." Absent an objection from the Petitioner, the undersigned admitted the forty-seven (47) page 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. As of the date of the Fair Hearing, Petitioner is [REDACTED] of age. See Respondent's Composite Exhibit 1 at page 22. Petitioner was diagnosed with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Petitioner's

Composite Exhibit 1 at pages 1-8.

3. Petitioner is not ventilator dependent, nor does [REDACTED] use a BiPap/CPAP, or oxygen. *Id.* at 66. Petitioner does not use a g-tube for feeding. *Id.*

4. Petitioner requested continuation of PPEC services for the certification period of December 16, 2023, through June 11, 2024. Services were requested for Full-day PPEC Services

(130 units) and Partial-day PPEC Services (520 units). Respondent’s Composite Exhibit 1 at page 30. In a Notice of Outcome (“NOO”), dated December 14, 2023, Respondent terminated Petitioner’s PPEC services. *Id.* at 30-32. 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.

...

The NOO further stated:

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] No need for skilled nursing. Deny this request.

Id. at 30-31.

5. A Notice of Reconsideration Determination was completed on December 21, 2023. *Id.* at 45 – 47. The Reconsideration Determination upheld the termination of the PPEC services request.

Id. The Reconsideration Determination explained the decision as follows:

The 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 need.

The medical basis for the reconsideration decision is as follows:

PR Recon Determination: The patient is a [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] attends school full-time. After reconsidering the submitted information, the original decision has to be upheld. There is no need for skilled nursing services; therefore, PPEC has to be denied.

Id. at 45-46.

6. On December 20, 2023, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On January 30, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for February 21, 2024, at 1:00 p.m. EST.

7. Dr. Kunis testified that PPEC centers are intended for children who need highly skilled nursing services on a daily basis. Dr. Kunis asserted that Petitioner's [REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]. Dr. Kunis established that Petitioner eats an [REDACTED]

[REDACTED]

[REDACTED]. Based on the documentation provided, Dr. Kunis opined that PPEC skilled nursing services are no longer medically necessary. Petitioner's circumstances do not demonstrate a need for skilled nursing services. *Id.* at 31, 41. Petitioner is receiving no scheduled medications at PPEC. *Id.*

8. Following a complete review of all the documentation available to Dr. Kunis, it is Dr. Kunis' testimony that the Petitioner's circumstances and condition do not meet the requirements for PPEC services. The requested services are not medically necessary in that such services are not

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

9. [REDACTED], the authorized representative for the Petitioner and the Director of Nursing at the PPEC daycare testified on behalf of the Petitioner. [REDACTED] expressed concern that the Petitioner's [REDACTED] may not understand the proper way to care for the Petitioner's condition. The [REDACTED] and spoke in a different dialect of Spanish. [REDACTED] stated that the PPEC services included preventative care to [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

Respondent's Composite Exhibit 2 at pages 40-42.

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 December 14, 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 and not in excess of the patient's needs." *See supra* ¶ 4. Respondent explained that Petitioner does not require skilled nursing services based on the documentation provided. *See supra* ¶ 4.

21. PPEC services are intended for patients with who "require continuous therapeutic interventions or skilled nursing supervision." *See supra* ¶ 13. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. *See supra* ¶ 18. 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* ¶ 7. Petitioner does not receive any prescription medications that require a skilled nurse to administer. *See supra* ¶ 7. In all, there is no indication


that Petitioner continues to daily require skilled nursing services. Further, the LTC Policy states, “[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 or a medical necessity or a covered service.” See supra ¶ 19.

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 March 2024, in Tallahassee, Leon County, Florida.

 George L. Winslow, Jr.
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GEORGE WINSLOW, 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]

AHCA Medicaid Hearing Unit
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