FILED
Apr 09, 2024, 1:32 pm
OFFICE OF FAIR HEARINGS

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

[redacted],

PETITIONER,

vs.

SUNSHINE STATE HEALTH PLAN, INC.,

RESPONDENT.
_____/

AHCA Case No.: 23-FH3208
Plan ID No.: [redacted]

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on March 8, 2024, 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 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.

Kimberly Bouchette ("Ms. Bouchette"), Clinical Appeals Coordinator for Sunshine State Health Plan, Inc., ("Sunshine" or "Respondent") appeared at the Fair Hearing as a representative for Respondent. Dr. Thidaporn Tanpattana, MD ("Dr. Tanapattana"), Pediatric Medical Director for Sunshine appeared as a witness for the Respondent. The following personnel of Sunshine attended the Fair Hearing for observation purposes only; Samira Jean-Louis, Occupation Therapist; Nicholas Crosby, Therapy Advisor; and Pascale Pierre, Case Management Supervisor.

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, Respondent sent to the Office of Fair Hearings and Petitioner a two hundred and eighty (280)-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 "MFH packet [Petitioner].pdf". The Petitioner did not submit any exhibits into evidence.

FINDINGS OF FACT

1. The Petitioner is an enrolled member of Sunshine. *See* Respondent's Composite Exhibit 1, page 1. Sunshine 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] years old and has been diagnosed with [redacted]. *See* Respondent's Composite Exhibit 1, page 18. In addition, the Petitioner's primary areas of delay and deficits include [redacted]. *Id.*

3. On October 11, 2023, the Petitioner submitted a request for a Cubby Plus Safety Bed with the technology package. *See* Respondent's Composite Exhibit 1, page 16. On October 18, 2023, Sunshine 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 5-10. 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** .
>
> Centene Clinical Policy on Durable Medical Equipment and Enclosed Beds, CP.MP.107 and the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook, Agency for HealthCare Administration. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).
>
> We got a request. This is for a Cubby Bed. This is a safety bed. The request is denied. There is no medical need. There are not enough notes that tell us if other

> choices for your childs safety was tried. This includes mattress on floor, bed alarms, monitors, and other child protection devices. This also includes changes to the surroundings which encourage calming behaviors and sleep. Also established routines addressing sensory needs and/or behavior change to help with better naptime or night time behaviors and sleep. We did not get a note why they could not meet the child's medical needs. Enclosure is not medically needed for a child's walking around at night. This should not be used as discipline or as a restraint during times of high agitation or aggression. The Cubby bed is a convenience item. There was no home assessment confirming if the child's home will safely accommodate the requested safety bed.

Id.

4. On November 15, 2023, the Petitioner requested a plan appeal. *See* Respondent's Composite Exhibit 1, page 34. On December 15, 2023, Sunshine 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 34-37. The NPAR states the following explanation, in pertinent part:

> The reason for our decision was the previous denial to authorize equipment (Cubby Safety Bed and accessories including Technology Hub Safety accessory) is upheld. The notes do not explain why less intensive alternatives to improve patient safety are not appropriate for this member. This includes: removal of all safety hazards, mattress on floor, bed alarms, video/audio monitors, child protection devices such as child locks on doors, windows, cabinets, furniture anchors, 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. Confinement is not medically necessary for a child's roaming behavior at night, and should not be used as a discipline measure or as a restraint during times of high agitation or aggression. The requested Technology Hub Safety and Sensory accessory is a convenience item and not medically necessary. There was no home assessment confirming if the member's home will safely accommodate the requested custom enclosed safety bed. Criteria: CP.MP.107 Durable Medical Equipment, Enclosed Beds, FLORIDA MEDICAID DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLY SERVICES COVERAGE AND LIMITATIONS HANDBOOK. This decision was made with regards to EPSDT. This decision was made by a Medical Director who is Board Certified Physician in Pediatrics.

Id.

5. On December 20, 2023, the Petitioner requested a Fair Hearing regarding the denial of the Cubby Plus Safety Bed. On February 9, 2024, the undersigned Hearing Officer issued a notice to all parties of record scheduling the Fair Hearing to be conducted by telephone on March 8, 2024, at 10:00 a.m. EST.

6. The Centene Corporation Clinical Policy for Durable Medical Equipment and Orthotics and Prosthetics Guidelines (Reference Number CP.MP.107, June 2022) states as follows with respect to children's enclosed safety beds:

> ENCLOSED BEDS - Requests will be reviewed by a medical director and/or therapy advisor to determine medical necessity, based on all of the following:
>
> 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:
>
> 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;
>
> C. Medical diagnosis to include, but not limited to:
>
> 1. [redacted];

3. [redacted];

D. Healthcare provider evaluation (typically from an occupational or physical therapist) to include:
   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;

E. Name of and invoice for the bed or enclosure being requested.

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.

See Respondent's Composite Exhibit 1, pages 64 and 65.

7. The Petitioner's [redacted] and Authorized Representative testified that [redacted]. [redacted] testified they have tried bed alarms, baby gates, placing the mattress on the floor, a toddler bed with sides, a surveillance camera, and a normal twin sized bed with sides but nothing has stopped [redacted] from wandering at night. *Testimony of* [redacted] and Respondent's Composite Exhibit 1, page 29. [redacted] testified that at the time of the Fair Hearing, a room in [redacted] residence was in the process of being renovated for [redacted] and stated [redacted] belief that [redacted] has exhausted every possible option and that an enclosed safety bed is the only alternative that may help [redacted].

8. Dr. Tanpatanna testified for the Respondent that the Cubby Smart Plus Safety Bed with the technology package was based in-part on the Centene Corporation Clinical Policy for Durable Medical Equipment and Orthotics and Prosthetics Guidelines (Reference Number CP.MP.107,

June 2022), and the lack of documentation regarding less expensive and intensive alternatives such as safety locks or room-proofing, and that there is no documentation from an occupational or physical therapist or a behavior analyst ruling out other alternatives. In addition, Dr. Tanpatanna testified there has been no home assessment by qualified personnel regarding the enclosed safety bed, and that extra features in the technology package are intended for the convenience of the caregiver(s). Finally, Dr. Tanpatanna reiterated that the use of a child's enclosed safety bed can present very serious risks, should only be tried after all other alternatives have failed, should never be used as a method of child discipline.

9. The [redacted], MD, a sleep medicine physician from [redacted], Florida that is treating the Petitioner for [redacted], provided a letter of medical necessity for the Petitioner to obtain a Cubby Safety Bed with an electronics package and a padded canopy. *See* Respondent's Composite Exhibit 1, pages 18-19.

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. *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, in excess of the Petitioner's medical needs, and that required supporting documentation, analysis, and opinions were not presented by the Petitioner . *See* supra ¶ 3 and 4. This medical necessity requirement is referenced in the Florida Medicaid DME Handbook, the EPSDT guidelines, the Respondent's Durable Medical Equipment Policy, CP.MP.107 for Enclosed Beds, 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 and 13. Thus, Petitioner must demonstrate by a preponderance of the evidence that a Cubby Plus Safety Bed (Smart Bed) that includes a technology hub is "…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 ¶ ¶ 17, 18 and 19. The Respondent's Medical Director, Dr. Tanpantanna provided credible testimony as to the information submitted to Sunshine that although a safety bed may be medically necessary for the Petitioner, there is insufficient documentary support to approve a Cubby Plus Safety Bed with a technology package and that the technology package is not medically necessary and is in excess of the Petitioner's needs. *See* supra ¶ 8.

22. In this case, [redacted], M.D., a physician treating the Petitioner for [redacted] provided a letter that a Cubby Plus Safety Bed with a technology package is recommended and 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], MD does not, *in itself* , make the requested Cubby Plus Safety Bed and technology package medically necessary.

23. In this case, Petitioner did not establish that by a preponderance of the evidence that a Cubby Plus Safety Bed and technology package 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 and technology package 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 with the technology package 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 and technology package was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of the requested Cubby Plus Safety Bed with the technology package is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 9th day of April, 2024, in Tallahassee, Leon County, Florida.

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]

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

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com