



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

FILED

Mar 25, 2024, 10:56 am

OFFICE OF FAIR HEARINGS

AHCA Case No.: 24-FH0064

[REDACTED]

PETITIONER,

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 March 8, 2024, at 9:30 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Lee Ann Williams
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 decision to terminate prescribed pediatric extended care ("PPEC") services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (" [REDACTED]"), Petitioner's Authorized Representative and Director of Nursing for [REDACTED] ("the provider"), appeared

at the Fair Hearing on behalf of Petitioner. [REDACTED] (“[REDACTED]”), Petitioner’s [REDACTED], appeared at the Fair Hearing as a witness for Petitioner.

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

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and seventy-two (172)-page evidence packet and a forty-seven (47)-page evidence packet. The one hundred and seventy-two (172)-page packet appears in the Office of Fair Hearings’ document management system as files titled “[REDACTED] FH 03.08.2024 1-97.pdf” and “[REDACTED] FH 03.08.2024 98-172.pdf.” The forty-seven (47)-page packet appears in the Office of Fair Hearings’ document management system as the file titled “24-FH0067 Agency Evidence Legal Authorities 47 pages.pdf”. The undersigned admitted the one hundred and seventy-two (172)-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the forty-seven (47)-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. See RCE 1 at page 16. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the agency to review prior authorization requests for services. See RCE 2 at page 2.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED]. See RCE 1 at 16. Petitioner is diagnosed with [REDACTED] *Id.* at 16. Petitioner has a [REDACTED] [REDACTED] *Id.*

3. A FL Home Health Assessment Tool assessment was completed for Petitioner, dated October 24, 2023. *Id.* at 56 – 62. According to the assessment, Petitioner is stable with no heightened risks for serious complications and death. *Id.* at 57. Petitioner does not use a ventilator, does not use BiPAP/CPAP, has no suctioning needs and does not use oxygen. *Id.* at 57 - 58. Petitioner does [REDACTED]. *Id.* at 58. Petitioner does not use enteral feeds, does not have seizures or spasms, and does not have wounds or stomas. *Id.* at 58 – 59.

4. Petitioner requested continuance of PPEC services for the certification period of October 22, 2023, through April 18, 2024. *Id.* at 24. In a Notice of Outcome (“NOO”), dated October 17, 2023, Respondent terminated Petitioner’s PPEC services. *Id.* at 24 - 28. The NOO explained the basis of the termination as follows:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010, Florida Administration Code, Specifically the 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 rational for our decision is as follows:

PR Principal Reason – Denial

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

Clinical Rational for Decision: Request is for PPEC for this [REDACTED]
[REDACTED]
[REDACTED] ; no
scheduled meds at PPEC . No need for skilled nursing. Deny this request.

Id. at 24 – 25.

5. In a Notice of Reconsideration Determination (“NRD”), dated December 29, 2023, Respondent upheld its decision. *Id.* at 39 – 43. The NRD explained the basis for the decision as follows, in pertinent part:

PR Recon Determination: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. Nursing needs consist of monitoring and supervision.

Id. at 40.

6. On January 3, 2024, Petitioner requested a Fair Hearing to challenge the termination of PPEC services. On January 31, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for March 8, 2024, at 9:30 a.m. EST.

7. Dr. Kunis testified as follows:

- a. Petitioner’s [REDACTED]
[REDACTED]
- b. [REDACTED].
- c. Petitioner does not meet criteria for failure to thrive. Petitioner’s nursing needs appear to only be for monitoring and supervision. Therefore, Petitioner no longer warrants PPEC care.

- d. The purpose of PPEC services is for skilled nursing services, which can include constant supervision and medical treatment from a nurse. Adjunct therapies such as therapy, physical therapy, speech therapy, and occupational therapy can be provided outside of PPEC and do not require PPEC services.
- e. Petitioner requested twelve (12) hours per day, seven (7) days per week of PPEC services.
- f. Petitioner does not receive any scheduled medications.
- g. Petitioner's weight and height does not indicate a failure to thrive.
- h. Dr. Kunis reviewed the Petitioner's [REDACTED]. See RCE 1 at 145 – 146. Dr. Kunis noted that there was "[REDACTED]
[REDACTED]
[REDACTED]
- i. Dr. Kunis opined that supervision and monitoring for Petitioner could be provided by any mature adult and there is a lack of sufficient skilled nursing needs.

8. [REDACTED] testified as follows:

- a. Petitioner's [REDACTED]
[REDACTED] [REDACTED] opined that Petitioner needs skilled nursing services to monitor for [REDACTED].
- b. [REDACTED] does not believe that daycare personnel will not monitor Petitioner while [REDACTED]. [REDACTED] believes that Petitioner needs skilled nurses to monitor [REDACTED].

- c. [REDACTED] reviewed the Petitioner's [REDACTED].
See RCE 1 at 151 – 153. [REDACTED] noted that Petitioner “would continue to benefit from skilled intervention in order to improve and maximize [REDACTED] [REDACTED].”

9. [REDACTED] testified as follows:

- a. [REDACTED] has difficulty [REDACTED] Petitioner.
- b. [REDACTED] is a nurse practitioner and has prevented Petitioner from going to the hospital or ER by monitoring [REDACTED].
- c. [REDACTED] believes Petitioner is at [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. See RCE 2 at 38 – 43. 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

RCE 2 at 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.

RCE 2 at 46.

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.

RCE 2 at 4 – 5.

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). Fla. Stat. § 409.905(2) 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.

...

RCE at 13.

18. Section 2.83 of 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.

RCE 2 at 23.

19. In the NOO, dated October 17, 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". See supra ¶ 4. Respondent explained that Petitioner does not require daily skilled nursing services based on the documentation provided. See supra ¶ 4 - 5, 7.

20. PPEC services are intended for patients 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 ¶ 17. As provided in section 2.83 of the Definitions Policy, a component of medical necessity is that 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." See supra ¶ 188. Dr. Kunis provided credible and persuasive testimony that Petitioner does not require daily skilled nursing services. See supra ¶ 7. The record reflects that Petitioner is stable with no heightened risk(s) for serious complications. See supra ¶ 3. Petitioner does not receive any undisclosed prescription medications that require a skilled nurse to


administer. *See supra* ¶ 3, 7. Petitioner is not using a ventilator, BiPAP/CPAP, or oxygen. *See supra* ¶ 3. Petitioner does not use enteral feeds, receive therapy intravenously, or receive wound or stoma care. *See supra* ¶ 3. In all, there is no indication that Petitioner continues to require skilled nursing services. [REDACTED] testified that [REDACTED] is a nurse practitioner and has prevented Petitioner from going to the hospital or ER by monitoring [REDACTED]. *See supra* ¶ 9. [REDACTED] testified that Petitioner needs skilled nursing services to monitor for [REDACTED]. *See supra* ¶ 8. However, Dr. Kunis established that the purpose of PPEC services is for skilled nursing services, which can include constant supervision and medical treatment from a nurse, and that Petitioner's nursing needs appear to only be for monitoring and supervision. *See supra* ¶ 7. The record does not reflect that Petitioner requires daily skilled nursing services or continuous therapeutic interventions at this time. Therefore, based on the foregoing, the record demonstrates that the PPEC services at issue are "in excess of" Petitioner's needs.

21. Upon consideration of the testimony provided, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, and the applicable polices and laws, 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 25th day of March, 2024, in Tallahassee, Leon County, Florida.

 Kameisha Presley
24-FH0064
2024.03.25
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KAMEISHA PRESLEY, 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.

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