



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

FILED

May 15, 2024, 12:00 pm

OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

vs.

AHCA Case No.: 24-FH0180

Plan ID No.: [REDACTED]

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on March 25, 2024, at 3:03 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette,
Clinical Appeals Coordinator
Childrens Medical Services

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 child's 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 Childrens Medical Services (“CMS” or “Respondent”) appeared at the Fair Hearing as a representative for Respondent. Dr. Andrew Metinko M.D. (“Dr. Metinko”), Medical Director for CMS appeared as a witness for the Respondent. The following personnel of CMS attended the Fair Hearing for observation purposes only; Samira Jean-Louis, Occupation Therapist; Dominique Milton, Case Management Supervisor; Mansooreh Salar, M.D.; and [REDACTED], Occupational Therapist. In addition, Joanne White and Theresa Sawyer, Esq., both from the Florida Department of Health appeared at the Fair Hearing for observational purposes.

Lee Ann Williams, Medical/Healthcare Program Analyst 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 thirty-five (235)-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 “24-FH0180 MFH packet [Petitioner].pdf”. The Petitioner did not submit any exhibits into evidence.

FINDINGS OF FACT

1. The Petitioner is an enrolled member of CMS. See Respondent’s Composite Exhibit 1, page 1.
1. CMS 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] and has been diagnosed with [REDACTED]. See Respondent’s Composite Exhibit 1, page 14.

3. On December 6, 2023, the Petitioner submitted a request for an enclosed safety bed. See Respondent's Composite Exhibit 1, page 4. On December 13, 2023, CMS issued a Notice of Adverse Benefit Determination ("NABD") denying Petitioner's request for the requested child's safety bed based on medical necessity. Respondent's Composite Exhibit 1, pages 4-10. The NABD explained the denial of Petitioner's requested safety bed as follows, in pertinent part:

We made our decision because:
(Check all boxes that apply)

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.

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 .

The facts that we used to make our decision are:

...

Rationale: The request to approve equipment, Beds by George Fixed surface Bunkie Board safety bed and add-on parts for your child is denied. The clinical notes that were sent are not matching with the equipment being requested. The quote from National Seating and Mobility is requesting a Beds By George Bunkie Board safety bed. The evaluating occupational therapist is requesting a Cubby Safety Bed. This person is trained to assess for this type of equipment. The therapist's advice should match the vendor quote.

Id.

4. On December 18, 2023, the Petitioner requested a plan appeal. See Respondent's Composite Exhibit 1, page 29. On January 12, 2024, CMS 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 29-33. The NPAR states the following explanation, in pertinent part:

The facts that we used to make our decision are: The reconsideration request for the denial of E1399 x 6 (Beds by George Fixed surface Bunkie Board safety bed and accessories) is denied and the original denial is upheld for lack of medical necessity. There is no mention of less intensive alternatives such as physician directed medication to address behaviors and sleep and environmental modifications to encourage calming behaviors and sleep. 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. Members diagnosis and noted impairments does not warrant medical need of an enclosed bed. In addition, there is no statement that the member would be institutionalized without this equipment. Furthermore, the use of the requested enclosed bed will not prevent members noted self-harm or self-injurious behaviors but may exacerbate behaviors in times of frustration. The reasons for this decision are based on a set of standards. This included FLORIDA MEDICAID DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLY SERVICES COVERAGE AND LIMITATIONS HANDBOOK; Early and Periodic Screening, Diagnostic and Treatment Services; CP.MP. 107: Durable Medical Equipment and Orthotics and Prosthetics.

Id.

5. On January 16, 2024, the Petitioner requested a Fair Hearing regarding the denial of the child's safety bed. On February 14, 2024, the undersigned Hearing Officer issued a notice to all parties of record scheduling the Fair Hearing to be conducted by telephone on March 25, 2024, at 3:00 p.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. 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;
- 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 54-72.

7. The Petitioner's [REDACTED] and Authorized Representative testified that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

8. Dr. Metinko testified for the Respondent that the child's safety bed was initially denied because of vague documentation. Dr. Metinko testified that the record in this matter does not demonstrate that less intensive alternatives to an enclosed safety bed were tried to improve the Petitioner's safety and sleep patterns, including bed rails, placing a mattress on the floor, the removal of all safety hazards, bed alarms, audio/video monitors, child protection devices such as locks on doors, windows, cabinets, furniture anchors, and gates at steps and doors. *See also* Respondent's Composite Exhibit 1, page 59.

9. [REDACTED], an Occupational Therapist that has been treating the Petitioner wrote that a child's safety bed would benefit the Petitioner and is medically necessary. See Respondent's Composite Exhibit 1, pages 14-16 and 20-21.

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 DME and more specifically a child's safety bed. *See supra* ¶ 3. In the NABD and in the NPAR, Respondent denied Petitioner's request for a child's safety bed 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 child's safety bed 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. Metinko provided credible testimony as to the information submitted to CMS that although a safety bed may be medically necessary for the Petitioner, there is insufficient documentary support to approve a safety bed. *See supra* ¶ 8. In addition, the Petitioner did not demonstrate that less intrusive methods to address the Petitioner's sleep issues have been tried and failed.

22. In this case, [REDACTED], an occupational therapist provided two (2) letters stating that a safety bed 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 letters from [REDACTED] do not, *in themselves*, make the requested child's safety bed medically necessary.

23. In this case, Petitioner did not establish that by a preponderance of the evidence that a child's safety bed 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 child's safety bed 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 child's safety bed 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 child's safety bed was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of the requested child's safety bed is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 15th day of May, 2024, in Tallahassee, Leon County, Florida.

Alan J. Leifer



24-FH0180

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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:



Children's Medical Services
CMSPlanContract@flhealth.gov

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com