FILED

Jul 15, 2024, 3:49 pm

OFFICE OF FAIR HEARINGS

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

[redacted],

PETITIONER, **AHCA Case No.: 24-FH0427**

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION,

RESPONDENT.
_______________________________________/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Medicaid Fair Hearing in the above-styled case on April 2, 2024, at 1:00 p.m.

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

For the Respondent: Linda Latson
Registered Nurse Specialist
Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's termination of Prescribed Pediatric Extended Care ("PPEC") services was correct.

PRELIMINARY STATEMENT

All parties appeared telephonically. [redacted] ("[redacted]"), Petitioner's Authorized Representative and [redacted] appeared on behalf of Petitioner.

Linda Latson, Registered Nurse Specialist for the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Respondent. Dr. Rakesh Mittal, M.D. ("Dr. Mittal"), Medical Director for eQHealth Solutions, Inc. ("eQHealth"), appeared as a witness for the Respondent.

Petitioner did not introduce any exhibits at the Fair Hearing.

Respondent sent to the Office of Fair Hearings and Petitioner a 264-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as " FH 04.02.2024 1-248.pdf" and " FH 04.02.2024 249=264.pdf." Absent an objection from Petitioner, the undersigned admitted the evidence packet into evidence as Respondent's Composite Exhibit 1.

Respondent also sent to the Office of Fair Hearings and Petitioner a 47-page evidence packet. The evidence packet appears in the Office of Fair Hearings' case management system as "24-FH0427 AHCA Evidence PPEC Services 47 Pages.pdf." Absent an objection from 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. *See* Respondent's Composite Exhibit 1 at page 21. eQHealth is a Quality Improvement Organization contracted by the Agency to review prior authorization requests for services. *See* Respondent's Composite Exhibit 2 at page 2. The Agency, through contractual agreement, authorized eQHealth to make Medical Necessity determinations for services requiring prior authorizations. *Id*.

2. As of the date of the Fair Hearing, Petitioner is . *See* Respondent's Composite Exhibit 1 at page 16. The Physician Plan of Care for PPEC Services ("POC"), signed February 1, 2024, states that Petitioner's diagnoses include: *Id*. at 199, 200.

3. As stated in the POC, Petitioner is prescribed . *Id*. at 201. She receives physical, occupational, and speech therapy ("PT", "OT", "ST") at PPEC. *Id*.

4. The Florida Home Health Assessment Tool, dated December 15, 2023, reflects that Petitioner's overall health status is "stable with no heightened risk(s) for serious complications and death." *Id*. at 43. Petitioner's

5. Petitioner requested PPEC services for the certification period of February 8, 2024 through August 5, 2024. *Id.* at 19.

6. On February 2, 2024, eQHealth sent Petitioner a Notice of Outcome ("NOO") terminating PPEC services. *Id.* at 35 - 37. The NOO explained that the requested services were not medically necessary and explained 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 Administrative 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.
> Reflective of the level of services that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide.
>
> The rationale for our decision is as follows:
> PR Principal Reason - Denial:
> Submitted information does not support the medical necessity for requested services.
>
> Clinical rationale for Decision: [redacted] Nursing needs consist of daily/PRN nebs and monitoring.
>
> Deny all PPEC units. The patient lack sufficient skilled nursing needs to warrant PPEC care.

Id. at 35-36.

8. On February 2, 2024, [redacted] requested a Fair Hearing on behalf of Petitioner. *Id*. at 8. Administrative approval of PPEC services was approved pending the outcome of the Fair Hearing. *Id*. at 19.

9. [redacted] argued that no regular day care providers will administer [redacted] to Petitioner. [redacted] testified that the [redacted] is used at PPEC approximately [redacted]. Petitioner has an appointment with the [redacted].

10. Dr. Mittal's testimony established that PPEC services consist of skilled nursing services provided full-time by a registered nurse. Skilled nursing services do not include observation, monitoring, and therapies such as OT, ST, and PT as these can be provided at any outpatient facility. Dr. Mittal reviewed the documentation in the Respondent's and Petitioner's evidence

packets and agreed with the two previous eQHealth physician reviewers that no specific skilled nursing needs have been identified warranting the continuation of PPEC services. *Id*. at 18 - 19. The medications administered by PPEC and recorded on the medication Administration Record ("MAR log"), *id*. at 252 – 358, do not have to be administered by a skilled nurse and are only administered once or twice per day or on an "as needed" basis. Dr. Mittal concluded, based on all the documentation provided, that PPEC services are in excess of Petitioner's needs.

CONCLUSIONS OF LAW

11. 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. This order is the final administrative decision of AHCA under section 409.285(2)(a).

12. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b), which states "[e]ach fair hearing shall be a de novo, evidentiary proceeding, and shall be conducted in a manner that meets the requirements of this rule."

13. 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.

14. In the instant case, Respondent terminated Petitioner's PPEC services. As such, 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.).

15. The Florida Medicaid Prescribed Pediatric Extended Care Services Coverage Policy (February 2018) ("PPEC Policy"), incorporated by reference in Fla. Admin. Code R. 59G- 4.260, governs PPEC services available under Florida Medicaid. The PPEC Policy provides the following:

> **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.
> . . . .
> **1.3.7 Medically Necessary/Medical Necessity**
> As defined in Rule 59G-1.010, F.A.C.
> . . . .
> **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 medically stable by a physician and who are not a threat to self or others
>
> Some services may be subject to additional coverage criteria as specified in section
> . . . .
> **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
>
> **4.2 Specific Criteria**
> Florida Medicaid covers PPEC services provided in accordance with section 400.902, F.S., the applicable Florida Medicaid fee schedule, or as specified in this policy, on a full or partial day basis. Services must include the following at a minimum:

- Caregiver training
- Developmental therapies
- An appropriate escort for travel to and from the PPEC when Florida Medicaid nonemergency transportation is provided
- Medical services
- Nursing services
- Personal care services
- Psychosocial services
- Respiratory therapy services

The PPEC day begins when the recipient arrives at the PPEC or is picked up for escorted transportation to the PPEC.

The PPEC day ends when the recipient departs from the PPEC for the day or is returned home by escorted transportation from the PPEC.

4.3 Early and Periodic Screening, Diagnosis, and Treatment

As required by federal law, Florida Medicaid provides services to eligible recipients under the age of 21 years, if such services are medically necessary to correct or ameliorate a defect, a condition, or a physical or mental illness. Included are diagnostic services, treatment, equipment, supplies, and other measures described in section 1905(a) of the SSA, codified in Title 42 of the United States Code 1396d(a). As such, services for recipients under the age of 21 years exceeding the coverage described within this policy or the associated fee schedule may be approved, if medically necessary. For more information, please refer to Florida Medicaid's General Policies on authorization requirements.

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

5.2 Specific Non-Covered Criteria

Florida Medicaid does not cover the following as part of this service benefit:

- A full day and a partial day of PPEC services on the same date of service, for the same recipient
- Early intervention services when billed separately
- Food or formulas
- Supportive or contracted services as defined in section 400.902, F.S.
- Transportation services

Some services may be reimbursed through another Florida Medicaid-covered

service. Please refer to the service-specific coverage policy for more information.

. . . .

7.0 Authorization

7.1 General Criteria

The authorization information described below is applicable to the fee-for-service delivery system. For more information on general authorization requirements, please refer to Florida Medicaid's General Policies on authorization requirements.

7.2 Specific Criteria

Providers must obtain authorization from AHCA, or its designee, every 180 days or more frequently if there is a change in the recipient's condition requiring an alteration in services.

Providers must submit a discharge request to AHCA, or its designee, to terminate a recipient's services. The discharge request must include both of the following:

- Last date services were provided to the recipient
- Number of units of service used during the current authorization period (through the discharge date)

Respondent's Composite Exhibit 2 at pages 40-43.

16. Section 400.902(6), Florida Statutes, defines "medically dependent or technologically dependent child" as "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."

17. Since the Petitioner is under twenty-one years old, the Early and Periodic Screening, Diagnosis, and Treatment ("EPSDT") requirements apply to the request for PPEC services. *See* 42 U.S.C. §§ 1396d(r)(1)-(S). Section 409.905, Florida Statutes, states:

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.—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. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. The Florida Medicaid Definitions Policy (August 2017) ("Definitions Policy"), which is incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines medical necessity as follows:

> **2.83 Medically Necessary or Medical Necessity**
> 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 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
> - 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.

19. The Florida Medicaid Authorization Requirements Policy (June 2016) ("Authorization Requirements Policy"), incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides general requirements for providers to obtain authorization to render Florida Medicaid services. It states the following:

> **1.2 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.

. . .

1.3.1 Authorization

The process of obtaining approval for reimbursement of a service based on medical necessity.

. . .

1.3.6 Provider

The term used to describe any entity, facility, person, or group that has been approved for enrollment or registered with Florida Medicaid.

1.3.7 Quality Improvement Organization

Entity designated to perform utilization review, quality assurance, and quality improvement activities for Florida Medicaid-covered services rendered by fee-for-service providers (also known as the QIO).

. . .

2.0 Authorization Requirements

2.4.2 Requests for Additional Information

The QIO may request additional information, as necessary, to determine medical necessity.

. . .

3.0 Determination Process

3.1 Review Criteria

The QIO may use a national standardized set of criteria, or other set of criteria, approved by AHCA, as a guide for authorizations performed at the first review level. If services cannot be approved at the first level review, the QIO's physician peer reviewer will determine medical necessity using his or her clinical judgment, acceptable standards of care, state and federal laws, and AHCA's medical necessity definition.

3.2 Review Process

The QIO will review each authorization request and will approve, deny, or request additional information. The QIO may deny a portion of the requested units of service if it cannot substantiate medical necessity based upon the information submitted.

3.2.1 Continued Authorization Requests

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual errors or omissions in prior certifications.
- There is a documented improvement in the recipient's medical condition.
- There is a documented change in the recipient's circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

Respondent's Composite Exhibit 2 at pages 32-35.

20. In the instant case, Petitioner's requested the continuation of PPEC services for the certification period of February 8, 2024 through August 5, 2024. *See* supra ¶ 5. As established on the record by the testimony and evidence, eQHealth terminated Petitioner's PPEC services because the services no longer met medical necessity criteria. *See* supra ¶ 6.

21. Florida Medicaid covers PPEC services that: are determined medically necessary; do not duplicate another service; and meet the criteria as specified in the PPEC Policy. *See* supra ¶ 15. PPEC provides "skilled nursing supervision and therapeutic interventions in a non-residential setting to medically dependent or technologically dependent recipients." *See* supra ¶ 15.

22. In this case, Dr. Mittal provided credible and persuasive testimony that there was no evidence demonstrating that Petitioner continues to require daily "skilled nursing supervision and therapeutic interventions" at a PPEC facility. *See* supra ¶ 10, 16. Further, the documentation regarding Petitioner's medical status, supra ¶¶ 2 – 4 and 10, reflects that Petitioner does not meet the definition of a "medically dependent or technologically dependent child" as Petitioner is not "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." *See* supra ¶16. Specifically, Petitioner's overall health status is "stable with no heightened risk(s) for serious complications and death." *See* supra ¶ 4. Petitioner's [redacted]

[redacted]

[redacted]. *See* supra ¶ 4.

Petitioner does not have wounds or stomas. *See* supra ¶ 4. Petitioner does not have seizures or spasms. *See* supra ¶ 4. Petitioner's ability to [redacted]. *See* supra ¶ 4. As Dr. Mittal confirmed, Petitioner's prescribed medication is given by mouth and can be administered by any responsible adult. *See* supra ¶ 10.

23. Section 2.83 of the Definitions Policy mandates that to be medically necessary, "[t]he medical or allied care, goods, or services furnished or ordered must . . . . "[b]e 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 ¶ 18. Based upon the aforementioned facts and evidence, the undersigned finds that Respondent demonstrated that the subject PPEC services are in excess of Petitioner's needs. Thus, Respondent established that the PPEC services do not meet medical necessity criteria, as defined in Fla. Admin. Code R. 59G-1.010 and required by section 1.3.7 of the PPEC Policy.

24. [redacted] asserted that Petitioner's request should be approved because PPEC services were recommended by a physician. *See* supra ¶ 9. However, 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. *See* supra ¶ 18.

25. In light of the both parties' testimony, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the PPEC Policy, the Authorization Requirements Policy, and the Definitions Policy, the record demonstrates by a preponderance of the evidence that Respondent's termination of PPEC services was correct.

DECISION

Respondent's termination of PPEC services is **AFFIRMED**. Petitioner's appeal based on Respondent's termination of PPEC services is hereby **DENIED**.

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

Laura Gallagher
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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:

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