



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

FILED

Jun 13, 2024, 9:24 am

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0582

Plan ID No.: [REDACTED]

vs.

SIMPLY HEALTHCARE PLANS, INC.,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 8, 2024, at 10:02 a.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Sharon Nealy
Grievance and Appeals
Simply Healthcare Plans, Inc.

STATEMENT OF ISSUE

The issue is whether Petitioner proved by a preponderance of the evidence that Respondent's decision to deny Petitioner's request for medical equipment and supplies (home UV light treatment) was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative and [REDACTED], [REDACTED] (" [REDACTED]"), appeared for Fair Hearing to provide testimony on behalf of the Petitioner, and did not call any witnesses.

Sharon Nealy ("Ms. Nealy"), Grievance and Appeals for Simply Healthcare Plans, Inc. ("Simply") appeared for Fair Hearing as representative for Respondent. Dr. Marc Kaprow ("Dr. Kaprow"), Chief Medical Director for Simply, appeared for Fair Hearing as a witness for Respondent.

Diana Hearod, Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared for Fair Hearing as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a seventeen (17)-page evidence packet, a nineteen (19)-page evidence packet, twenty-one (21)-page evidence packet, and a twenty-seven (27)-page evidence packet. The seventeen (17)-page packet appears in the Office of Fair Hearings' document management system as file title "24-FH0582 Evidence.pdf", the nineteen (19)-page packet appears as file title "24-FH0582 Evidence Part 1.pdf", the twenty-one (21)-page packet appears as file title "24-FH0582 Evidence Part 2.pdf", and the twenty-seven (27)-page packet appears as file title "24-FH0582 Evidence Part 3.pdf." Absent an objection from the Respondent, the undersigned admitted the seventeen (17)-page packet into evidence as Petitioner's Composite Exhibit 1 ("PCE 1"). Absent an objection from the Respondent, the undersigned admitted the nineteen (19)-page packet, the twenty-one (21)-page packet, and the twenty-seven (27)-page packet into evidence as Petitioner's Composite Exhibit 2 ("PCE 2").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty-six (86)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file title "Florida Simply Evidence Packet - [Petitioner].pdf." Absent an objection from the Petitioner, the undersigned admitted the eighty-six (86)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of Simply Medicaid Managed Care ("MMA") plan. See RCE 1 at page 2. Simply is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED]. *Id.* at 9. Petitioner's medical history includes [REDACTED] *Id.* at 10, 21. Petitioner is prescribed the following medications: [REDACTED]
[REDACTED]. *Id.* at 39, 44.

3. Petitioner's nurse practitioner, [REDACTED], wrote a medical necessity later dated [REDACTED]
[REDACTED], for Petitioner to receive the home ultraviolet light ("UV") light treatment. The letter states as follows:

I am writing on behalf of [Petitioner] to document the medical necessity of Home UVB for the treatment of [REDACTED]. This letter provides information about the patient's medical history and diagnosis and a statement summarizing my treatment rationale.

[REDACTED] is a medical condition that can have devastating effects on a patient's quality of life, causing [REDACTED]. As this diagnosis is usually a life-long condition that requires long-term maintenance to prevent future flare-ups, my patient will likely require UV light treatment for indefinite use with an ongoing maintenance schedule. Treatment frequency of 3 times per week is required with likely moderation during the summer months. Patient has tried [REDACTED]
[REDACTED] at a time without great improvement.

Patient has also tried outpatient UVB which has greatly improved [REDACTED] condition, however [REDACTED] was missing school to make the appointments and the office is over an hour away from patient's residence. An at home device would greatly reduce absences from school and improve [REDACTED] medical condition greatly.

Id. at 23.

4. Petitioner requested medical equipment (home UV light treatment). Petitioner's request was denied in the Notice of Adverse Benefit Determination ("NABD") dated December 2, 2023.

Id. at 67-70. The NABD explained the basis of the denial as follows:

- ✓ 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 individualized, specific, and consistent with symptoms or diagnosis of illness or injury, and not be in excess of the patient's needs.
...

The facts that we used to make our decision are We cannot cover your child's treatment (home UV light treatment). This can be covered for certain problems ([REDACTED]). Your child does not have these conditions (requested for treatment of [REDACTED]). This decision is based on Simply Healthcare Clinical UM Guidelines CG-DME-41 Ultraviolet Light Therapy Delivery Devices for Home Use. Your reference number is: [REDACTED]

Id. at 67-68.

5. On December 15, 2023, Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR") dated December 15, 2023, upholding the denial. *Id.* at 71-74, 75-77.

The NPAR explained as follows:

On 12/15/2023, after consideration of the information you provided to Simply in support of your plan appeal, Simply hereby DENIES, your plan appeal. We can not cover your request for a special light (home UV light treatment). We know your child has [REDACTED]. You asked for a special light treatment. Your child does not have the type of [REDACTED] that this light works well for ([REDACTED]). We based this decision on the information provided, health plan guidelines, and Simply Healthcare Clinical UM Guideline Ultraviolet Light Therapy Delivery Devices for Home Use: CG-DME-41. Your case was looked at by a Pediatrics provider for Simply.

Id. at 75.

6. On February 19, 2024, Petitioner requested a Fair Hearing to challenge the denial of the medical equipment (home UV light treatment). On March 7, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for April 8, 2024, at 10:00 a.m. EST.

7. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following:

- a. [REDACTED]
[REDACTED]
- b. [REDACTED] also referenced the letter of medical necessity authored by Petitioner's nurse practitioner indicating that other options were tried but unsuccessful, and considering Petitioner's age this is the last option. *See* ¶ 3.
- c. [REDACTED] argued that Petitioner completed sessions for [REDACTED], but it did not help much and that is the reason why [REDACTED] stopped treatment in office.
- d. [REDACTED] [REDACTED]
[REDACTED].
- e. Petitioner no longer receiving treatment in office and has not for the past [REDACTED] [REDACTED] years.

8. Dr. Kaprow is a Medical Director for Simply. Dr. Kaprow testified to the following:

- a. The decision of Simply's medical directors to deny the home UV light treatment services was based on the medical necessity criteria and the Clinical UM Guideline Ultraviolet Light Therapy Delivery Devices for Home Use. *See* ¶ 4-5.

- b. Dr. Kaprow opined that [REDACTED] is not a condition typically approved for treatment at home. *See* RCE 1 at 78.
- c. Dr. Kaprow argued that the description from the nurse practitioner indicated that treatment was effective in office and can therefore be continued in office at the discretion of the provider. *See* ¶ 3.
- d. Dr. Kaprow contended that if treatment was not effective in the office, it would not be likely to be effective at home. *See* ¶ 9.
- e. Dr. Kaprow argued that the office in [REDACTED] and Petitioner’s home in [REDACTED] [REDACTED] is not 1 hour apart. *See* ¶ 3.

9. The Clinical UM Guidelines CG-DME-41 Ultraviolet Light Therapy Delivery Devices for Home Use (September 2023) (“CG.DME-41”) provides as follows in regard to UV therapy:

CLINICAL INDICATIONS

An in-home Ultraviolet B (UVB) light therapy delivery device is considered **medically necessary** when conditions A and B are met:

- A. The treatment is for one of the following conditions:
 - 1. Atopic dermatitis, when topical treatment alone has failed; or
 - 2. Pityriasis lichenoides; or
 - 3. Pruritus of hepatic disease; or
 - 4. Pruritus of renal failure; or
 - 5. Psoriasis, when topical treatment alone has failed; or
 - 6. Cutaneous T-cell lymphoma including mycosis fungoides and Sézary syndrome.

and

- B. The treatment meets all of the following criteria:
 - 1. Treatment is conducted under a physician’s supervision with regularly scheduled exams; and
 - 2. Treatment is expected to be long term (3 months or longer); and
 - 3. The individual meets any of the following:
 - a. The individual is unable to attend office-based therapy due to a serious medical or physical condition (for example, confined to the home, leaving home requires special services or involves unreasonable risk); or

- b. Office-based therapy has failed to control the disease and it is likely that home-based therapy will be successful; or
- c. The individual suffers from severe psoriasis with a history of frequent flares which require immediate treatment to control the disease.

...

Not Medically Necessary

An in-home UVB delivery device is considered **not medically necessary** for all other conditions not mentioned above, including but not limited to vitiligo, and when the criteria above are not met.

Home ultraviolet light therapy using ultraviolet A (UVA) light devices are considered **not medically necessary** for all indications.

...

CODING

...

ICD-10 Diagnosis

C84.00-C84.09	Mycosis fungoides
C84.10-C84.19	Sézary disease
C86.6	Primary cutaneous CD30-positive T-cell proliferations
K73.0-K73.9	Chronic hepatitis, not elsewhere classified
K74.00-K74.69	Fibrosis and cirrhosis of liver
K75.0-K75.9	Other inflammatory liver diseases
L20.0-L20.9	Atopic dermatitis
L29.0-L29.9	Pruritus
L40.0-L40.9	Psoriasis
L41.0	Pityriasis lichenoides et varioliformis acuta
L41.1	Pityriasis lichenoides chronica
N03.0-N03.A	Chronic nephritic syndrome
N18.1-N18.9	Chronic kidney disease (CKD)

When services are Not Medically Necessary:

For the procedure and diagnosis codes listed above for UVB therapy when criteria are not met or for all other diagnoses not listed; or when the code describes a procedure or situation designated in the Clinical Indications section as not medically necessary such as UVA therapy.

DISCUSSION/GENERAL INFORMATION

...

Vitiligo

...

While there is increasing evidence supporting the benefits of home-based UVB phototherapy, this treatment has not been generally accepted as standard treatment for vitiligo.

UVA home therapy devices

...

The use of UVA as a home therapy has not been shown to be safe and effective when compared to the other alternatives, such as office or facility-based treatment UVA therapy or UVB therapy. The AAD (2014) notes that given the limited number of head-to-head trials, there is no definitive recommendation regarding which form of phototherapy is more effective. UVA therapy requires the concurrent use of photosensitizers, which greatly increase the risk of complications. UVB therapy does not involve the use of photosensitizers.

See RCE 1 at 78-83.

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 (2022). 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 Rule 59G-1.100(17)(b), Florida Administrative Code Rule ("Fla. Admin. Code R.").

12. 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.)

13. 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.

14. 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). 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.

15. The Florida Medicaid Definitions Policy (August 2017) (“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.

Definitions Policy at page 7.

16. Petitioner requested medical equipment and supplies (home UV light treatment). See ¶ 4. In the NABD dated December 2, 2023, Respondent denied Petitioner’s request citing the lack of medical necessity. See ¶ 4. Specifically, Respondent explained that the treatment was not “individualized, specific, and consistent with symptoms or diagnosis of illness or injury, and not be in excess of the patient’s needs.” See ¶ 4. In the NPAR dated December 15, 2023, Respondent upheld its denial citing the same rationale. See ¶ 5. Petitioner has the burden of proof to show by a preponderance of evidence that Respondent’s decision was incorrect. See ¶ 12.

17. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010 for Medicaid-covered benefits. See ¶ 13-14. The Definitions Policy requires that medically necessary services 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.” See ¶ 15.

18. In the instant case, Petitioner is under 21 years of age and is diagnosed with [REDACTED] See ¶ 2. Dr. Kaprow testified that the request for the home UV light treatment and submitted documentation were reviewed in consideration of medical necessity and the CG.DME-41 guidelines. See ¶ 8.

19. At Fair Hearing, [REDACTED] referenced the letter of medical necessity authored by Petitioner’s nurse practitioner indicating that other options were tried but unsuccessful, and considering Petitioner’s age this was the last option. See ¶ 7. [REDACTED] argued that Petitioner has suffered from [REDACTED] for several years and has affected [REDACTED] daily life and socialization at school. See ¶ 7. [REDACTED] further [REDACTED] [REDACTED]. See ¶ 7. According to [REDACTED],

Petitioner has not received treatment in office for the past [REDACTED] years. See ¶ 7. [REDACTED] described the reason why Petitioner stopped receiving treatment in office as because of its ineffectiveness after [REDACTED] of completed sessions. See ¶ 7. Dr. Kaprow argued that based on the nurse practitioner's description, treatment was effective in office and can therefore be continued in office at the discretion of the provider. See ¶ 8. Dr. Kaprow opined that [REDACTED] is not a condition typically approved for treatment at home. See ¶ 8. Moreover, Dr. Kaprow contended that if treatment was not effective in the office, it would not be likely to be effective at home. See ¶ 8.

20. The record indicates that the request for the home UV light treatment is in part due to the distance between the office in [REDACTED] and Petitioner's residence in [REDACTED]. See ¶ 3. Because of this distance, the nurse practitioner recommended the at-home device to "greatly reduce absences from school and improve [REDACTED] medical condition greatly." See ¶ 3. 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 ¶ 15. Therefore, a letter from Petitioner's nurse practitioner does not, in itself, make the requested equipment medically necessary. See ¶ 15. Nonetheless, the record does not demonstrate sufficient justification that the home UV light treatment is "individualized, specific, and consistent with symptoms or diagnosis of illness or injury, and not in excess of [Petitioner]'s needs." See ¶ 2, 7-9, 15.


21. Upon consideration of the testimony provided, evidence submitted, and applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the requested medical equipment and supplies (home UV light treatment) is

medically necessary. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not shown that the requested service is necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the undersigned finds that Petitioner has not proved by a preponderance of the evidence that Respondent's denial of medical equipment and supplies (home UV light treatment) was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of medical equipment and supplies (home UV light treatment) is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of medical equipment and supplies (home UV light treatment) is **DENIED**.

DONE AND ORDERED this 13th day of June, 2024 in Tallahassee, Leon County, Florida.

 Kimberly Roche
24-FH0582
2024.06.13 08:13:52
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KIMBERLY ROCHE, 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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