



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

**FILED**

Jul 08, 2024, 2:43 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH0747

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on April 23, 2024, at 9:00 a.m. Eastern Standard Time (“EST”).

**APPEARANCES**

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Marielisa Amador  
Medical/Health Care Program Analyst  
Agency for Health Care Administration

**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 prescribed pediatric extended care (“PPEC”) services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared telephonically. Petitioner’s Authorized Representative and [REDACTED],

[REDACTED] (“[REDACTED]”), appeared on behalf of the Petitioner.

Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared on behalf of Respondent. Dr. Chris Kunis (“Dr. Kunis”), Medical Director for eQHealth Solutions, Inc. appeared as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a fifty-three (53)-page evidence packet. The evidence packet appears in the Office of Fair Hearings’ document management system as the file titles “24-FH0747 Faxed Supporting Documents.pdf” and “24-FH0747 Faxed Supporting Documents(2).pdf”. Absent an objection from the Respondent, the undersigned admitted the fifty-three (53)-page evidence packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and fifty-one (151) page evidence packet and a forty-seven (47) page evidence packet. The one hundred and fifty-one (151) evidence packet appears in the Office of Fair Hearings’ document management system as “[REDACTED] FH 04.23.2024 1-129.pdf” and “[REDACTED] FH 04.23.2024 130-151.pdf”. The forty-seven (47)-page evidence packet appears as “24-FH0747 AHCA Evidence (Pages 1-47 of 47).pdf”. Absent an objection from the Petitioner, the undersigned admitted the 151-page evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the 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. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the agency to review prior authorization requests for services. See page 2 of RCE 2.

2. Petitioner is [REDACTED]. See page 16 of RCE 1. Petitioner is diagnosed with the following: [REDACTED]

[REDACTED]

[REDACTED]. *Id.* at 17.

3. Petitioner is not ventilator dependent, nor does [REDACTED] use a BiPap/CPAP, or oxygen treatment. *Id.* at 59 - 60. Petitioner does not require G-tube or J-Tube feeding. *Id.* at 60. Petitioner does not require wound care. *Id.* at 61.

4. Petitioner's provider, [REDACTED], APRN, wrote a letter recommending PPEC services that stated as follows:

This letter verifies that [Petitioner] is under our care for a complicated history of

[REDACTED]

...

Page 12 of PCE 1.

5. Petitioner requested the following PPEC services: for the period of December 18, 2023, through December 26, 2024, 9 units of T1025 (full day PPEC services) and 36 units of T1026 (partial day PPEC services); and for the period of December 27, 2023, through June 14, 2024, 684 units of T1026 (partial day PPEC services) and 171 units of T1025 (full day PPEC services). In a

Notice of Outcome (“NOO”), dated January 4, 2024, Respondent denied Petitioner’s request for PPEC services. See pages 24 – 26 of RCE 1. The NOO explained the basis of the denial as follows:

[T]he 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 NOO further stated:

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

Clinical rationale for Decision: The patient is a [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] There are no daily medications that have to be administered by nursing. There is no need for skilled nursing care; therefore, PPEC has to be denied.

...

*Id.* at 24 - 25 of RCE 1.

6. Petitioner requested reconsideration of the Respondent’s decision. In a Notice of Reconsideration Determination (“NRD”), Respondent upheld its decision. *Id.* at 39 – 41. The NRD explained the basis of the decision as follows:

PR Recon Determination: Reconsideration request and the submitted clinicals were reviewed. [REDACTED]  
[REDACTED] need for skilled nursing . Uphold the denial .

...

*Id.* at 39 – 40.

7. On March 8, 2024, Petitioner requested a Fair Hearing to challenge the denial of PPEC services. On April 2, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for April 23, 2024, at 9:00 a.m. EST.

8. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following:
- a. Petitioner is on [REDACTED] different medications. [REDACTED]  
[REDACTED]  
[REDACTED].
  - b. Petitioner attended a regular daycare from [REDACTED].  
Petitioner was unable to receive [REDACTED] treatments. As a result, [REDACTED]  
[REDACTED].
  - c. Petitioner has [REDACTED].
  - d. Petitioner receives ABA therapy five (5) hours per day, six (6) days per week.
  - e. Petitioner receives occupational therapy for three (3) times per week, for 1.5 hours each session.

9. Dr. Kunis is a Medical Director for eQHealth. Dr. testified Kunis testified to the following:
- a. PPEC services are intended for children who need skill nursing services beyond observation and administering medication for episodic illnesses.
  - b. [REDACTED]  
[REDACTED].
  - c. [REDACTED]  
[REDACTED]  
[REDACTED].
  - d. Petitioner is receiving routine medications that do not need a skilled nurse to provide and can be provided at home.

- e. Petitioner has durable medical equipment such as a cubby bed and special seating which can help calm with the [REDACTED].
- f. Dr. Kunis does not believe that skilled nursing services are necessary for Petitioner. Dr. Kunis explained that skilled nursing services are of that type that are performed in a hospital, for example, the use of feeding tubes.

**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 Fla. Admin. Code R. 59G-1.100(17)(b).

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. The PPEC Policy establishes the provision and coverage of PPEC services under Florida Medicaid. 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

14. Rule 59A-13.007(4)(a), F.A.C. 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, F.S described “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.

15. Rule 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.

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).

18. 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.

19. The Florida Medicaid 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.

20. In the instant case, Respondent denied Petitioner’s request for PPEC services. See ¶ 4. In the NOO dated January 4, 2024, Respondent explained that PPEC services are not medically necessary, specifically that the request did not meet the requirement 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.” *Id.* Respondent further explained that “there are no daily medications that have to be administered by nursing”. *Id.*

21. As Petitioner bears the burden of proof, Petitioner must show that it is medically necessary for Petitioner to receive the requested service. PPEC services are intended for patients who “require continuous therapeutic interventions or skilled nursing supervision”. See ¶ 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. As shown by the record, Petitioner is diagnosed with

[REDACTED]

[REDACTED]

[REDACTED]. See ¶ 2. Petitioner does not require a ventilator, BiPap/CPAP, G-tube/J-tube, nor does [REDACTED] require wound care. See ¶ 3. Petitioner has been hospitalized on multiple occasions. See ¶ 8. Here, the record reflects that Petitioner has complex medical issues, and may require [REDACTED], however, Dr. Kunis provided credible and persuasive testimony that these could be administer at home and did not require a skilled nurse. See ¶ 9. In all, Petitioner did not provide evidence that skilled nursing services were medically necessary. As such, it was not shown that PPEC services were not “in excess of the patient’s needs”. Accordingly, Petitioner did not demonstrate that PPEC were medically necessary.


22. Lastly, although the record reflects that Petitioner’s provider has recommended PPEC services, the recommendation does not make the service a covered service. See ¶ 4. 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 or a medical necessity or a covered service.” See ¶ 19.

23. 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 PPEC services are medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that PPEC services are not necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent’s denial of PPEC services was incorrect.

**IT IS HEREBY ORDERED AND ADJUDGED THAT:**

Respondent’s denial is **AFFIRMED**. Petitioner’s appeal based on Respondent’s denial is **DENIED**.

**DONE and ORDERED** this 8th day of July 2024, in Tallahassee, Leon County, Florida.

Joseph Mabry  
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**JOSEPH MABRY, 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]  
[REDACTED]  
[REDACTED]

**AHCA Medicaid Hearing Unit**  
**MedicaidHearingUnit@ahca.myflorida.com**