

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



FILED

Jul 10, 2024, 1:37 pm  
OFFICE OF FAIR HEARINGS

[REDACTED]  
PETITIONER,

AHCA Case No.: 24-FH0776

vs.

AGENCY FOR HEALTH CARE  
ADMINISTRATION,

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the instant case on April 29, 2024, at 1:00 p.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 denial of Personal Care Services was incorrect.

**PRELIMINARY STATEMENT**

All parties appeared for the scheduled Fair Hearing telephonically. [REDACTED], (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED], appeared for the Fair

Hearing on behalf of Petitioner and provided testimony. [REDACTED] (“[REDACTED]”), Director of Exceptional Student Education for [REDACTED], [REDACTED] (“[REDACTED]”), pediatric nurse and [REDACTED] (“[REDACTED]”), CDC Consultant, appeared on behalf of Petitioner and provided testimony.

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

Prior to the Fair Hearing, Petitioner sent to the Office of Fair Hearings a five (5)-page evidence packet and an eleven (11)- page evidence packet. The eleven (11)-page evidence packet appears in the Office of Fair Hearings’ case management system as file title “24-FH0776 Additional Evidence.pdf.” The five (5) page evidence packet appears in the Office of Fair Hearings’ case management system as file title “[PETITIONER] Fair Hearing Request.pdf.” Absent an objection, the undersigned admitted the evidence packets into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”)

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and fifty-one (151)-page evidence packet and a fifty-two (52) page evidence packet. The one hundred and fifty-one (151) page evidence packet appears in the Office of Fair Hearings’ case management system as file titles: “[REDACTED] FH 04.28.2024 1-130.pdf,” and “[REDACTED] FH 04.28.2024 131-151.pdf.” Absent an objection from the Petitioner, the undersigned admitted

the one hundred and fifty-one (151) evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE1”). The fifty-two (52) page evidence packet appears in the Office of Fair Hearings’ case management system as file title: “24-FH0776 AHCA evidence (Pages 1-52 of 52).pdf.” Absent an objection from the Petitioner, the undersigned admitted the fifty-two (52) evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE2”).

**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. RCE 2 at 2.

2. As of the date of the Fair Hearing, Petitioner is [REDACTED].  
*Id.* at 16. Petitioner has been diagnosed with [REDACTED]  
[REDACTED] *Id.* at 16, 72.

3. Petitioner’s physician, [REDACTED] (“[REDACTED]”), wrote a prescription dated December 18, 2023, for “personal care assistance”: twenty-four (24) hours per day, seven days per week. *Id.* at 72. The prescription indicated as follows, in pertinent part:

Due to [PETITIONER’S] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Skill level required (i.e. RN, LPN, or Aide) Aide

*Id.*

4. In a Notice of Outcome (“NOO”) dated January 25, 2024, 20 hours of personal care services were approved for January 1, 2024, through January 6, 2024; 500 hours of personal care services were approved for January 7, 2024, through July 29, 2024. The balance of the request for personal care services, specifically, 124 hours for January 1, 2024, through January 6, 2024; 3700 hours for January 7, 2024, through July 29, 2024; and 24 hours for June 30, 2024, were denied based on medical necessity. *Id.* at 22-23. The NOO explained the basis of the determination as follows, in pertinent part:

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.  
The rationale for our decision is as follows:

PR Principal Reason - Denial:  
Submitted information does not support the medical necessity for requested frequency and/or duration.

[REDACTED]

[REDACTED]

[REDACTED]

*Id.*

5. Petitioner requested a reconsideration. *Id.* at 33-34. On February 8, 2024, Respondent, through eQHealth, issued a Notice of Reconsideration Determination (“NRD”) upholding its determination. *Id.* The NRD states the following, in pertinent part:

The reason for the denial is that the services are not medically necessary as defined in 59G-1.010, Florida Administrative Code. Specifically the 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.

The medical basis for the reconsideration decision is as follows:

The patient is a [REDACTED]

[REDACTED] PCS is not intended for monitoring and supervision and parents have to provide to the best of their ability.

*Id.*

6. On March 12, 2024, [REDACTED] requested a Fair Hearing on behalf of Petitioner due to Respondent’s denial of personal care services. On April 4, 2024, the undersigned Hearing Officer

issued an Order of Scheduling Fair Hearing by Telephone and Prehearing Instructions for April 29, 2024, at 1:00 p.m. EST.

7. [REDACTED] testified as follows:

- a. [REDACTED] needs personal care services.
- b. [REDACTED]  
[REDACTED].
- c. They no longer have the safety beds in the home due to [REDACTED]  
[REDACTED].
- d. [REDACTED] goes to school at 8:00 a.m. and arrives home at 4:00 p.m.
- e. [REDACTED] works full-time Monday through Friday 9:00 a.m. to 3:00 p.m. [REDACTED] does not have the children on Saturdays during the day and Sunday mornings.
- f. [REDACTED] takes medications at dinner time and as needed medications.
- g. [REDACTED] needs hours when the child is not in school. Respite, ABA and personal care are provided in the home currently.
- h. [REDACTED] needs time to do other things like work and sleep.
- i. [REDACTED] works as an advocate for people with autism through a non-profit organization.
- j. [REDACTED] has 1,200 families that [REDACTED] works with and [REDACTED] sets [REDACTED] own hours.

8. [REDACTED] testified as follows:

- a. Has known Petitioner all [REDACTED] life and understands [REDACTED] needs.

- b. [REDACTED] needs personal care support due to [REDACTED]. [REDACTED] jumped out of a second story window at [REDACTED] school.
- c. [REDACTED] have been used due to [REDACTED] behavior.
- d. [REDACTED] believes the services are medically necessary for the child's safety and that [REDACTED] needs help with [REDACTED] ADLs from multiple people.
- e. [REDACTED] is intermittently involved with the family both personally and professionally.

9. [REDACTED] testified as follows:

- a. [REDACTED] has known the child since [REDACTED] was in elementary school.
- b. [REDACTED] observes the child in [REDACTED] school program monthly.
- c. [REDACTED] needs specially designed instruction in school.
- d. Having personal care services at home would be helpful because it is helpful to [REDACTED] at school to keep [REDACTED] safe and increase independence in ADL skills.
- e. [REDACTED]  
[REDACTED].

10. [REDACTED] testified as follows:

- a. Has been working with the child for the last year.
- b. [REDACTED] helps to get services for the family through the CDC plus program due to [REDACTED] concerns, and other behavioral challenges. [REDACTED] is unable to live safely in [REDACTED] home or be in school without the extra support of personal care services.
- c. [REDACTED] needs help with all ADLs in order for [REDACTED] to have a meaningful day.

11. Dr. Kunis testified as follows:

- a. 20 hours of personal care services were approved for January 1, 2024, through January 6, 2024; 500 hours of personal care services were approved for January 7, 2024, through July 29, 2024. These hours are adequate for the child's needs considering parental availability and the child's school schedule.
- b. The child's issues are behavior related.
- c. The hours that have been authorized are appropriate to assist the child with [REDACTED] ADLs in the absence of a parent.
- d. Per the Personal Care policy, parents are to participate in providing care to the fullest extent possible. RCE 2 at 42.
- e. 24-hour supervision is not covered under the personal care policy.

#### **CONCLUSIONS OF LAW**

12. 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).

13. This hearing was held as a *de novo* proceeding pursuant to Florida Administrative Code Rule ("Fla. Admin. Code R.") 59G-1.100(17)(b).

14. Because Petitioner is requesting new services, 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.).

15. The Florida Medicaid Personal Care Services Coverage Policy (“Policy”) incorporated by reference in Fla. Admin. Code R. 59G-4.215, governs Personal Care services available under Florida Medicaid. The Policy provides the following with respect to personal care services and companion care services:

**1.1 Description**

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

**4.1 General Criteria**

Florida Medicaid reimburses for 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 reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician’s order for personal care services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or the community

...

#### **4.2.1 Parental Responsibility**

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

...

#### **4.2.2 Services Provided by Independent Personal Care Providers**

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

...

#### **4.3 Early and Period 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 1095(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.

16. The Policy further addresses excluded services as follows:

##### **5.1 General Non-Covered Criteria**

Services related to this policy are not reimbursed 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 reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved plan of care (POC)
- Assistance with homework
- Babysitting
- Care, grooming, or feeding of pets and animals
- Certification of the POC by a physician
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian attending to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient. (Except when a recipient is enrolled in the Consumer-Directed Care Plus program)
- Services provided in any of the following locations:
  - Hospitals
  - Intermediate care facility for individuals with intellectual disabilities
  - Nursing facilities
  - Prescribed pediatric extended care centers
  - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient's place of residence
- Yard work, gardening, or home maintenance work.

17. 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.

18. Petitioner is under age 21, and therefore EPSDT applies to the request for 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.

19. The Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides the applicable definitions for Florida Statewide Medicaid Managed Care policy. The Definition Policy provides the following definitions applicable to the instant case:

**2.2 Activities of Daily Living (ADLs)**

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting

- Transferring

### **2.64 Instrumental Activities of Daily Living (IADLs)**

When necessary for the recipient to function independently, including:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Money Management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

### **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 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. Petitioner’s request for services is governed by the Florida Medicaid Authorization Requirements Policy (June 2016) (“Authorization Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-1.053. *Id.* at 34. The Authorization Policy provides the following, in pertinent part:

**3.0 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.

**3.0.1 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.

RCE 2 at 3.

20. In this case, Petitioner, is a [REDACTED]  
[REDACTED] See ¶ 2. In an NOO dated January 25, 2024, twenty (20) hours of personal care services were approved for January 1, 2024, through January 6, 2024 and five hundred (500) hours of personal care services were approved for January 7, 2024, through July 29, 2024. The balance of the request for Personal Care Services were denied based on medical necessity. See ¶ 4. Specifically, the services are not “individualized, specific, consistent with symptoms or diagnosis of illness or injury” and are “in excess of [Petitioner’s] needs.” *Id.*

21. The Home Health and Personal Care Policies are clear that Florida Medicaid covers Home Health Aide visits and Personal Care Services for a Recipient whose parent or legal guardian is not able to provide ADL or IADL care. See ¶ 15, 19. Further, parents and legal guardians must participate in providing care to the fullest extent possible. See ¶ 15, 19. Medicaid does not provide babysitting. See ¶ 15. Babysitting is defined as custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient. See ¶ 15.

22. In the instant case, the record does not show that the requested hours of personal care services are warranted. As Petitioner is under the age of twenty-one (21), Florida Medicaid would cover the requested if they were medically necessary. A component of medical necessity is that the services must not be “in excess of the patient’s needs.” Here, as Dr. Kunis credibly testified, Petitioner’s needs do not merit authorization of the hours requested due to the child attending school full time, and having two parents whom [REDACTED] splits time with. See ¶ 7, 11. Dr. Kunis provided further testimony that services could not be approved due to the lack of documentation supporting both Petitioner’s need for the services at issue and an inability of the parents to provide for their child’s needs. See ¶ 11. Therefore, the services are “in excess of the patient’s needs” and thus are not medically necessary.

23. [REDACTED] indicated that [REDACTED] workday is comprised of volunteer work, and [REDACTED] sets [REDACTED] own hours. See ¶ 7. Additionally, the child’s [REDACTED], who shares custody, has the child on Saturday through Sunday morning. *Id.* Parents are expected to participate in providing care to the fullest


extent possible. See ¶ 15, 19. Therefore, Respondent's denial of services based upon the services being in excess of the child's needs and the parents' availability and ability to participate in the care of their child was warranted. See ¶ 4-5, 7, 11.

24. Upon consideration of the testimony, evidence, and applicable policies, the undersigned finds that Petitioner did not prove by a preponderance of the evidence that the Personal Care Services at issue are not in excess of Petitioner's needs. As such, Petitioner has not shown that the requested services are medically necessary. Looking at all the evidence relevant to the particular needs of this Petitioner, the Petitioner did not demonstrate that the requested Personal Care services are 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 Personal Care services was incorrect.

**IT IS THEREFORE ORDERED AND ADJUDGED:**

Respondent's denial of Personal Care Services is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

**DONE and ORDERED** this 10th day of July 2024, in Tallahassee, Leon County, Florida.

 Lynne Ringers  
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**LYNNE RINGERS, 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]

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