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

FILED

Jul 01, 2024, 1:37 pm

OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

AHCA Case No.: 24-FH0798
Plan ID No.: [redacted]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the Office of Fair Hearings convened a telephonic Medicaid Fair Hearing in the above styled case on May 3, 2024, at 9:30 a.m. Eastern Standard Time ("EST").

APPEARANCES

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

For the Respondent: Nicole Vega
Clinical Appeals Coordinator
Children's Medical Services

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 durable medical equipment and supplies (a "cubby basic safety bed" or "medical equipment"), billing code E1399, was incorrect.

PRELIMINARY STATEMENT

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

Nicole Vega, Regulatory Research Coordinator, for Children's Medical Services under Sunshine Health ("CMS"), appeared at the Fair Hearing on behalf of Respondent. Dr. Maria Samerson ("Dr. Samerson"), Senior Medical Director with Sunshine Health, appeared as a witness for Respondent. The following employees of Sunshine Health attended as witnesses but did not testify at the Fair Hearing: Rachel Rosinski, Registered Nurse Case Manager; Samera Jean-Louis, Occupational Therapist and Therapy Advisor with Sunshine State Health Plan, Inc. ("Sunshine Health"); Cristie Dudeck, CMS Care Management Supervisor; Nicholas Crosby, Physical Therapist and Therapy Advisor with Sunshine Health; and Heather Soechtie, Manager with CMS. The following employees of Children's Medical Services appears at the Fair Hearing as observers and did not provide testimony: Aldria White-Futrell, Compliance Officer with CMS; Elyssa Luke, Counsel for Florida Department of Health; and Dr. Mansooreh Salari, Children's Medical Services Medical Director.

Diana Hearod, Medical Health Care 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, Petitioner sent to the Office of Fair Hearings and Respondent a forty-two (42)-page evidence packet. The evidence appears in the Office of Fair Hearings' document management system as "24-FH0798 Faxed Correspondence.pdf." Absent an objection from Respondent, the undersigned admitted the forty-two (42)-page evidence packet 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 two hundred and fifty (250)-page evidence packet. The evidence appears in the Office of Fair Hearings' document management system as "MFH packet [Petitioner's surname].pdf." Absent

an objection from Petitioner, the undersigned admitted the two hundred and fifty (250)-page evidence packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS operated by Sunshine Health. *See* RCE 1 at page 1. Sunshine Health is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. As of the date of the Fair Hearing, Petitioner is [redacted]. *Id.* at 15. Petitioner has the following medical conditions: [redacted] *See* RCE 1 at 17, PCE 1 at 24. Petitioner [redacted]." *See* PCE 1 at 31. Petitioner "does (sic) sleeps through the night 8 hours." *Id.* at 37. Petitioner's occupational therapist, Jacqueline Reitmayr, OTR, provided a Pediatric PT/OT Outpatient Evaluation form, dated December 11, 2023, recommending a cubby canopy bed. *Id.* at 27 – 28.

3. On December 28, 2023, CMS issued a Notice of Adverse Benefit Determination ("NABD") denying Petitioner's request for a cubby bed as of December 27, 2023. *See* RCE 1 at 5 – 10. The NABD explained the basis of the decision as follows:

> 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 facts that we used to make our decision are:

Centene Clinical Policy on Durable Medical Equipment and Enclosed Beds, CP.MP.107, Durable Medical Equipment and Orthotics and Prosthetics Guidelines, the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook, Agency for HealthCare Administration. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Your request for billing code E1399 x 1 (Cubby Basic Safety Bed and accessories) has been carefully reviewed, but cannot be approved at this time, due to lack of documented medical need. The requested item is not medical in nature. Additionally, there is insufficient clinical information noting that less intensive alternatives to improve patient safety have been tried and ruled out (including removal of all safety hazards, home safety modifications, mattress on floor, bed alarms, video/audio monitors, child protection devices such as child locks on doors, windows, cabinets, furniture anchors, gates at steps and doors, physician directed medication to address behaviors and sleep, environmental modifications to encourage calming behaviors and sleep, or established routines addressing sensory needs and/or behavior modification to assist with improved naptime or night time behaviors and sleep), including why they could not meet the member's medical needs. Confinement is not medically necessary for a child's roaming behavior at night and should not be used as a restraint during times of high agitation or aggression. Lastly, there was no detailed home assessment performed by requesting provider confirming that the child's home will safely accommodate the requested custom enclosed safety bed.
. . .

RCE 1 at 5 – 6.

4. Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution ("NPAR"), dated January 31, 2024, denying Petitioner's appeal. *Id.* at 56 – 59. The NPAR states, in pertinent part:

> On 01/11/2024 we received your timely plan appeal request regarding Children's Medical Services Health Plan Notice of Adverse Benefit Determination dated 12/28/2023, NABD Number [redacted] the service to be provided to [Petitioner].
>
> The request has been reviewed. The review was completed by a licensed doctor. The doctor was not a part of the first review or the findings from that review.
>
> The Medical Director involved is Board Certified MD with a specialty in Pediatrics.
>
> On 01/30/2024, after consideration of the information you provided to Children's Medical Services Health Plan in support of your plan appeal, Children's Medical Services Health Plan hereby deny your plan appeal. As a result, [Petitioner] will not receive service, effective 01/30/2024.
>
> The facts that we used to make our decision are: the previous denial to authorize equipment (Cubby Safety Bed and accessories) is upheld as not medically necessary for this member. 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 for institutionalization without the use such bed. The use of the requested enclosed bed will not prevent members noted behaviors but may exacerbate behaviors in times of frustration. Criteria: FLORIDA MEDICAID DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLY SERVICES COVERAGE AND LIMITATIONS HANDBOOK; CP.MP. 107: Durable Medical Equipment and Orthotics and Prosthetics. This decision was made with regards to EPSDT (Early and Periodic Screening, Diagnostic and Treatment Services). 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; CP.MP. 107: Durable Medical Equipment and Orthotics and Prosthetics.
> . . .

RCE 1 at 56 – 57.

5. On March 7, 2024, Petitioner requested a Fair Hearing to challenge the denial of the cubby safety bed. On April 8, 2024, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 3, 2024, at 9:30 a.m. EST.

6. Petitioner's authorized representative and [redacted], [redacted], testified to the following:

a. [redacted] has [redacted]. [redacted] were approved to receive a cubby safety bed. [redacted] believes Petitioner should receive a cubby safety bed because Petitioner's siblings in similar circumstances were approved for cubby safety beds.

b. [redacted] referred to a letter [redacted] wrote, detailing the safety protocols in the home. *See* PCE 1 at 5 – 6. The letter states:

- [redacted]

c. The cubby bed will not be used to put Petitioner in a cage or to confine Petitioner. Petitioner currently uses [redacted] cubby bed, but they cannot share it. Petitioner would use a cubby safety bed as a quiet and safe space after [redacted] first calms [redacted] down.

d. [redacted]

e. Petitioner receives occupational therapy and is struggling in school.

f. [redacted] was told that a cubby safety bed is not to be used for restraint, that it could be used for calming behaviors.

7. Dr. Samerson, Medical Director, testified to the following:

a. Respondent went through several periods of off waivers and temporary lifting of authorization, which impacted different parts of utilization management and prior authorization and a wide range of service types, including durable medical equipment. At one point the approval of cubby safety beds did not have a burden of proof or a medically necessary review. Petitioner's siblings received a cubby safety bed without a medically necessary assessment.

b. Cubby safety beds are considered to be a sleeping system for the home that has a constraint feature that prevents voluntary exits by a patient. Confinement is not medically necessary for roaming behaviors. A cubby safety bed should not be used as restraint during times of aggression or agitation.

c. Respondent considers that if a child does not receive a cubby safety bed, then they will require hospitalization. Respondent did not find that Petitioner would require hospitalization.

d. If Petitioner needs a quiet or dark space, that does not require a cubby safety bed. The intended use of a cubby bed is not as a safe space. A cubby safety bed provides a restraining mechanism by having a fully enclosed environment.

e. Cubby safety beds are best suited for very extreme situations.

CONCLUSIONS OF LAW

8. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

10. 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.)

11. The Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010) ("DME Coverage Handbook"), incorporated by reference in Fla. Admin. Code R. 59G-4.070, governs requested for DME services available under Florida Medicaid. The DME Coverage Handbook provides the following:

> **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).
> . . .
> **Services Limited to Recipients Under 21 Years of Age**:
> Many durable medical equipment (DME) items and services are limited to recipients under 21 years of age.
>
> To determine whether a service is available to all recipients or limited to recipients under age 21 years of age, refer to the DME and Medical Supply Services Provider Fee Schedules.
>
> . . .
> **Authorized Prescribers of Durable Medical Equipment and Medical Supplies:**
> All durable medical equipment, medical supplies, and orthotic and prosthetic devices must be prescribed by the Medicaid recipient's:
> - Treating physician, or
> - Treating physician's physician assistant, or
> - Treating physician's advanced registered nurse practitioner (ARNP), or
> - Treating podiatrist.
>
> The prescribing professional must include the date, his signature, and current professional license number or national provider identification number on each documentation of medical necessity when requesting DME and services or medical supplies.
> . . .
> **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.
> . . .

RCE 1 at 93, 121, and 123.

12. The DME Coverage Handbook states the following with respect to acceptable documentation of Medical Necessity:

> **Acceptable Documentation of Medical Necessity**
> Medical necessity must be established for each service and documented, at a minimum, with the following:
>
> - Written prescription not more than 12 months old, with the printed name and the dated signature of the recipient's treating physician or the treating physician's ARNP or physician assistant. The prescription can be received by the DME and medical supply provider before or after the DME service has been initiated, but the prescription cannot be dated more than 21 days after the initiation of service (date of service); or
> - Current hospital discharge plan with the dated signature of the recipient's treating physician or the treating physician's ARNP or physician assistant that clearly describes the type of DME item or service ordered; or
> - Certificate of Medical Necessity (CMN) not more than 12 months old, which includes the printed name and the dated signature of the recipient's treating physician or the treating physician's ARNP or physician assistant. Medicaid prohibits vendors from preparing sections of the CMN that are to be completed by the physician or authorized prescriber. The CMN cannot be dated more than 21 days after the initiation of service (date of service); and Plan of care, if a home health agency.
>
> . . .
> All documentation of medical necessity must include the type of medical equipment, services or consumable goods ordered, including the type, quantity, frequency and length of need ordered or prescribed. Prescribed oxygen services must include rates of flow, concentration, level of frequency, duration of use, and circumstances under which oxygen is to be used. If this information is not included, a new prescription that clarifies the order is required.
> . . .

RCE 1 at 128.

13. 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 8.

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). 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.

15. 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.

16. As Petitioner bears the burden of proof, *see* supra ¶ 10, Petitioner must show that Respondent's denial was incorrect. On December 11, 2023, Petitioner's provider, [redacted], recommended that Petitioner should receive a cubby safety bed. *See* supra ¶ 2. [redacted] relied upon this recommendation to show that the cubby safety bed was medically necessary. 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 ¶ 13.

17. Based on the evidence admitted and testimony presented, Respondent denied Petitioner's request for the cubby safety bed based on a lack of medical necessity. *See* supra ¶ 3 – 4, 7. [redacted] testified that Petitioner requires a cubby safety bed because Petitioner cannot sleep and roams at night. *See* supra ¶ 6. However, Dr. Samerson countered that confinement is not medically necessary for roaming behaviors. *See* supra ¶ 7. Concerning the use of a cubby safety bed, Dr. Samerson testified that cubby safety beds are considered to be a sleeping system for the home that has a constraint feature that prevents voluntary exits by a patient. *See* supra ¶ 7. [redacted] testified that [redacted] was told that a cubby safety bed is not to be used for restraint, that it could be used for calming behaviors and that Petitioner would use a cubby safety bed as a quiet and safe space after [redacted] first calms [redacted] down. *See* supra ¶ 6. However, Dr. Samerson provided convincing and persuasive testimony that a cubby safety bed provides a restraining mechanism by having a fully enclosed environment, that the intended use

of a cubby bed is not as a safe space, and that if Petitioner needs a quiet or dark space, that does not require a cubby safety bed. *See* supra ¶ 7. Respondent determined that the requested item is not medical in nature, that confinement is not medically necessary for a child's roaming behavior at night and should not be used as a restraint during times of high agitation or aggression, and that there was no detailed home assessment performed by requesting provider confirming that the child's home will safely accommodate the requested custom enclosed safety bed. *See* supra ¶ 3. Although [redacted] did provide a letter detailing the safety protocols implanted in Petitioner's home, *see* supra ¶ 6, there is no record of a detailed home assessment performed by the requesting provider.

18. Dr. Samerson testified that Respondent considers that if a child does not receive a cubby safety bed, then they will require hospitalization. *See* supra ¶ 7. Further, Dr. Samerson established that Respondent did not find that Petitioner would require hospitalization. *See* supra ¶ 7. Neither Petitioner nor [redacted] provided any testimony or documentation that, without the cubby safety bed, Petitioner would require hospitalization. Although the records shows that the requested cubby safety bed possesses features that would be desirable to Petitioner and Petitioner's parent, Petitioner failed to establish how the requested medical equipment was necessary to treat Petitioner's confirmed diagnoses ([redacted]), *see* supra ¶ 2, or that alternative treatment options would not be equally effective to treat Petitioner's confirmed diagnoses. Upon consideration of the aforementioned facts, Petitioner did not establish that the requested medical equipment is not in excess of Petitioner's needs.

19. Upon consideration of the testimony provided, evidence submitted, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, the EPSDT policy, and all other applicable laws and policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the medical equipment at issue is medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the cubby safety bed is 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 the denial of durable medical equipment, or the cubby safety bed, was incorrect.

DECISION

Respondent's denial of durable medical equipment is **AFFIRMED**. Petitioner's appeal based on Respondent's denial in this matter is **DENIED.**

DONE AND ORDERED this 1st day of July, 2024, in Tallahassee, Leon County, Florida.

Kameisha Presley
24-FH0798
2024.07.01
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KAMEISHA PRESLEY, 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]

Children's Medical Services
CMSPlanContract@flhealth.gov

AHCA Medicaid Hearing Unit
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