



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

FILED

Jul 12, 2024, 11:04 am
OFFICE OF FAIR HEARINGS

[REDACTED],

PETITIONER,

vs.

AHCA Case No.: 24-FH0911

Plan ID No.: [REDACTED]

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on May 20, 2024, at 2:03 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantal Pierre,
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 denial of Durable Medical Equipment ("DME"), namely a child's safety bed was incorrect.

PRELIMINARY STATEMENT

All parties appeared for the Fair Hearing telephonically. [REDACTED] (" [REDACTED] ") the Petitioner's [REDACTED] and Authorized Representative appeared for the Fair Hearing and testified

on behalf of the Petitioner. [REDACTED], ([REDACTED]), the Petitioner's Board Certified Behavior Analyst also appeared and testified on behalf of the Petitioner.

Chantal Pierre ("Ms. Pierre"), Clinical Appeals Coordinator for Children's Medical Services ("CMS" or "Respondent") appeared at the Fair Hearing as a representative for Respondent. Dr. Andrew Metinko M.D. ("Dr. Metinko"), Medical Director for CMS appeared as a witness for the Respondent. The following personnel of CMS attended the Fair Hearing for observation purposes only; Samira Jean-Louis, Occupation Therapist; Ashley Poquette, Supervisor of Case Management; Jessemy Givenco, Manager of Case Management; Eileen Lidwig, Case Manager, and Mansuri Salari, Medical Director. In addition, Joanne White and Elyssa Luke, Esq., both from the Florida Department of Health appeared at the Fair Hearing for observational purposes.

Marielisa Amador, Medical/Healthcare 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, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and four (104)-page evidence package that was admitted into evidence without objection, is identified as "Respondent's Composite Exhibit 1", and is maintained in the Office of Fair Hearings' document management system as "MFH packet [Petitioner].pdf". The Petitioner did not submit any exhibits into evidence.

FINDINGS OF FACT

1. The Petitioner is an enrolled member of CMS. See Respondent's Composite Exhibit 1, page 1.
1. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in the state of Florida.

2. As of the date of the Fair Hearing, Petitioner is a [REDACTED] [REDACTED] See Respondent’s Composite Exhibit 1, page 28.

3. On February 12, 2024, the Petitioner submitted a request for an enclosed safety bed. See Respondent’s Composite Exhibit 1, page 5. More specifically and as reflected on the Quote from Custom Mobility, Inc., the request was for a Cubby Basic Safety Bed, CPT Code E-1399. See Respondent’s Composite Exhibit 1, page 17. On February 19, 2024, CMS issued a Notice of Adverse Benefit Determination (“NABD”) denying Petitioner’s request for the requested child’s safety bed based on medical necessity. Respondent’s Composite Exhibit 1, pages 5-10. The NABD explained the denial of Petitioner’s requested safety bed as follows, in pertinent part:

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 requested **service is not a covered benefit.**

Other authority .

The facts that we used to make our decision are:

...

Centene Clinical Policy on Durable Medical Equipment and Orthotics and Prosthetics, CP.MP.107. Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage Policy: Wheelchairs, Hospital Beds, and Ambulatory Aids December 2023. The review of these services were also considered under EPSDT (Early and Periodic Screening Diagnostic and Treatment).

Rationale: We got your request for a safety bed for your child. This is denied for medical need. The notes did not show other choices were look at to help with your child safety that did not work. This includes removing all hazards, putting a mattress on the floor, bed alarms, monitoring with video or audio. Child protection such as locks on doors, windows, cabinets, furniture anchors, gates at steps and doors. Also, if a doctor ordered medications to help with behaviors and sleep. We did not get notes of area changes that help with calming behaviors and sleep. We did not get notes that show a routine for your child showing sensory needs and behavior changes to assist with improved naptime or night time. This information including why they could not meet your child's s medical needs was not provided. We did not get notes that tells us how this bed will help your child with roaming behavior. Confinement is medically needed.

Id.

4. On February 22, 2024, the Petitioner requested a plan appeal. See Respondent's Composite Exhibit 1, page 37. On March 14, 2024, CMS issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial of Petitioner's request for a Cubby Plus Safety Bed. See Respondent's Composite Exhibit 1, pages 37-40. The NPAR states the following explanation, in pertinent part:

The facts that we used to make our decision are: The reconsideration request to authorize equipment (Cubby Safety Bed and accessories) is denied. No additional information was submitted in this appeal. There is not enough clinical information noting that less intensive alternatives to improve patient safety have been tried and ruled out. This includes: -removal of all safety hazards, -home safety modifications, -mattress on floor, -use of safety helmets, -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 The notes do not explain why the above alternatives cannot meet the member's needs. There is no statement that the member would be institutionalized without this equipment. The notes do not explain how the requested enclosed safety bed will correct or reduce the

members [REDACTED]. 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. Furthermore, the use of the requested enclosed bed will not prevent members noted self-harm or self-injurious behaviors but may exacerbate behaviors in times of frustration. The reasons for this decision are based on a set of standards. This included Criteria: Custom criteria for enclosed beds based on CP.MP.107 Durable Medical Equipment and Orthotics and Prosthetics Guidelines; Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage Policy: Wheelchairs, Hospital Beds, and Ambulatory Aids December 2023. This decision was made with regards to EPSDT.

Id.

5. On March 19, 2024, the Petitioner requested a Fair Hearing regarding the denial of the child's safety bed. On April 4, 2024, the undersigned Hearing Officer issued a notice to all parties of record scheduling the Fair Hearing to be conducted by telephone on May 20, 2024, at 2:00 p.m. EST.

6. The Centene Corporation Clinical Policy for Durable Medical Equipment and Orthotics and Prosthetics Guidelines (Reference Number CP.MP.107, June 2022) states as follows with respect to children's enclosed safety beds:

ENCLOSED BEDS - Requests will be reviewed by a medical director and/or therapy advisor to determine medical necessity, based on all of the following:

- A. Standard bed or standard hospital bed must be unable to meet the positioning needs due to disability;
- B. Less intensive alternatives to improve the member's/enrollee's safety have been tried and ruled out (To include documentation of why they could not meet medical needs). Considerations include, but are not limited to:
 - 1. Bed rails;
 - 2. Mattress placed on the floor;
 - 3. Removal of all safety hazards;
 - 4. Bed alarms;
 - 5. Video/audio monitors;

6. Child protection devices such as locks on doors, windows, cabinets, furniture anchors, gates at steps and doors;
 7. Physician-directed medication to address seizures, behaviors and sleep;
 8. Environmental modification to encourage calming behaviors and sleep;
 9. Established routines addressing sensory needs and/or behavior modification to assist with improved naptime or night time behaviors and sleep;
- C. Medical diagnosis to include, but not limited to:
1. Cerebral palsy;
 2. Developmental delay;
 3. Genetic or neurological disorder that would cause vertigo, disorientation, or uncontrolled movement of the body or extremities;
 4. Uncontrolled seizure disorder;
 5. Severe behavior disorder;
- D. Healthcare provider evaluation (typically from an occupational or physical therapist) to include:
1. Specific information on functional status;
 2. Documentation of home evaluation;
 3. Documentation of education provided to caregivers on proper use of a bed enclosure, noting: they are to be used for medical support, improved safety transitioning in and out of the bed, and improved safety while sleeping;
- E. Name of and invoice for the bed or enclosure being requested.

Note: Enclosed beds should not be used as a discipline measure or as a restraint during times of high agitation or aggression. To limit sensory deprivation, enclosed beds should be used at night for sleeping and only for short rests or naps during the day.

See Respondent's Composite Exhibit 1, pages 64-83.

7. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8. [REDACTED], BCBA, is the Petitioner's treating behavioral therapy analyst, and testified the Petitioner has [REDACTED], and doesn't stay in bed during the night. [REDACTED] testified the Petitioner's maladaptive behaviors include [REDACTED] and [REDACTED], [REDACTED]. [REDACTED] stated the Petitioner has wandered from [REDACTED] home during the daytime and nighttime. Finally, [REDACTED] testified the furniture was removed from the Petitioner's bedroom but [REDACTED] bedroom door was left unlocked.

9. Dr. Metinko testified for the Respondent that the use of an enclosed child safety bed is something to try as a last-resort with all other less intense options have been tried and failed. Dr. Metinko testified that a principal basis for denying the Petitioner's requested safety bed was that the file in this matter does not reflect that it is medically necessary in that the other available options had not been tried. Dr. Metinko spoke of home modifications, including the installation of adult height locks on the exterior doors and in the child's bedroom, stating it's easier to contain a child in a bedroom versus a safety bed. Dr. Metinko testified that sleep medications that were previously not recommended due to the Petitioner's early age, may now be an option since the Petitioner is older. Dr. Metinko also stated that moving the baby crib from the Petitioner's bedroom to [REDACTED]'s bedroom will not only protect the [REDACTED], but will take away

the Petitioner's ability to climb on the crib. Finally, Dr. Metinko did not rule out that the Petitioner should one day get a safety bed, but concluded that other options still need to be tried, fail, and documented first, but to approve an enclosed safety bed now would be contrary to the appropriate medical standards of care.

10. [REDACTED] diagnosed the Petitioner with [REDACTED] [REDACTED] and provided the Petitioner a [REDACTED], Prescription and Written Order for a Cubby Safety Bed. See Respondent's Composite Exhibit 1, pages 28-30. [REDACTED] further stated that "[REDACTED] is prevented with a cubby bed". Id.

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) of the Florida Statutes (2019). This order is the final administrative decision of AHCA under Fla. Stat. § 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).

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. 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.).

15. 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).

16. 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. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d).

18. 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.

19. Petitioner’s requests for DME are governed by the Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage Policy: Wheelchairs, Hospital Beds, and Ambulatory Aid(December 2023) (“DME Policy”), which is incorporated by reference in Fla. Admin. Code R. 59G-4.070. The DME Policy provides the following, in pertinent part:

1.0 Introduction

Florida Medicaid wheelchairs, hospital beds, and ambulatory aids durable medical equipment and medical supply (DME) services provide medically necessary equipment or supplies to assist, correct, or improve mobility of eligible recipients.

...

1.1 Florida Medicaid Policies

This policy is intended for use by providers that render wheelchairs, hospital beds, and ambulatory aids DME services to eligible Florida Medicaid recipients. It must be used in conjunction with Florida Medicaid's General Policies (as defined in section 1.3) and any applicable service-specific and claim reimbursement policies with which providers must comply.

...

1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the service coverage requirements outlined in this policy, unless otherwise specified in the AHCA contract with the Florida Medicaid managed care plan. The provision of services to recipients enrolled in a Florida Medicaid managed care plan must not be subject to more stringent service coverage limits than specified in Florida Medicaid policies.

1.4 Definitions

...

1.4.5 Medically Necessary/Medical necessity

As defined in Rule 59G-1.010, F.A.C.

...

2.2 Eligible Recipient

2.1 General Criteria

An eligible recipient must be enrolled in the Florida Medicaid program on the date of service and meet the criteria provided in this policy. Provider(s) must verify each recipient's eligibility each time a service is rendered.

2.2 Who Can Receive

Florida Medicaid recipients requiring medically necessary wheelchairs, hospital beds, and ambulatory aids DME services. **Some services may be subject to additional coverage criteria as specified in section 4.0.**

...

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 wheelchairs, hospital beds, and ambulatory aids DME in accordance with the American Medical Association's Current Procedural Terminology (CPT) and Healthcare Common Procedure Coding System (HCPCS), and the applicable Florida Medicaid fee schedule(s), or as specified in this policy.

Florida Medicaid covers custom and specialized equipment when a less costly alternative is not available to fulfill the recipient's need.

...

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 Authorization Requirements 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

...

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 Authorization Requirements Policy.

7.2 Specific Criteria

Providers must obtain authorization from the quality improvement organization (QIO) as follows:

- **For miscellaneous procedure codes**
- **When indicated on the applicable Florida Medicaid fee schedule(s)**

...

8.3.1 Customized Equipment

Providers must include a non-classified procedure code for customized equipment on the claim form.

...

8.4 Diagnosis Code

Providers must report the most current and appropriate diagnosis code to the highest level of specificity that supports medical necessity, as appropriate for this service.

Respondent's Composite Exhibit 1 at pages 86-93 (emphasis added).

20. Petitioner’s request for DME is also governed by the Florida Medicaid Durable Medical Equipment and Medical Supply Services Provider Fee Schedule for All Medicaid Recipients 2024 (“DME Fee Schedule”). The Fee Schedule states that healthcare Common Procedure Coding System (HCPCS) billing code D1399 is governed by a medical necessity limitation. See DME Fee Schedule at page 47.

21. The Florida Medicaid Definitions Policy (August 2017), incorporated by reference in Fla. Admin. Code R. 59G-1.010, provides definitions of commonly used terms that are applicable to all sections of Rule Division 59G, Florida Administrative Code (F.A.C.), unless specifically stated otherwise in a service-specific coverage policy or rule. The Florida Medicaid Definitions Policy 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.

(Emphasis added).

22. The Petitioner requested DME and more specifically a child's safety bed. *See supra* ¶ 3. In the NABD and in the NPAR, Respondent denied Petitioner's request for a child's safety bed as not medically necessary, in excess of the Petitioner's medical needs, that required supporting documentation, analysis, and opinions were not presented by the Petitioner, and that all the other lesser alternatives to a safety bed have not been tried and failed. *See supra* ¶¶ 3, 4, and 9. This medical necessity requirement is referenced in the EPSDT guidelines, the Respondent's Durable Medical Equipment Policy, CP.MP.107 for Enclosed Beds, and the Florida Medicaid Definitions Policy. *See supra* ¶¶ 6, 18 and 19.

23. As Petitioner bears the burden of proof, Petitioner must show that Respondent's decision was incorrect. *See supra* ¶¶ 12 and 13. Thus, Petitioner must demonstrate by a preponderance of the evidence that a child's safety bed is "...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 and 21. The Respondent's Medical Director, Dr. Metinko provided credible testimony as to the information submitted to CMS that although a safety bed may ultimately be proven medically necessary for the Petitioner, all the lesser alternatives to a safety bed have not been tried and failed. *See supra* ¶ 9. In addition, the Petitioner did not demonstrate that less intrusive methods to address the Petitioner's sleep issues have been tried and failed.

24. In this case, [REDACTED] provided the Petitioner a [REDACTED], Prescription and Written Order for a Cubby Safety Bed. *See supra* ¶ 10. However, 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.” See supra ¶ 21. Therefore, the prescription from [REDACTED] does not in itself make the requested child’s safety bed medically necessary. In addition, [REDACTED] stated a Cubby safety bed will prevent [REDACTED] but this conclusion lends support to the fact the enclosed bed will be used for confinement purposes and the ignores other less intensive methods to address [REDACTED] such as locks on exterior and bedroom doors, bed monitors, motion detectors, and motion sensitive cameras. See supra ¶ ¶ 9 and 10.

25. In this case, Petitioner did not establish that by a preponderance of the evidence that a child’s safety bed was 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. The undersigned Hearing Officer finds that Petitioner did not establish that a child’s safety bed meets the Respondent’s criteria or the Florida Medicaid program’s criteria, and the requested DME is medically necessary.

26. Based on the totality of the circumstances, evidence, testimony, the Durable Medical Equipment Fee Schedule, and the applicable Florida policies, the Petitioner has not established that a child’s safety bed is medically necessary under Florida Medicaid and Respondent’s Clinical Guidelines. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner has not demonstrated that the requested DME is necessary to correct or ameliorate a defect or a physical and mental illness or condition. Therefore, the undersigned Hearing Officer concludes that Petitioner did not prove by a preponderance of the evidence that Respondent’s decision to deny the requested child’s safety bed was incorrect.

IT IS THEREFORE ORDERED AND ADJUDGED:

Respondent's denial of the requested child's safety bed is hereby **AFFIRMED**. Petitioner's appeal based on Respondent's denial is hereby **DENIED**.

DONE and ORDERED this 12th day of July, 2024, in Tallahassee, Leon County, Florida.



Alan J. Leifer
24-FH0911
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ALAN J. LEIFER, 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:



Children's Medical Services
CMSPlanContract@flhealth.gov

AHCA Medicaid Hearing Unit
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