



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

**FILED**

Jul 18, 2024, 11:05 am

OFFICE OF FAIR HEARINGS

AHCA Case No.: 24-FH1012

[REDACTED],

PETITIONER,

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 10, 2024, at 9:58 a.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 decision to deny Petitioner's request for a Cubby Bed was incorrect.

**PRELIMINARY STATEMENT**

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

[REDACTED] (" [REDACTED] "), appeared for Fair Hearing to provide testimony on behalf of the

Petitioner. [REDACTED] (“[REDACTED]”), Petitioner’s [REDACTED], appeared for Fair Hearing but did not testify.

Chantal Pierre (“Ms. Pierre”), Clinical Appeals Coordinator for Children's Medical Services (“CMS”) appeared for Fair Hearing as representative for Respondent. Dr. Andrew Metinko (“Dr. Metinko”), Medical Director for CMS, appeared for Fair Hearing as a witness for Respondent. Angela Brazzeal, Care Manager for CMS, appeared for Fair Hearing as a witness for Respondent. Ashley Paquette, Case Management Supervisor for CMS, appeared for Fair Hearing as a witness for Respondent. Jessemyn Giovenco, Case Management Manager for CMS, appeared for Fair Hearing as a witness for Respondent. Nicholas Crosby, Physical Therapist and Therapy Advisor for Sunshine, appeared for Fair Hearing as a witness for Respondent.

The following individuals appeared for Fair Hearing as observers: Dr. Mansooreh Salari, Medical Director for Sunshine; Elyssa Luke, Counsel for Florida Department of Health; Joane White, Ombudsman for Florida Department of Health; and Sandra Durden, Medical Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”).

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a two (2)-page letter dated April 5, 2024, and a second two (2)-page letter dated April 9, 2024. The letter dated April 5, 2024, appears in the Office of Fair Hearings’ document management system as file title “24-FH1012 Supporting Document.pdf.” The letter dated April 9, 2024, appears in the Office of Fair Hearings’ document management system as file title “24-FH1012 Evidence.pdf.” Absent an objection from the Respondent, the undersigned admitted the letter dated April 5, 2024, into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”) and the letter dated April 9, 2024, into evidence as Petitioner’s Composite Exhibit 2 (“PCE 2”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a three hundred and three (303)-page evidence packet. The evidence packet appears in the Office of Fair Hearings' document management system as file title "MFH packet [Petitioner].pdf." Absent an objection from the Petitioner, the undersigned admitted the three hundred and three (303)-page packet into evidence as Respondent's Composite Exhibit 1 ("RCE 1").

**FINDINGS OF FACT**

1. Petitioner is an enrolled member of CMS Managed Medical Assistance ("MMA") program. See RCE 1 at page 2. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida. *Id.*

2. Petitioner is [REDACTED]. *Id.* at 13, 16, 19. Petitioner's medical history includes [REDACTED] [REDACTED] [REDACTED]. *Id.* at 22. Petitioner receives 25-30 hours per week of behavior therapy. *Id.* at 14, 20.

3. Petitioner requested a Cubby Bed. Petitioner's request was denied in the Notice of Adverse Benefit Determination ("NABD") dated January 17, 2024. *Id.* at 4-8. The NABD explained the basis of the denial as follows:

- ✓ We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: (See Rule 59G-1.010)  
...
- ✓ Must be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs.  
...

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 and Durable Medical Equipment and Medical Supply Services Coverage Policy: Wheelchairs, Hospital Beds, and Ambulatory Aids Handbook December 2023. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

We got a request. This is for billing code E1399 x 1. Cubby Basic Safety bed and accessories. This is a safety bed. The request is denied. There are not enough notes that tell us if other choices for your child’s safety was tried. This includes mattress on floor, bed alarms, monitors, and other child protection devices. This also includes changes to the surroundings which encourage calming behaviors and sleep. Also established routines addressing sensory needs and/or behavior change to help with better naptime or night time behaviors and sleep. We did not get a note why they could not meet the child's medical needs. Enclosure is not medically needed for a child's walking around at night. This should not be used as discipline or as a restraint during times of high agitation or aggression.

*Id.* at 4-5.

4. [REDACTED], authored a medical necessity letter (“Medical Necessity Letter”) dated February 1, 2024, for Petitioner to receive a Cubby Bed. The Letter states as follows:

The purpose of this medical request letter is to request a special needs Cubby bed, an adaptive safe bed for [Petitioner] [REDACTED] [Petitioner] Is a [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

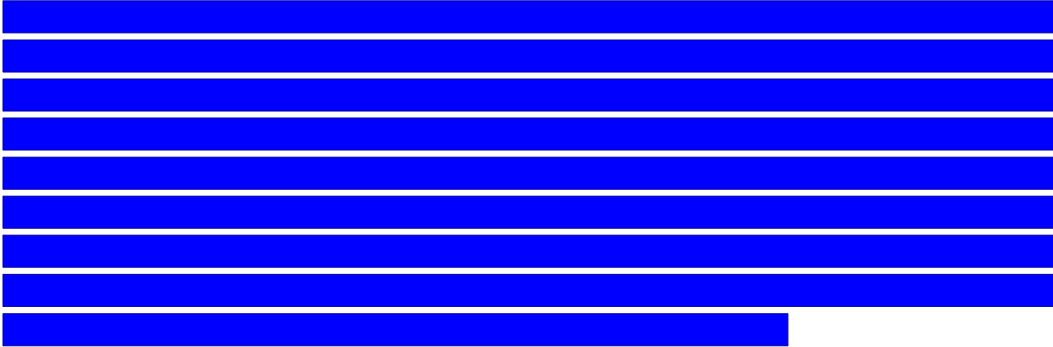
[Petitioner] lives with [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].

[Redacted text block]

The following alternatives to improve patient safety have been tried and ruled out:

- 1. [Redacted list item 1]
- 2. [Redacted list item 2]
- 3. [Redacted list item 3]
- 4. [Redacted list item 4]
- 5. [Redacted list item 5]
- 6. [Redacted list item 6]
- 7. [Redacted list item 7]

[Redacted text block]



*Id.* at 13-15.

5. On February 5, 2024, Petitioner requested a plan appeal and received a Notice of Plan Appeal Resolution (“NPAR”) dated February 20, 2024, upholding the denial. *Id.* at 30, 36-39. The NPAR explained as follows:

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. Caregivers have implemented the use of a mattress on floor and removal of hazardous materials and objects that member can climb onto. It is not clear if these environmental modifications have proven effective in reducing or eliminating injury due to risk of falls while member is in his room. There is no mention of less intensive alternatives such as physician directed medication to address behaviors and sleep and environmental modifications to encourage calming behaviors and sleep. 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. 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: 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, Diagnosis and Treatment (EPSDT) Requirements in the Managed Medical Assistance Program).

*Id.* at 36-37.

6. On March 20, 2024, Petitioner requested a Fair Hearing to challenge the denial of the Cubby Bed. On April 9, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 10, 2024, at 10:00 a.m. EST.

7. Petitioner's Authorized Representative and [REDACTED], [REDACTED], wrote a reconsideration letter e-mailed to the Office of Fair Hearings dated April 5, 2024. The letter states as follows:

My name is [REDACTED] and I am [Petitioner]'s [REDACTED].

This is for [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Also, may you please let me know exactly what else you need? I have been documenting the dates each night what I have tried for [REDACTED] and what does not work

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

I honestly do not know what else I can do, this is my last hope. I have faith that you will understand my concerns about my [REDACTED] and reconsider the decision.

I am requesting to appeal for fair consideration and support for my [REDACTED]

[REDACTED]

[REDACTED]

See PCE 1 at 1-2.

8. [REDACTED] wrote a second reconsideration letter e-mailed to the Office of Fair Hearings dated April 9, 2024. The letter states as follows:

I am writing to you today to provide insight into the challenges my [REDACTED], [Petitioner], has faced regarding [REDACTED] sleeping arrangements and to request your understanding and support in this matter.

[Petitioner] is a vibrant [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Despite our best efforts, the cubby bed proved to be overwhelming and distressing for [Petitioner]. Rather than feeling secure, [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

In our pursuit of solutions, we have explored various alternatives and implemented numerous strategies, including:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

See PCE 2 at 1-2.

9. [REDACTED] is Petitioner's [REDACTED]. [REDACTED] testified to the following:
- a. [REDACTED] argued that Petitioner does not get adequate sleep and routinely does not sleep until about 5-6 a.m.
  - b. [REDACTED] asserted that Petitioner likes to be in enclosed spaces with the lights dimmed.
  - c. [REDACTED] argued that of the several alternatives have been tried none have worked including [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED].
  - e. [REDACTED] argued that although Petitioner cannot sleep alone, Petitioner's [REDACTED]  
[REDACTED]
  - f. [REDACTED] argued that Petitioner's pediatrician, [REDACTED], does not want to start Petitioner on medications until after [REDACTED]  
[REDACTED]
  - g. [REDACTED] believes that based on the information provided by Petitioner's pediatrician, [REDACTED], Petitioner could get adequate sleep in a secured bed. *Id.* at 19, 24.

10. Dr. Metinko is a Medical Director for Sunshine. Dr. Metinko testified to the following:

- a. The decision to deny the Cubby Bed was reviewed by Sunshine Medical Directors and consultant therapists. See ¶ 2, 3.
- b. Sunshine reviewers denied the request based on a lack of documentation to demonstrate that other safety measures have been exhausted and ineffective to meet the recipient's needs. See ¶ 4-5, 9.
- c. No sleep medication intervention is shown in the record. See ¶ 2.
- d. Dr. Metinko opined that [REDACTED] needs to be addressed in the household through less restraining interventions because of the temptation to use the Cubby Bed as a sitter or containment rather than for sleeping.
- e. Dr. Metinko argued that the suggestion of the Cubby Bed encouraging safe sleep is unproven.

11. The Centene Corporation Clinical Policy: Durable Medical Equipment and Orthotics and Prosthetics Guidelines (June 2022) ("CP.MP.107") provides as follows in regard to durable medical equipment and supplies:

**Policy/Criteria**

It is the policy of health plans affiliated with Centene Corporation® that durable medical equipment, orthotics, and prosthetics are **medically necessary** when the applicable criteria are met.

...

<b>OTHER EQUIPMENT</b>	<b>CRITERIA</b>	<b>HCPCS</b>
Enclosed Beds <sup>17,18,19,20,21,22</sup>	<p>Requests will be reviewed by a medical director and/or therapy advisor to determine medical necessity, based on all of the following:</p> <p>A. Standard bed or standard hospital bed must be unable to meet the positioning needs due to disability;</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. Bed rails;</li> <li>2. Mattress placed on the floor;</li> <li>3. Removal of all safety hazards;</li> <li>4. Bed alarms;</li> <li>5. Video/audio monitors;</li> <li>6. Child protection devices such as locks on doors, windows, cabinets, furniture anchors, gates at steps and doors;</li> <li>7. Physician-directed medication to address seizures, behaviors and sleep;</li> <li>8. Environmental modification to encourage calming behaviors and sleep;</li> <li>9. Established routines addressing sensory needs and/or behavior modification to assist with improved naptime or night time behaviors and sleep;</li> </ol>	<p>E0316 E1399</p> <p>E0328 or E0329 (when combined with E0316 or E1399)</p>

OTHER EQUIPMENT	CRITERIA	HCPCS
	<p>C. Medical diagnosis to include, but not limited to:</p> <ol style="list-style-type: none"> <li>1. Cerebral palsy;</li> <li>2. Developmental delay;</li> <li>3. Genetic or neurological disorder that would cause vertigo, disorientation, or uncontrolled movement of the body or extremities;</li> <li>4. Uncontrolled seizure disorder;</li> <li>5. Severe behavior disorder;</li> </ol> <p>D. Healthcare provider evaluation (typically from an occupational or physical therapist) to include:</p> <ol style="list-style-type: none"> <li>1. Specific information on functional status;</li> <li>2. Documentation of home evaluation;</li> <li>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;</li> </ol> <p>E. Name of and invoice for the bed or enclosure being requested.</p> <p>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.</p>	

**Background**

DME items have the following characteristics:

- The equipment is prescribed by a physician;
- The equipment meets the definition of DME;
- The equipment is necessary and reasonable for the treatment of an illness or injury;
- The equipment is manufactured primarily for use in the home environment, but is not limited to use in the home.

...

**Medical Equipment**

Medical equipment is defined as equipment primarily and customarily used for medical purposes and is not generally useful in the absence of illness or injury. In most instances, no documentation will be needed to support whether a specific item of equipment is medical in nature. However, some cases will require documentation to determine whether the item constitutes medical equipment. This documentation would include the advice of local medical organizations and facilities and specialists in the field of physical medicine and rehabilitation. If the equipment is new on the market, it may be necessary, prior to seeking professional advice, to obtain information from the supplier or manufacturer explaining the design, purpose, effectiveness and method of using the equipment

in the home as well as the results of any tests or clinical studies that have been conducted.

*Id.* at 236-248.

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

14. Because Petitioner is requesting a new benefit, 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. Petitioner's request for DME is 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 E1399 is governed by a medical necessity limitation. *See* DME Fee Schedule at page 47.

16. 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-4.075, provides guidance regarding Petitioner's request for medical equipment and supplies. 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.

See RCE 1 at 92-136.

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 eligible for EPSDT services. However, a state may place medical necessity limitations on EPSDT services. See 42 C.F.R. §§ 440.230(a), (b), (d). Section 409.905(2), Florida Statutes, limits EPSDT services with a medical necessity standard:

The [Agency] shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

19. The Florida Medicaid Definitions Policy (August 2017) (“Definitions Policy”), incorporated by reference in Fla. Admin. Code R. 59G-1.010, defines “Medically Necessary” or “Medical Necessity” as follows:

The medical or allied care, goods, or services furnished or ordered must meet the following conditions:

- Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate pain
- Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient’s needs

- Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational
- Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available statewide
- Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider

The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

Definitions Policy at page 7.

20. Petitioner requested a Cubby Bed. *See* ¶¶ 4, 7. In the NABD dated January 17, 2024, Respondent denied Petitioner's request citing the lack of medical necessity. *See* ¶ 3. Specifically, Respondent explained that the request "must be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." *See* ¶ 3. In the NPAR dated February 20, 2024, Respondent upheld its denial citing the same rationale. *See* ¶ 5. As Petitioner bears the burden of proof, Petitioner must show that Respondent's decision was incorrect. *See* ¶ 14.

21. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010 for Medicaid-covered benefits. *See* ¶ 17-18. The Definitions Policy requires that medically necessary services be "individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs." *See* ¶ 19. According to the DME Policy, Florida Medicaid covers custom and specialized equipment when a less costly alternative is not available to fulfill the recipient's need. *See* ¶ 16.

22. In the instant case, Petitioner is [REDACTED]. See ¶ 2. Petitioner’s medical history includes [REDACTED]  
[REDACTED]  
[REDACTED]. See ¶¶ 2, 4.

The request for the Cubby Bed was reviewed and denied by Sunshine Medical Directors and consultant therapists. See ¶¶ 3, 5, 10.

23. [REDACTED] testified that [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. See ¶ 7, 9. There is no evidence regarding Petitioner’s behavior therapy or any other therapies to mitigate, correct or ameliorate Petitioner’s behavioral and sleep concerns. See ¶¶ 2, 7. Dr. Metinko argued that the suggestion of the Cubby Bed encouraging safe sleep is unproven. See ¶ 10. Dr. Metinko opined that [REDACTED] needs to be addressed in the household through less restraining interventions because of the temptation to use the Cubby Bed as a sitter or containment rather than for sleeping. See ¶ 10.

24. [REDACTED] believes that based on the information provided by Petitioner’s pediatrician, [REDACTED], Petitioner could get adequate sleep in a secured bed. See ¶ 9. The Medical Necessity Letter authored by [REDACTED]



**DONE AND ORDERED** this 18th day of July, 2024, in Tallahassee, Leon County, Florida.

Kimberly Roche  
24-FH1012  
2024.07.18  
09:49:20 -04'00'

---

**KIMBERLY ROCHE, Hearing Officer**  
**Agency for Health Care Administration**  
**Office of Fair Hearings**  
**2727 Mahan Drive, Mail Stop # 11**  
**Tallahassee, FL 32308-5407**

**NOTICE OF A RIGHT TO JUDICIAL REVIEW**

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW, WHICH SHALL BE INSTITUTED BY FILING THE ORIGINAL NOTICE OF APPEAL WITH THE AGENCY CLERK OF AHCA, AND A COPY, ALONG WITH THE FILING FEE PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE AGENCY MAINTAINS ITS HEADQUARTERS OR WHERE A PARTY RESIDES. REVIEW PROCEEDINGS SHALL BE CONDUCTED IN ACCORDANCE WITH THE FLORIDA APPELLATE RULES. THE NOTICE OF APPEAL MUST BE FILED WITHIN 30 DAYS OF THE RENDITION OF THE ORDER TO BE REVIEWED.

**COPIES FURNISHED TO:**

[REDACTED]  
[REDACTED]

**Children's Medical Services**  
**CMSPlanContract@flhealth.gov**

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