



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

FILED

Jul 08, 2024, 1:31 pm

[REDACTED]

PETITIONER,

OFFICE OF FAIR HEARINGS

AHCA Case No.: 24-FH1051

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Medicaid Fair Hearing in the above-styled case on May 28, 2024, at 9:34 a.m., Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Sandra Durden
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 Prescribed Pediatric Extended Care ("PPEC") services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. [REDACTED] (" [REDACTED]"), Petitioner's Authorized Representative and the Director of Nursing for [REDACTED] (Petitioner's provider), appeared on behalf of Petitioner.

Sandra Durden, Medical Health Care Program Analyst for the Agency for Health Care Administration (“AHCA” or “Agency”), appeared on behalf of the Respondent. Dr. Chris Kunis (“Dr. Kunis”), Medical Director with eQHealth Solutions of Florida and Kepro, Inc. (“eQHealth”), appeared at the Fair Hearing as a witness for Respondent.

Petitioner did not introduce any exhibits at the Fair Hearing.

Prior to the Fair Hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and sixty-three (163)-page evidence packet and a forty-seven (47)-page evidence packet. The one hundred and sixty-three (163)-page packet appears in the Office of Fair Hearings’ document management system as the files titled “[REDACTED] FH 05.28.2024 1 - 107.pdf” and “[REDACTED] FH 05.28.2024 108 - 163.pdf”. The forty- seven (47)-page packet appears in the Office of Fair Hearings’ document management system as the file titled “24-FH1051 PPEC AHCA EVIDENCE PKT.pdf.” Absent any objections from Petitioner, the undersigned admitted the one hundred and sixty-three (163)-page evidence packet as Respondent’s Composite Exhibit 1 (“RCE 1”) and the forty- seven (47)-page evidence packet as Respondent’s Composite Exhibit 2 (“RCE 2”).

During the Fair Hearing, Petitioner’s Authorized Representative requested time to submit recent doctor’s notes for Petitioner. The Fair Hearing record remained open until June 4, 2024, at 5:00 p.m. Respondent had until June 11, 2024, at 5:00 p.m. to submit a response or objection to Petitioner’s doctor’s notes. As of June 4, 2024, at 5:00 p.m., no additional information or documents were received from Petitioner or Petitioner’s Authorized Representative.

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. See RCE 1 at page 22. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the Agency to review prior authorization requests for services. See RCE 2 at page 2. The Agency, through contractual agreement, authorized eQHealth to make Medical Necessity determinations for services requiring prior authorizations. *Id.*

2. As of the date of the Fair Hearing, Petitioner is [REDACTED] See RCE 1 at page 22. Petitioner’s diagnoses include [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 22 – 23.

3. Petitioner is prescribed the following medications: [REDACTED]
[REDACTED]
[REDACTED]. *Id.* at 25.

4. Petitioner requested PPEC services for the certification period of March 5, 2024, through August 31, 2024. *Id.* at 32. On March 11, 2024, eQHealth sent Petitioner a Notice of Outcome (“NOO”) denying the requested PPEC services. *Id.* at 32 – 36. The NOO explained that the requested services were denied in whole or in part because they were not medically necessary and explained as follows:

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:

Requested services are denied because this care can be provided by the parent or caregiver.

Requested services are denied because the clinical information does not support the medical necessity.

Clinical rationale for Decision: The patient is a [REDACTED]
[REDACTED]
[REDACTED]. There is no need for skilled nursing care; therefore, PPEC has to be denied.

Date of action is 03/11/2024.

RCE 1 at 32 – 33.

5. On March 29, 2024, Petitioner’s provider, [REDACTED], requested a Fair Hearing on behalf of Petitioner due to Respondent’s denial of PPEC services. On April 22, 2024, the undersigned scheduled the hearing for May 28, 2024, at 9:30 a.m., EST, and all parties were duly notified.

6. [REDACTED] testified to the following:

- a. [REDACTED] believes it is in Petitioner’s best interest to be in the care of a skilled nurse because [REDACTED]
- b. Propranolol is prescribed to be administered by a nurse.
- c. Petitioner’s parents want Petitioner to attend PPEC for the first year for monitoring purposes.

7. Dr. Kunis testified to the following:

- a. Petitioner was prescribed a [REDACTED]
[REDACTED]

- [REDACTED]
- [REDACTED]
- b. Petitioner's [REDACTED]. See RCE 1 at 25.
 - c. There is no apparent need for skilled nursing care for any treatments.

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 section 409.285(2), Florida Statutes (2019). This order is the final administrative decision of AHCA under section 409.285(2)(a).

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

10. 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.

11. Here, Petitioner requested a new service. As such, 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.).

12. The Prescribed Pediatric Extended Care Services Coverage Policy (February 2018) (“PPEC Policy”) establishes the provision and coverage of PPEC services under Florida Medicaid. The PPEC Policy states as follows:

1.1 Description

Florida Medicaid prescribed pediatric extended care (PPEC) services provide skilled nursing supervision and therapeutic interventions in a non-residential setting to medically dependent or technologically dependent recipients.

...

2.2 Who Can Receive

Florida Medicaid recipients under the age of 21 years requiring medically necessary PPEC services and who:

- Require continuous therapeutic interventions or skilled nursing supervision, as described in section 400.902, F.S., and in Rule 59A-13.007, F.A.C.
- Are determined stable by a physician and who are not a threat to self or others

...

1.3 Definitions

The following definitions are applicable to this policy. For additional definitions that are applicable to all sections of Rule Division 59G, F.A.C., please refer to the Florida Medicaid definitions policy.

...

1.3.7 Medically Necessary/Medical Necessity

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

...

4.0 Coverage Information

4.1 General Criteria

Florida Medicaid covers services that meet all of the following:

- Are determined medically necessary
- Do not duplicate another service
- Meet the criteria as specified in this policy

4.2 Specific Criteria

Florida Medicaid covers PPEC services provided in accordance with section 400.902, F.S., the applicable Florida Medicaid fee schedule, or as specified in this policy, on a full or partial day basis. Services must include the following at a minimum:

- Caregiver training
- Developmental therapies
- An appropriate escort for travel to and from the PPEC when Florida Medicaid nonemergency transportation is provided

- Medical services
- Nursing services
- Personal care services
- Psychosocial services
- Respiratory therapy services

The PPEC day begins when the recipient arrives at the PPEC or is picked up for escorted transportation to the PPEC.

The PPEC day ends when the recipient departs from the PPEC for the day or is returned home by escorted transportation from the PPEC.

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 General Policies on authorization requirements.

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

RCE 2 at pages 40 - 42.

13. Fla. Admin. Code Rule 59A-13.007(4)(a) states the following:

(4) Each child admitted for service to a PPEC center must meet at least the following criteria:

(a) Infants and children considered for admission to the PPEC center will be those who are medically or technologically dependent. . . .

. . .

Further, section 400.902, Florida Statutes, describes “medically dependent or technologically dependent child” as follows:

[A] child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse.

RCE 2 at 46.

14. Fla. Admin. Code R. 59G-4.290 defines skilled nursing as follows:

(3) Skilled Services Criteria.

- a) To be classified as requiring skilled nursing or skilled rehabilitative services in the community or in a nursing facility, the recipient must require the type of medical, nursing or rehabilitative services specified in this subsection.
- b) Skilled Nursing. To be classified as skilled nursing service, the service must meet all of the following conditions:
 - 1. Ordered by and remain under the supervision of a physician;
 - 2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.
 - 3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effect performance;
 - 4. Required on a daily basis;
 - 5. Reasonable and necessary to the treatment of a specified documented illness or injury; and,
 - 6. Consistent with the nature and severity of the individual's condition or the disease state or stage.
- c) Examples of services that qualify as skilled nursing services:
 - 1. Intravenous medication or fluids.
 - 2. Intramuscular or subcutaneous injection and hypodermoclysis when:
 - a. Administered by licensed nursing personnel at least 5 times weekly, excluding daily insulin administration; and,
 - b. Observation is necessary to assess the recipient's response to treatment or to identify adverse reactions.
 - 3. Management and monitoring medication regime on a daily basis:
 - a. For drugs whose dosage requirements may rapidly change;
 - b. For drugs prone to cause adverse reactions, severe side effects or unfavorable reactions; and,
 - c. For residents with unstable reactions.
 - 4. Levin tube and gastrostomy feedings; excluding feedings performed by residents, family members, or friends.

5. Administration of medical gases, aerosolized medication or oxygen which is started, monitored and regulated by professional staff.
6. Naso-pharyngeal and tracheotomy aspiration, excluding tracheotomy care in self-care residents.
7. Insertion, replacement, and sterile irrigation of catheters when:
 - a. Medically necessary or required for reasons other than to maintain satisfactory catheter functioning and dryness;
 - b. The medical need is documented by the physician;
 - c. Continuous irrigation, frequent insertion, special care or observation is required because of bleeding, infection, obstruction, or heavy sediment formations; and,
 - d. Care of a recently inserted supra-pubic catheter, inserted within 2-4 weeks, is required.
8. Colostomy and ileostomy care:
 - a. When medically necessary and required during early postoperative period;
 - b. During the period of initial self-care training, or
 - c. when complications are present and documented in the medical record.
9. Treatment of decubitus ulcers when:
 - a. Deep or wide without necrotic center;
 - b. Deep or wide with layers of necrotic tissue, or
 - c. Infected and draining.
10. Treatment of widespread infected or draining skin disorders.
11. Application of dressings involving prescription medication and aseptic techniques when documented as required on a daily basis. Excludes simple dressings involving non-infected cases, simple skin breaks, and healed postoperative incisions.
12. Heat treatments prescribed by a physician as daily treatment for a specific condition.
13. Rehabilitation nursing procedures required on a daily basis as necessary to restore functioning, including teaching and adaptive aspects of nursing.

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). 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.

RCE 2 at 4 – 5.

16. 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.

RCE 2 at 13.

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

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.

RCE 2 at 23.

18. The Florida Medicaid Authorization Requirements Policy (“Authorization Requirements Policy”) incorporated by reference in Fla. Admin. Code R. 59G-1.053, provides as follows:

3.2.1 Continued Authorization Requests

The QIO shall not deny or reduce the amount, frequency, or duration of a service that is already being provided, unless:

- The reduction is to correct for factual errors or omissions in prior certifications.
- There is a documented improvement in the recipient’s medical condition.
- There is a documented change in the recipient’s circumstances.
- The reviewing physician determines the recipient will not gain any additional benefit by continuing services at the current level.

RCE 2 at 34.

19. In the instant case, Petitioner requested PPEC services for the certification period of March 5, 2024, through August 31, 2024. *See supra* ¶ 4. As established on the record by the testimony and evidence, eQHealth denied Petitioner’s request because the services were not medically necessary. *See supra* ¶ 4. In the NOO, dated March 11, 2024, Respondent explained that the basis of the denial was that the request was not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment”. *See supra* ¶ 4. Respondent explained that Petitioner does not require skilled nursing services based on the documentation provided. *See supra* ¶ 4, 7.

20. PPEC services are intended for patients who require “continuous therapeutic interventions or skilled nursing supervision.” See supra ¶ 12, 13. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. See supra ¶ 16, 17. As provided in Section 2.83 of the Definitions Policy, a component of medical necessity is that services must be “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs.” See supra ¶ 17. Dr. Kunis provided credible and persuasive testimony that Petitioner does not require daily skilled nursing services. See supra ¶ 7. The record reflects that Petitioner’s diagnoses include [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] See supra ¶ 2. [REDACTED] testified that Petitioner needs PPEC services because [REDACTED] is prescribed the [REDACTED]. See supra ¶ 6. However, Dr. Kunis testified that Petitioner’s [REDACTED] and that a parent can administer [REDACTED]. See supra ¶ 7. In all, there is no indication that Petitioner continues to need daily require skilled nursing services. Based upon the aforementioned facts and evidence, the undersigned finds that Petitioner did not show that the request for PPEC services was not in excess of what Petitioner needs. Thus, Petitioner failed to establish that the requested PPEC services are medically necessary, as defined in Fla. Admin. Code R. 59G-1.010, and required by section 1.3.7 of the PPEC Policy.


21. [REDACTED] testified that Petitioner's parents want Petitioner to attend PPEC for the first year for monitoring purposes. See supra ¶ 6. However, services furnished must not be furnished in a manner primarily intended for the convenience of the recipient or recipient's caretaker. *Supra* ¶ 17.

22. Upon consideration of the testimony provided, Respondent's Composite Exhibit 1, Respondent's Composite Exhibit 2, the EPSDT policy, and all other applicable policies, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that PPEC services are medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner failed to demonstrate that PPEC services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner failed to prove by a preponderance of the evidence that Respondent's denial of PPEC services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of Petitioner's requested PPEC services for the certification period of March 5, 2024, through August 31, 2024, is **AFFIRMED**. Petitioner's request for PPEC services is hereby **DENIED**.

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

 Kameisha Presley
24-FH1051
2024.07.08 08:29:35
-04'00'

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]
[REDACTED]

AHCA Medicaid Hearing Unit
MedicaidHearingUnit@ahca.myflorida.com