



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

FILED

Aug 23, 2024, 1:00 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH1182

vs.

AGENCY FOR HEALTH CARE
ADMINISTRATION,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on May 23, 2024, at 9:05 a.m. Eastern Standard Time (“EST”).

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner’s Authorized Representative

For the Respondent:

Lee Ann Williams
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 decision to deny Petitioner’s prescribed pediatric extended care (“PPEC”) services was incorrect.

PRELIMINARY STATEMENT

All parties appeared telephonically. Petitioner's Authorized Representative, [REDACTED] [REDACTED] ("[REDACTED]"), of [REDACTED], appeared on behalf of the Petitioner and gave testimony.

Lee Ann Williams, ("Ms. Williams"), Medical Health Care Program Analyst for the Agency for Health Care Administration ("Agency" or "AHCA"), appeared on behalf of Respondent. Dr. Chris Kunis ("Dr. Kunis"), Medical Director for eQHealth Solutions, Inc. ("eQHealth") appeared as a witness for Respondent.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings a forty-one (41)-page evidence packet. The forty-one (41)-page evidence packet appears in the Office of Fair Hearings document management system as file title "24-FH1182 DAR and Supporting Documents.pdf." Absent an objection from Respondent, the undersigned admitted the forty-one (41) page evidence packet as Petitioner's Composite Exhibit 1 ("PCE 1").

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner a one hundred and thirty-eight (138)-page evidence packet and a forty-seven (47)-page evidence packet. The one hundred and thirty-eight (138)-page evidence packet appears in the Office of Fair Hearings' document management system as file titles: "[REDACTED] FH 05.23.24 1-93.pdf," and "[REDACTED] FH 05.23.24 94-138.pdf" respectively. The forty-seven (47) evidence packet appears in the Office of Fair Hearings' document management system as file title "24-FH1182 - Agency Evidence Legal Authorities 47 pages.pdf."

Petitioner objected to pages 74 through 88 of Respondent's one hundred thirty-eight (138)-page evidence packet as they do not pertain to the Petitioner in this matter. This objection

was sustained, and pages 74 through 88 of Respondent’s one hundred thirty-eight (138)-page evidence packet will not be considered in the ruling of this Final Order.

Absent further objection from the Petitioner, the undersigned admitted the one hundred thirty-eight (138)-page evidence packet, less pages 74-88, into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”) and the forty-seven (47)-page evidence packet into evidence as Respondent’s Composite Exhibit 2 (“RCE 2”).

FINDINGS OF FACT

1. Petitioner receives Medicaid services on a fee-for-service basis from the Agency. *See* RCE 1 at 22. eQHealth is a Quality Improvement Organization (“QIO”) contracted by the agency to review prior authorization requests for services. *See* RCE 2 at 2.

2. Petitioner was [REDACTED] at the time of the hearing. *See* RCE 1 at 22.

3. Petitioner has been diagnosed with the following: [REDACTED]

[REDACTED] *Id.* at 22-23. Petitioner does not use a ventilator, BiPAP/CPAP, or oxygen, and has no monitors or suctioning needs for airway/tracheostomy. *Id.* at 63. Petitioner does not require oral suctioning. *Id.* Petitioner does not use enteral feeds, does not have seizures or spasms, does not receive therapy, fluids or medications intravenously. *Id.* at 62-63. Petitioner does not have wounds or stomas. *Id.* at 65.

4. Petitioner requested authorization of PPEC services, specifically 624 units of code T1026 (Partial day services) and 156 units of code T1025 (Full day services). *Id.* at 39. In a Notice of Outcome (“NOO”), dated March 18, 2024, Respondent denied Petitioner’s request for PPEC services on the basis of medical necessity. *Id.* at 39-40. The NOO explained the denial as follows, in pertinent part:

The request for services is denied in whole or in part because they are not medically necessary as defined in 59G-1.010 , Florida Administrative Code, Specifically the requested services are not medically necessary under the following standard(s):

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

The rationale for our decision is as follows:

PR Principal Reason - Denial:

Submitted information does not support the medical necessity for requested services.

Clinical Rationale for Decision: Clinical Rationale for Decision: Request is for PPEC for this [REDACTED]
[REDACTED]
[REDACTED] . No need for skilled nursing services[sic] . Deny this request .

Id.

5. Petitioner requested reconsideration. On April 8, 2024, Respondent issued a Notice of Reconsideration Determination(“NRD”). *Id.* at 44-45. The NRD states as follows in pertinent part:

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

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

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.

The medical basis for the reconsideration decision is as follows:

PR Recon Determination: [REDACTED],

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Nursing needs consist of monitoring and supervision.

Uphold denial of all PPEC units. The submitted documentation was reviewed. The patient lacks sufficient skilled nursing needs to warrant PPEC care.

Id. at 45.

6. On April 11, 2024, Petitioner requested a Fair Hearing to challenge the denial of PPEC services. On April 19, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for May 23, 2024, at 9:00 a.m., EST.

7. [REDACTED] testified to the following at the fair hearing:

a. Petitioner participates in an after-school program due to [REDACTED] behavioral conditions. [REDACTED] is given medication that can't be given at school. [REDACTED] is currently taking three medications, and the school nurse will not give the medication before 1:00 PM.

b. [REDACTED] is not able to go to daycare due to limited resources of the [REDACTED] of Petitioner.

8. Dr. Kunis is a Medical Director at eQHealth. Dr. Kunis testified as follows:

a. Petitioner is [REDACTED] with no scheduled medications at PPEC.

b. [REDACTED] is not showing any need for skilled nursing, but instead has needs for monitoring and supervising only.

c. Dr. Kunis does not believe PPEC is medically necessary for this child.

d. Petitioner's [REDACTED] is not currently working so [REDACTED] is able to give the medication to the child when needed. Therefore, the services requested are for convenience only.

CONCLUSIONS OF LAW

9. 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).

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

11. Because Petitioner is requesting new services, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to the 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 Florida Medicaid Prescribed Pediatric Extended Care Services Policy (“PPEC Policy”), incorporated by reference in Fla. Admin. Code R. 59G-4.260, establishes the provision and coverage of PPEC services under Florida Medicaid. See RCE 2 at 38-43. The PPEC Policy states as follows, in pertinent part:

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.

...

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.

Id.

13. 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.

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.

Id. at 5.

15. 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).

Id. at 3-12.

16. 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.

Id. at 13.

17. The Florida Medicaid 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.

Id. at 23.

18. Fla. Admin. Code R. 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. . [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.

Id. at 47.

19. In an NOO dated March 18, 2024, Respondent denied Petitioner's PPEC services. See ¶ 4.

The NOO 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."

Id.

20. PPEC services are intended for patients who “require continuous therapeutic interventions or skilled nursing supervision.” See ¶ 12, 18. 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 ¶ 14-16. As provided in the Definitions Policy, a component of medical necessity is that services must be “[i]ndividualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient’s needs,” and “Reflective of the level of service that can be safely furnished, and for which no other equally effective and more conservative or less costly treatment is available statewide.” See ¶ 17.

21. Petitioner is a [REDACTED] with [REDACTED]
[REDACTED] See ¶ 3. Petitioner does not use a ventilator, BiPAP/CPAP, or oxygen, and has no monitors or suctioning needs for airway/tracheostomy. See ¶ 3. Petitioner does not require oral suctioning. See ¶ 3. Petitioner does not use enteral feeds, does not have seizures or spasms, does not receive therapy, fluids or medications intravenously. See ¶ 3. Petitioner does not have wounds or stomas. See ¶ 2- 3.

22. Dr. Kunis provided credible and persuasive testimony that, while Petitioner’s diagnoses and needs are complex, there was no evidence presented to show that Petitioner’s condition meets the criteria for skilled nursing services. See ¶ 8. Further, Petitioner does not meet any of the criteria listed in the Florida Administrative Code for skilled nursing and needs no medication during PPEC services. See ¶ 13.

23. Based on the foregoing, the record demonstrates that the PPEC services at issue do not meet the following medical necessity criteria: “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 ¶ 4,17.

24. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner did not prove by a preponderance of the evidence that the PPEC services are medically necessary for Petitioner. Looking at all the evidence relevant to the particular needs of Petitioner, Petitioner did not demonstrate that PPEC services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, Petitioner did not prove by a preponderance of the evidence that Respondent's denial of PPEC services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

Respondent's denial of PPEC services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and ORDERED this 23rd day of August 2024, in Tallahassee, Leon County, Florida.

 Lynne Ringers
24-FH1182
2024.08.23
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LYNNE RINGERS, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407

NOTICE OF A RIGHT TO JUDICIAL REVIEW

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

Copies Furnished To:

[REDACTED]
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