



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

FILED

May 23, 2024, 1:46 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH1270

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing in the above-styled case on May 21, 2024, at 1:00 p.m. Eastern Standard Time.

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantel 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 non-emergency transportation expenses (meals and lodging) for a Health Care Attendant on [REDACTED], was incorrect.

PRELIMINARY STATEMENT

All parties and witnesses appeared for the Fair Hearing telephonically. [REDACTED] (“[REDACTED]”), Petitioner’s Authorized Representative and [REDACTED], appeared for the Fair Hearing to provide testimony and did not call any witnesses.

Chantel Pierre, Clinical Appeals Coordinator for Children’s Medical Services (“CMS”), appeared as a representative for Respondent. Dr. Andrew Metinko (“Dr. Metinko”), Medical Director for CMS, appeared as a witness for Respondent. The following persons attended as observers: Joanne White, Colleen Martin, Elissa Luke, Kristen Zimmerman, Dr. Mansooreh Salari, and Stephanie McCrory.

Petitioner introduced an evidence packet containing forty-two (42) pages, which is identified in the Office of Fair Hearing’s case management system as “24-FH1270 Evidence.pdf.” Without objection, the evidence packet was admitted into evidence as Petitioner’s Composite Exhibit 1.

Respondent introduced an evidence packet containing sixty-nine (69) pages, which is identified in the Office of Fair Hearing’s case management system as “MFH Packet [Petitioner].pdf.” Without objection, the evidence packet was admitted into evidence as Respondent’s Composite Exhibit 1.

At the Fair Hearing, [REDACTED] renewed [REDACTED] motion for an expedited Fair Hearing, which was granted based on information provided on the record. The undersigned agreed to issue the Final Order by no later than Friday, May 24, 2024.

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS. See Respondent’s Composite Exhibit 1, page 2,
22. CMS is a Medicaid 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 an [REDACTED] diagnosed with
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.* at 32.

3. Petitioner requested non-emergency transportation for a trip on [REDACTED]
[REDACTED] *Id.* at 29. Petitioner’s request included transportation, meals, and lodging for the
recipient, [REDACTED], and one home health aide (“HHA”). Petitioner was travelling from [REDACTED]
home in [REDACTED], Florida, to [REDACTED], Florida, for [REDACTED]
[REDACTED]. *Id.* at 29, 32. The trip is [REDACTED]
[REDACTED] *Id.*

4. On April 15, 2024, CMS issued a Notice of Adverse Benefit Determination (“NABD”) partially approving Petitioner’s request for non-emergency transport. *Id.* at 4-5. The NABD approves transportation, meals, and lodging for Petitioner and [REDACTED], but it denies meals and lodging for the HHA. The NABD states as follows:

Children's Medical Services Health Plan has reviewed a request for transport which we received on April 01, 2024. After our review, this service has been:

PARTIALLY DENIED as of April 12, 2024.

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, and 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 facts that we used to make our decision are:

Criteria: Florida Medicaid Non-Emergency Transportation Services Coverage Policy, Agency for Health Care Administration. This decision was made with regards to Early and Periodic Screening, Diagnostic and Treatment Services (EPSDT).

We received a request to authorize non-emergency transportation/meals/lodging for your child and 2 adult escorts (parent and home health aide/personal care assistant). A service to drive a person to a location that is not an emergency. This request is partly approved and partly denied. Approved is your child and 1 adult (parent). The request for the home health aide/personal care assistant is denied. Florida Medicaid does not cover services for health care attendants.

Id. at 4-5.

5. On April 18, 2024, CMS issued a Notice of Plan Appeal Resolution ("NPAR") upholding the denial of meals and lodging for the HHA. *Id.* at 10-11. The NPAR explained as follows:

The request has been reviewed. The review was completed by a licensed doctor. The doctor was not a part of the first review or the findings from that review. The Medical Director involved is Board Certified MD with a specialty in Pediatrics.

On 04/17/2024, after consideration of the information you provided to Children's Medical Services Health Plan in support of your plan appeal, Children's Medical Services Health Plan hereby denies your plan appeal.

As a result, [Petitioner] will not receive non-emergency transportation / meals / lodging for home health aide / personal care assistant, effective 04/17/2024.

The facts that we used to make our decision are: the reconsideration request for the partial approval / partial denial of non-emergency transportation / meals/ lodging for your child and 2 adult escorts (parent and home health aide / personal care assistant) is upheld. Clinical information submitted was closely reviewed. You and your child were previously approved for transportation/meals and lodging for DOS 4/28/2024-5/1/2024.

Id.

6. On April 19, 2024, Petitioner timely requested a Fair Hearing. A Fair Hearing was scheduled for May 21, 2024, and all parties were duly notified.

7. At the Fair Hearing, Dr. Metinko testified that this case is moot because Petitioner's [REDACTED] [REDACTED] was cancelled. On April 19, 2024, CMS became aware that [REDACTED] [REDACTED] had left the practice, and CMS notified Petitioner. Dr. Metinko further testified that CMS contacted the surgeon's office on [REDACTED], and confirmed that the office is not taking over Petitioner's case. Therefore, the subject trip would no longer be necessary.

8. [REDACTED] testified that [REDACTED] was aware of the cancellation. However, [REDACTED] asserted that the case is not moot because [REDACTED] has found a new surgeon for Petitioner, will request non-emergency transportation services to visit the new surgeon in the future, and will need the same ADA accommodations that [REDACTED] requested in this case in order to visit the new surgeon. Petitioner's proposed ADA accommodations are listed on Petitioner's Composite Exhibit 1 at pages 38-39.

CONCLUSIONS OF LAW

9. In this case Petitioner requested non-emergency transportation for a trip on [REDACTED] [REDACTED], for [REDACTED] [REDACTED]. See supra ¶ 2. Petitioner requested transportation, meals, and lodging for the recipient, [REDACTED], and one HHA. See supra ¶ 2. In the NABD and NPAR, Respondent approved

transportation, meals, and lodging for Petitioner and [REDACTED]; however, Respondent denied meals and lodging for the HHA. See supra ¶ 4, 5. At the Fair Hearing, the CMS witness asserted that the instant case is moot. CMS confirmed through testimony that Petitioner's surgery was cancelled and, therefore, the subject trip was cancelled. See supra ¶ 7. [REDACTED] asserted that the instant case is not moot because [REDACTED] found a new surgeon for Petitioner, and Petitioner would need the ADA accommodations requested and denied in this case in order to visit the new surgeon in the future. See supra ¶ 8. [REDACTED] presented a list of ADA accommodations Petitioner will need for a future trip. However, Petitioner did not raise any additional issues that the Office of Fair Hearings has jurisdiction to address in the instant case since the subject trip was cancelled.

10. Pursuant to Rule 59G-1.100(9)(b)(6), Florida Administrative Code, the Hearing Officer is authorized to dismiss a request for a Fair Hearing because it is moot. The Florida Supreme Court explained in *Godwin v. State*, 593 So.2d 211 (1992) (citing *Dehoff v. Imeson*, 153 Fla. 553 (1943)) that "[a]n issue is moot when the controversy has been so fully resolved that a judicial determination can have no actual effect. . . . A case is 'moot' when it presents no actual controversy or when the issues have ceased to exist."

11. Upon consideration of both parties' testimony, Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, and the applicable rules and policies, the undersigned concludes that, because the subject trip on April 28, 2023, through May 1, 2024 was cancelled, there is no relief that can be granted at this time.

DECISION

AHCA Case Number 24-FH01270 is dismissed as **MOOT** and is now closed.

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

Laura Gallagher

24-FH1270

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LAURA GALLAGHER, 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.

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Children's Medical Services
CMSPlanContract@flhealth.gov

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