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

FILED
Aug 21, 2024, 3:40 pm
OFFICE OF FAIR HEARINGS

[redacted],

PETITIONER,

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.
_____/

AHCA Case No.: 24-FH1453
Plan ID No.: [redacted]

FINAL ORDER

Pursuant to notice, the undersigned Hearing Officer convened a telephonic Fair Hearing on the instant case on June 13, 2024, at 10:06 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Authorized Representative

For the Respondent: Nichole Vega,
Regulatory Research 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 and accessories 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. Nichole Vega ("Ms. Vega"), Regulatory Research 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; Jessemy Givenco, Manager of Case Management; Brooke Sheehan, Care Manager; Alicia Jiles, Case Management Supervisor; and Nicholas Crosby, Therapy Advisor. In addition, Aldrea Futtrell-White, Compliance Officer, and Elyssa Luke, Esq., both from the Florida Department of Health appeared at the Fair Hearing for observational purposes.

Chrissy Simmons, Medical/Healthcare Program Analyst and Fair Hearing Liaison 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 two hundred and fifty (250)-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 "Segment 001 MFH Packet [Petitioner].pdf", "Segment 002 MFH Packet [Petitioner].pdf", and "Segment 003 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. 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] and has multiple medical diagnosis, including [redacted] *See* Respondent's Composite Exhibit 1, pages 19 and 38.

3. On March 4, 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 26. On March 11, 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)*
>
> __**X**__ 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.
> __**X**__ 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 the request for Cubby Basic Safety Bed and extra accessories. It is denied as not medically needed. It is not medical in nature for you. Sent clinical notes does not address less intensive options. Such as different doctor directed medications to address behaviors and sleep. It does not note environmental specific changes to help calming behaviors and sleep. It does not established routines addressing sensory needs and/or behavior changes. Thus, to help with improved naptime or nighttime behaviors and sleep. This is why they could not meet your medical needs. Non – enclosed systems have not been tried and ruled out. There are not enough clinical notes stating that less severe choices to help patient safety have been tried and ruled out. These include taking away all unsafe items. Home safety changes and removal of hazardous materials in room. Padded walls, floors low/floor beds, and personal safety equipment. There was no home review stating if your home will safely hold the requested custom enclosed safety bed. Confinement is not medically needed for a child's roaming behavior at night. Your findings and noted impairments do not warrant medical need for institutionalization without the use such bed. Furthermore, the use of the asked enclosed bed will not prevent your noted self-harm or self-injurious behaviors. These may make behaviors worse in times of frustration.

Id.

4. On April 3, 2024, the Petitioner requested a plan appeal. *See* Respondent's Composite Exhibit 1, page 71. On April 24, 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 71-74. The NPAR states the following explanation, in pertinent part:

> The facts that we used to make our decision are: the previous denial to authorize equipment (Cubby Basic Safety Bed and accessories) is upheld due to a lack of documented medical necessity. 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 from bedroom, mattress on floor,

> use of personal safety equipment, bed alarms, video/audio monitors, child protection devices such as child locks high on doors, windows, cabinets, furniture anchors, physician directed medication to address behaviors and sleep, environmental modifications to encourage calming behaviors and sleep, or established routines addressing sensory needs and/or behavior modification to assist with improved naptime or night time behaviors and sleep. The notes do not explain why these measures could not meet the member's medical needs. 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. Members diagnosis and noted impairments do not warrant medical institutionalization without the use of such bed. Confinement is not medically necessary for a child's roaming behavior at night, and should not be used as discipline measure or as a restraint during times of high agitation or aggression. The reasons for this decision are based on a set of standards. This included CP.MP.107 Durable Medical Equipment and Orthotics and Prosthetics Guidelines, FLORIDA MEDICAID DURABLE MEDICAL EQUIPMENT AND MEDICAL SUPPLY SERVICES COVERAGE AND LIMITATIONS HANDBOOK, and EPSDT.

Id.

5. On May 1, 2024, the Petitioner requested a Fair Hearing regarding the denial of the child's safety bed. On May 17, 2024, the undersigned Hearing Officer issued a notice to all parties of record scheduling the Fair Hearing to be conducted by telephone on June 13, 2024, at 10:00 a.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 189-208.

7. The Petitioner's [redacted] and Authorized Representative testified that [redacted]

[redacted]

[redacted]. [redacted] testified that [redacted]

8. 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 sufficient reflect that it is medically necessary in that other less intrusive methods have all been tried and failed. Dr. Metinko testified that the record does not reflect what hospital bed is currently being used or that proper bed rail padding has been tried, which is designed in a way to prevent the user from becoming entangled in the bed rails. Dr. Metinko added that larger full length bed rails, and placing the hospital bed next to a wall will likely prevent the Petitioner from falling out of bed, and that a hospital style bed can be adjusted lower to the floor to lessen any injury that may occur should the Petitioner fall out of his bed at night. Dr. Metinko stated his professional opinion that a proper hospital bed and accessories would be better for the Petitioner than an enclosed Cubby safety bed. Finally, Dr. Metinko testified that the reasons which existed at the time for denying the requested Cubby safety bed still stand and that there is no new basis on which to reverse the Respondent's decision to deny the enclosed safety bed.

9. [redacted], M.D., provided a January 19, 2024, Physicians Order requesting a specialty bed for the Petitioner. *See* Respondent's Composite Exhibit 1, page 27. In addition, [redacted], PT, provide a [redacted], Letter of Medical Necessity, with the opinion that a Cubby safety bed was medically necessary for the Petitioner. *See* Respondent's Composite Exhibit 1, pages 19-22.

CONCLUSIONS OF LAW

10. 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).

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

12. 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.

13. 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.).

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).

15. 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.

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

17. 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.

18. 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).

19. 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.

20. 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).

21. 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 8. 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 20.

22. 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 20. 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 ¶ 8. In addition, the Petitioner did not demonstrate that less intrusive methods to address the Petitioner's sleep issues have been tried and failed.

23. In this case, [redacted], M.D. provided the Petitioner a [redacted], Written Order for a Safety Bed, and [redacted], P.T. provided a [redacted], report concluding it was medically necessary for the Petitioner to receive a Cubby Safety Bed. *See* supra ¶ 9. 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 ¶ 20. Therefore, the Written Order from [redacted], M.D. and report of medically necessity by [redacted] does not in itself make the requested child's safety bed medically necessary.

24. 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.

25. 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 21st day of August, 2024, in Tallahassee, Leon County, Florida.

Alan J. Leifer
24-FH1453
2024.08.21
09:14:52 -04'00'

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:

[redacted]

Children's Medical Services
CMSPlanContract@flhealth.gov

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