



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

FILED

Sep 10, 2024, 12:48 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

vs.

AHCA Case No.: 24-FH1505

Plan ID No.: [REDACTED]

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, a Hearing Officer convened a telephonic Fair Hearing on the instant case on June 20, 2024, at 2:00 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Kimberly Bouchette
Clinical Appeals Coordinator
Children's Medical Services

STATEMENT OF ISSUE

The issue is whether Respondent proved by a preponderance of the evidence that Respondent's decision to deny the Petitioner's request for private duty nursing services was incorrect.

PRELIMINARY STATEMENT

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

[REDACTED] (" [REDACTED] ") appeared on behalf of Petitioner.

Kimberly Bouchette, Clinical Appeals Coordinator (“Ms. Bouchette”) and Dr. Andrew Metinko (“Dr. Metinko”) appeared and testified on behalf of Children’s Medical Services (“Respondent” or “CMS”). In addition, the following attended the Fair Hearing on behalf of the Respondent as observers: Ms. Janice Ryder, Care Manager, Dr. Mansooreh Salari, Medical Director, Sherry Krans, Supervisor, Heather Schoetig. The following attended as observers: Joanne White, Ombudsman for CMS and Elisa Luke, Esq., both from the Florida Department of Health. Finally, Marielisa Amador, Medical/Health Care Program Analyst for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, the Petitioner sent to the Office of Fair Hearings and Respondent three (3) separate document submissions that all appeared to be repetitive. The Petitioner agreed to rely on the final forty-three (43) page submission that was admitted into evidence without objection, is identified as Petitioner’s Composite Exhibit 1, and is maintained in the Office of Fair Hearings document management system as file title “24-FH1505 Petitioner Evidence.pdf”.

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty-five (85)-page evidence packet that was admitted into evidence without objection, is identified as “Respondent’s Composite Exhibit 1”, and appears in the Office of Fair Hearings document management system as “MFH Packet [Petitioner Surname].pdf”.

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS as of October 1, 2021. *See* Respondent’s Composite Exhibit 1, page 2. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.
2. The Petitioner is a [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.*

3. On March 8, 2024, the Petitioner's [REDACTED] and Authorized Representative requested a continuation of in-home private duty nursing benefits from the Respondent. See Respondent's Composite Exhibit 1, page 4. On March 15, 2024, the Respondent denied the Petitioner's request for in-home private duty nursing in a Notice of Adverse Benefit Determination ("NABD") and explained the basis of the denial in-part as follows:

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)

- Must be needed to protect life, prevent significant illness or disability, or alleviate severe pain.

- 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: Sunshine Health Policy on Review of Private Duty Nursing Requests, FL.UM.26.00. The review of these services was

also considered under (EPSDT) Early and Periodic Screening, Diagnostic and Treatment.

Rationale: The request for private duty nursing services (these are licensed nurses who provide care in the home) for your child is denied based on a lack of medical need. The clinical notes that we received do not indicate that your child needs advanced respiratory support (tracheostomy/ventilator). Your child does not need multiple medications administered in the veins. [REDACTED] does not need continuous feedings through a feeding tube. There are no skilled nursing (care or treatment that can only be done by licensed nurses) needs documented. Please discuss other options with your child's care manager and/or primary care doctor.

...

See Respondent's Composite Exhibit 1, pages 4-8.

4. On March 22, 2024, the Petitioner requested an appeal of the Respondent's decision to deny the request for in-home private duty nursing. See Respondent's Composite Exhibit 1, page 41. On April 13, 2024, the Respondent issued their Notice of Plan Appeal Resolution ("NPAR"), affirming the denial of in-home private duty nursing. See Respondent's Composite Exhibit 1, pages 41-44. The Respondent's NPAR provided the basis for upholding the denial of the Petitioner's request and states in-part as follows:

The facts that we used to make our decision are: The previous denial to authorize private duty nursing services for your child is upheld based on a lack of medical necessity (need). The clinical information that we received does not indicate that your child needs advanced respiratory support. Your child does not need multiple medications administered in the veins. They do not need continuous feedings through a feeding tube. The notes that we received do not document any continuous skilled nursing needs. The reasons for this decision are based on a set of standards. This included Criteria: Review of Private Duty Nursing Requests, POLICY ID: FL.UM.26.00. This decision was made with regards to EPSDT.

...

Id.

5. On May 7, 2024, the Petitioner requested a Fair Hearing to challenge the denial of in-home private duty nursing. On May 29, 2024, the Hearing Officer issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for June 20, 2024, at 2:00

p.m. EST.

6. The Petitioner's [REDACTED] testified that [REDACTED] testified that the Petitioner previously had a private duty nurse for the purposes of administering medications but that the purpose of [REDACTED] request in this matter is to gain support for the [REDACTED]. [REDACTED] testified [REDACTED] works full time as an office manager Monday through Friday between the hours of 5:30 a.m. to approximately 5:00 p.m. Finally, [REDACTED] testified [REDACTED] is requesting service for 4 nights each week (Sunday, Monday, Tuesday, and Thursday) between the hours of 8:00 p.m. and 6:00 a.m. or 7:00 a.m.

7. Dr. Metinko testified the Petitioner previously had a Medicaid private duty nurse but that between June 2023 and March 2024, the Petitioner did not have any private duty nursing. Dr. Metinko stated the only task that the overnight nurse is performing is watching the Petitioner to [REDACTED] and that is something a parent can do. Dr. Metinko pointed out that a home health aide would be more appropriate than a private duty nurse especially since the Petitioner has no feeding tube, no trach tube, or a ventilator. Dr. Metinko stated it was excessive for a private duty nurse to watch the Petitioner [REDACTED] [REDACTED].

8. On February 19, 2024, [REDACTED], M.D. provided the Petitioner a letter stating "[I]t is necessary for the patient [Petitioner] to receive private duty nursing services for 12-hour days, 4 days out of the week." See Respondent's Composite Exhibit 1, page 12.

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. 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.

12. The standard of proof in an administrative hearing is 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.)

13. The Florida Medicaid Private Duty Nursing Services Coverage Policy (November 2016) (“PDN Policy”) establishes the provision and coverage of private duty nursing services under Florida Medicaid. The PDN policy provides as follows:

13.1 Description

Florida Medicaid private duty nursing (PDN) services provide medically necessary skilled nursing to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community.

...

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.

...

1.3.6 Medically Necessary/Medical Necessity

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

2.2 Who Can Receive

Florida Medicaid recipients under the age of 21 years requiring medically necessary PDN 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 reimburses for up to 24 hours of PDN services per day, per recipient, when the recipient meets all of the following criteria:

- Is under the care of a physician and has a physician's order for PDN services
- Requires more extensive and continual care than can be provided through a home health visit
- Requires services that can be safely provided in their home or community

...

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 sectioned 1905(a) of the Social Security Act, 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

5.2 Specific Non-Covered Criteria

Florida Medicaid does not reimburse for the following:

- A skill level other than what is prescribed in the physician order and approved POC

- Babysitting
- Certification of the POC by a physician
- Nursing assessments related to the POC
- Professional development training or supervision of home health staff or other home health personnel
- Respite care to facilitate the parent or legal guardian to personal matters
- Services funded under section 110 of the Rehabilitation Act of 1973 or under the provisions of the Individuals with Disabilities Educational Act
- Services furnished by relatives as defined in section 429.02(18), F.S., household members, or any person with custodial or legal responsibility for the recipient (except as described in section 4.2.1)
- Services provided in any of the following locations:
 - Hospitals
 - Intermediate care facilities for individuals with intellectual disabilities
 - Nursing facilities
 - Prescribed pediatric extended care centers
 - Residential facilities or assisted living facilities when the services duplicate those provided by the facility
- Services rendered prior to the development and approval of the POC
- Travel time to or from the recipient’s place of residence.

Florida Medicaid may reimburse for some services listed in the section through a different service benefit.

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.

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).

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.

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.

18. In the NABD, dated March 15, 2024, the Respondent denied the Petitioner’s request for private duty nursing services. *See* ¶ 3. The NABD explained that the basis of the reduction was that the request was not “individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment”, was “in excess of the patient’s needs”. *Id.*

19. As provided by the EPSDT requirements, the recipient must meet the medical necessity criteria as outlined in Fla. Admin. Code R. 59G-1.010. 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”. See ¶ 16. As shown by the record, Petitioner has [REDACTED]

[REDACTED]
[REDACTED] See ¶ 2.

However, as testified to by Dr. Metinko, the Petitioner does not require skilled nursing as the only services the Petitioner receives is [REDACTED], which can be performed by a parent or a home health aide. See ¶ 7. As such, Respondent has shown that skilled nursing services are in excess of Petitioner’s needs and that those services can be provided in a less costly manner.

20. Lastly, Petitioner’s provider, [REDACTED] wrote a letter and stated that it was “medically necessary” for the Petitioner to receive twelve (12) hours of private duty nursing for four days a week. See ¶ 8. However, “[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 . . . medically necessary”. See ¶ 17.

21. Upon consideration of the testimony provided, evidence submitted, and applicable polices, the undersigned concludes that Petitioner has failed to prove by a preponderance of the evidence that private duty nursing services for the Petitioner was medically necessary, not in excess of the Petitioner’s needs, and cannot be provided at a lower cost than private duty nursing. Considering all the evidence relevant to the particular needs of Petitioner, the Petitioner has not demonstrated that skilled nursing services are necessary to correct or ameliorate a defect or a physical and mental illness or condition. Accordingly, the Petitioner has not proved by a

preponderance of the evidence that Respondent's denial of private duty nursing services was incorrect.

IT IS HEREBY ORDERED AND ADJUDGED THAT:

The Respondent's denial of in-home private duty nursing is **AFFIRMED**. Petitioner's appeal based on Respondent's denial of in-home private duty nursing is **DENIED**.

DONE and ORDERED this 10th day of September, 2024, in Tallahassee, Leon County,
Florida.

Alan J. Leifer
24-FH1505
2024.09.10 09:18:20
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**ALAN 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]
[REDACTED]
[REDACTED]

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