



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

FILED

Aug 16, 2024, 2:53 pm

OFFICE OF FAIR HEARINGS

[REDACTED]

PETITIONER,

AHCA Case No.: 24-FH1693

Plan ID No.: [REDACTED]

vs.

CHILDREN'S MEDICAL SERVICES,

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic Fair Hearing on the instant case on August 6, 2024, at 1:02 p.m. Eastern Standard Time ("EST").

APPEARANCES

For the Petitioner:

[REDACTED]

Petitioner's Authorized Representative

For the Respondent:

Chantal Pierre

Plan Representative

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 Petitioner's request for home health aide services was correct.

PRELIMINARY STATEMENT

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

Chantal Pierre, (“Ms. Pierre”) Plan Representative for Children’s Medical Services, (“CMS”), appeared on behalf of Respondent. Dr. Andrew Metinko, M.D. (“Dr. Metinko”) Medical Director for CMS, appeared as a witness for Respondent. The following attended as observers on behalf of Respondent but did not testify: Elyssa Luke, Esq. and Joann White.

Lee Ann Williams, (“Ms. Williams”) Medical Health Care Program Analysis for the Agency for Health Care Administration (“Agency” or “AHCA”), appeared as an observer.

Prior to the hearing, Petitioner sent to the Office of Fair Hearings and Respondent a thirty-five (35)-page evidence packet. This evidence packet is identified in the Office of Fair Hearings document management system as file title: “24-FH1693 Supporting Document.pdf.” Absent an objection from the Respondent the undersigned admitted Petitioner’s evidence packet into evidence as Petitioner’s Composite Exhibit 1 (“PCE 1”).

Prior to the hearing, Respondent sent to the Office of Fair Hearings and Petitioner an eighty-one (81)-page evidence packet. This evidence packet is identified in the Office of Fair Hearings document management system as file titles: “MFH packet [Petitioner’s Name].pdf.” Absent an objection from the Petitioner the undersigned admitted Respondent’s evidence packet into evidence as Respondent’s Composite Exhibit 1 (“RCE 1”).

FINDINGS OF FACT

1. Petitioner is an enrolled member of CMS. See page 2 of RCE 1. CMS is a managed care organization contracted by the Agency to provide services to eligible Medicaid recipients in Florida.

2. Petitioner is [REDACTED].
[REDACTED].

3. Petitioner is diagnosed with the following primary health conditions: [REDACTED]. *Id.* at 12 and verbal testimony of Dr. Metinko.

4. According to the recipient's primary pediatrician ([REDACTED], MD), the recipient has functional limitations involving [REDACTED]. Recipient's primary pediatrician states that the recipient needs services with [REDACTED]. *Id.* at 12-13. The recipient needs assistance with ADLs and IADLs and the caregiver needs a skill level of "Aide." RCE 1 at page 14-15.

5. Most Instrumental Activities of Daily Living ("IADLs") are not age relevant for this recipient at this time.

6. Petitioner requested home health aide services for the recipient. There is some conflict in the amount of time and days of the services, however, from the testimony, the request for services appears to cover [REDACTED]'s working hours of two 24-hour shifts one beginning on Friday at 8:00 a.m. and the other beginning on Sunday at 8:00 a.m. One accounting of the requested services was stated as 8 hours on Monday, 5 hours on Tuesday/Thursday, 11 hours on Friday, 9 hours on Saturday, 17 hours on Sunday and 19 hours on non-school days Monday and Friday. RCE 1 at page 36. Some of the requested services may no longer be necessary as the recipient is now being home schooled on Tuesday, Wednesday and Thursday. In a Notice of Adverse Benefit Determination ("NABD"), dated February 29, 2024, the request was partially denied. *Id.* at 4-5. NABD explained the basis of the denial as follows:

We determined that the requested services are not medically necessary because the services do not meet the reasons checked below: (*See Rule 59G-1.010*).

...

- Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of your child's needs.

The facts that we used to make our decision are:

...

Sunshine Health Policy on Review for Personal Care Services Request, FL.UM.25.00. Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016. These services have also been reviewed under EPSDT (Early and Periodic Screening, Diagnostic and Treatment).

Rationale: The request for home health aide services for your child is partially approved. We are approving services for an initial 30-day period. Services after the first 30 days are denied due to missing notes. The work schedule and requested days for aide are not clear.

Id.

7. Petitioner requested a plan appeal regarding the denial of the home health aide. In a Notice of Plan Appeal Resolution ("NPAR"), dated May 9, 2024, Respondent denied the plan appeal. *Id.* at 26-27. The NPAR explained as follows:

On 04/23/2024 we received your timely plan appeal request regarding Children's Medical Services Health Plan Notice of Adverse Benefit Determination dated 02/29/2024, NABD Number [REDACTED], the service to be provided to [Petitioner's name].

On 05/09/2024, 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 deny your plan appeal. As a result, [Petitioner's name] will not receive service, effective 05/09/2024.

The facts that we used to make our decision are: the previous decision regarding home health aide services for your child is upheld due to lack of medical necessity. The clinical information submitted with this request does not support the medical need for a home health aide. Your child appears to need adult supervision/childcare. Adult supervision does not require a home health aide. All young children need adult supervision and assistance with activities of daily living. Please note that previous authorizations for home health aide services were approved without medical necessity review. Criteria: SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Request FL.UM.25; Personal Care Services Coverage Policy, agency for Health Care Administration, November 2016. This decision was

made with regards to EPSDT. The reasons for this decision are based on a set of standards. This included SUNSHINE POLICY AND PROCEDURE Review for Personal Care Services Requests FLUM.25; Personal Care Services Coverage Policy, Agency for Health Care Administration, November 2016.

Id.

8. On May 20, 2024, Petitioner requested a Fair Hearing to challenge the denial of home health aide services. On July 1, 2024, the undersigned issued an Order Scheduling Fair Hearing by Telephone and Prehearing Instructions, setting the hearing for August 6, 2024, at 1:00 p.m. Eastern Standard Time.

9. Dr. Metinko testified to the following:

- a. This recipient of Medicaid services is a [REDACTED]
[REDACTED]
[REDACTED] Dr. Metinko testified to the history of home health aide services for the recipient. The home health aide services have been provided at least since October 1, 2021, under a different health care organization. That organization (Well Care Health Plan) was merged into the Sunshine health care organization. Under the prior health care organization and during the transition of the merger, home health aide services had been administratively approved until an actual medical review could take place. The first actual medical review of these services occurred September 21, 2022, by a medical director, Dr. Phung. The request was for 60 hours per week of home health aide services. Dr. Phung gave a partial authorization of 52 hours per week based upon the work schedule submitted with the request for services. The decision was appealed and reviewed

by Dr. Phillips, who overturned the partial authorization and granted the full 60 hours requested. The next medical director's review occurred on February 29, 2024, by Dr. Shamma. The request for services was authorized, but only for 30 days pending receipt and review of missing information. Dr. Shamma's decision was appealed on May 9, 2024, and Dr. Samerson conducted the appeal review and upheld Dr. Shamma's decision. The reasons given for the denial of services included an unclear work schedule for the recipient's [REDACTED] and information that the child was being home schooled which could not be a home health aide. Thereafter, [REDACTED] requested a Fair Hearing review.

- b. As the lead medical officer of CMS, Dr. Metinko was requested to review this matter and the existing decisions. Dr. Metinko's review team reviewed the entire file. The review team specifically reviewed speech and occupational therapy notes from January of 2024 which contained information that the recipient was not non-verbal. The recipient was further described as [REDACTED]. Occupational therapy notes indicated that the [REDACTED] said [REDACTED] could [REDACTED]. The recipient was [REDACTED]. The recipient was [REDACTED]. An additional occupational therapy note from July 3, 2024 stated that the [REDACTED] said [REDACTED] was independent with [REDACTED]. Dr. Metinko and the review team had access to the individual education plan (IEP) from the [REDACTED].

date October of 2023. The recipient was in the third grade and was noted as inconsistent with expected behaviors. The recipient was described as having a

[REDACTED]

[REDACTED]

[REDACTED] Thus, based upon that information, Dr. Metinko and the review team found that the recipient clearly exceeded the need for a home health aide. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Therefore, based upon this entire review which included three pediatricians, Dr. Phung, Dr. Samerson, Dr. Metinko, and case managers it was decided that the recipient exceeded the need for a home health aide and such services were in excess of the patient's needs. Also, as a secondary concern and not the primary reason for the denial of services, was some confusion about the [REDACTED]'s work schedule. The review team had trouble confirming the hours worked.

- c. Dr. Metinko opined that the recipient did not meet the functional limitations required to qualify the recipient for home health aide services. Therefore, the request for a home health aide was denied and found to be in excess of the needs of the recipient and therefore does not meet the criteria of medically necessary.

10. [REDACTED] testified as to the following:

a. [REDACTED] testified that it is [REDACTED]

[REDACTED]

[REDACTED] testified that the school could not get [REDACTED]

[REDACTED] to learn even with an RBT at school with [REDACTED]. [REDACTED]

[REDACTED]

[REDACTED] is home schooling [REDACTED] on Tuesday, Wednesday and Thursday, [REDACTED]

days off work. [REDACTED] stated that [REDACTED] does not understand [REDACTED]

[REDACTED]

[REDACTED] For example, [REDACTED] would go with [REDACTED].

During the summer, [REDACTED] enrolled [REDACTED] in a YMCA program for children with [REDACTED]. Included in the evidence presented in PCE 1 are written reports of [REDACTED]

[REDACTED] to be contacted to pick [REDACTED] up from the program. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Also, [REDACTED] clarified the employment issue that [REDACTED] did not work for the hospital but worked for a company that supplied nursing services to the hospital. Also, [REDACTED] supervisor had relocated to [REDACTED], but was still in charge of [REDACTED] services and work hours.

CONCLUSIONS OF LAW

11. The Agency's Office of Fair Hearings has jurisdiction over the subject matter of this proceeding and the parties pursuant to Fla. Stat. § 409.285(2)(2019). This order is the final administrative decision of AHCA under Fla. Stat. § 409.285(2)(a).

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

13. Because Respondent is denying an existing service, Fla. Admin. Code R. 59G-1.100(17)(g) assigns the burden of proof to Respondent. 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. The Florida Medicaid Personal Care Services Coverage Policy (November 2016) ("PC Policy") which is incorporated by reference in Fla. Admin. Code R. 59G-4.215, establishes the coverage and provision of personal care services available under the Florida Medicaid program.

The PC Policy states as follows, in pertinent part:

1.1 Description

Florida Medicaid personal care services provide medically necessary assistance, in the home or in the community, with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) to enable recipients to accomplish tasks they would normally be able to do for themselves if they did not have a medical condition or disability.

...

1.1.2 Statewide Medicaid Managed Care Plans

Florida Medicaid managed care plans must comply with the 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 coverage limits than specified in Florida Medicaid policies.

...

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 Home Health Services

Medically necessary services that can be safely provided to the recipient in their home or in the community that include home health visits (skilled nursing and home health aide services), private duty nursing, and personal care services.

...

4.2 Specific Criteria

Florida Medicaid reimburses for up to 24 hours of personal care services per day, per recipient, in order to provide assistance with ADLs and age appropriate IADLs when the recipient meets the following criteria:

- Has a medical condition or disability that substantially limits their ability to perform ADLs or IADLs and do not have a parent or legal guardian able to provide the required care
- Is under the care of a physician and has a physician's order for personal care 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 the community

...

4.2.1 Parental Responsibility

Florida Medicaid reimburses for personal care services rendered to a recipient whose parent or legal guardian is not able to provide ADL or IADL care, and to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Providers must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient when needed.

4.2.2 Services Provided by Independent Personal Care Providers

Personal care services provided by independent personal care providers must be:

- Supervised by the parent or legal guardian if provided by a non-home health agency when the recipient is under the age of 18 years.
- Supervised by the recipient, or their authorized representative, if the services are provided by a non-home health agency when the recipient is between the age of 18 and 21 years with no legal guardian.

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, 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 reimbursed 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 plan of care (POC)
- Assistance with homework
- Babysitting
- ...
- Companion sitting or leisure activities
- Escort services
- Housekeeping (except light housekeeping to make the environment safe), homemaker, and chore services
- ...
- Respite care to facilitate the parent or legal guardian attending 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 when a recipient is enrolled in the Consumer-Directed Care Plus program)
- ...

Personal Care Services Coverage Policy pages 1-6.

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.

16. A state may place medical necessity limitations on EPSDT services. *See* 42 C.F.R. §§ 440.230(a), (b), (d). Pursuant to section 409.905(2), Florida Statutes:

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. Once it is determined that EPSDT applies to a request for a service, the Florida Medicaid program determines the amount or necessity for that service based on the State of Florida’s published definition of medical necessity. The Florida Medicaid Definitions Policy (August 2017) (“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 severe 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.

Definitions Policy at page 7.

18. The Definitions Policy also provides the following definitions that are relevant to this case:

21.2 Activities of Daily Living (ADLs)

ADLs include:

- Bathing
- Dressing
- Eating (oral feedings and fluid intake)
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control bowel or bladder functions)
- Toileting
- Transferring

2.64 Instrumental Activities of Daily Living (IADLs)

IADLs include:

- Grocery shopping
- Laundry
- Light housework
- Meal preparation
- Medication management
- Money management
- Personal hygiene
- Transportation
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)

Definitions Policy at pages 1 and 6.

19. In the instant case, Petitioner requested home health aide services. In an NABD dated February 29, 2024, Respondent authorized services for 30 days only and terminated thereafter Petitioner's request based upon medical necessity. See ¶ 6. Petitioner appealed the decision and in an NPAR dated May 9, 2024, Respondent denied Petitioner's plan appeal. See ¶ 7.

20. Petitioner is under the age of 21, and therefore, EPSDT applies to [REDACTED] request for home health aide services. See ¶ 15-17.

21. The Florida Medicaid program provides coverage to its recipients for home health services. See ¶ 14. Home health services provide medically necessary home health aide services to recipients whose medical condition, illness, or injury requires the care to be delivered in their home or in the community. See ¶ 14. Parents and legal guardians of Medicaid recipients are mandated to participate in providing care to the fullest extent possible. See ¶ 14. These services cannot be authorized for babysitting, companion sitting or leisure activities, escort services, housekeeping, and respite care. *Id.*

22. Home health aide services must meet the medical necessity criteria defined in Fla. Admin. Code R. 59G-1.010. See ¶ 17. To be medically necessary, the services requested must meet the five criteria set forth in section 2.83 of the Definitions Policy. *Id.* Specifically, the type of service requested, and the quantity of service requested must not be in excess of the recipient's needs. *Id.*

23. The evidence presented in this case does not reflect that the requested services are warranted. Petitioner requested home health aide services. See ¶ 6. This was denied in an NABD dated February 29, 2024 and NPAR dated May 9, 2024, explaining that home health aide services

in the amount requested by Petitioner were not medically necessary and in excess of Petitioner's needs. See ¶ 6-7.

24. [REDACTED] testified on behalf of [REDACTED]. [REDACTED] testified generally that [REDACTED]'s behavior was not under control. [REDACTED] is no longer in public school and received written reports about [REDACTED] behavior from a summer program at the YMCA. See ¶ 10. [REDACTED] testified that [REDACTED] abilities to complete ADL's was limited by [REDACTED] mental and physical issues. See ¶ 10. Further, that [REDACTED] does have and RBT and receives ABA (applied behavior analysis) services. See ¶ 10.

25. Dr. Metinko gave credible testimony regarding the request for home health aide services. Dr. Metinko testified that three (3) medical doctors had reviewed the recipient's case. Dr. Phung conducted the initial review. Dr. Samerson conducted the appeal review. And Dr. Metinko, who specializes in pediatrics, prepared the recipients case for the Fair Hearing. Dr. Metinko testified that based upon the medical conditions and medical needs of the recipient, the lack of functional limitations, and along with the reported work schedule of [REDACTED] the requested home health aide services were in excess of the needs of the patient. The recipients functional abilities far exceeded the need for a home health aide. Dr. Metinko opined that home health aide services would be in excess of the patient's needs and therefore not medically necessary. See ¶ 9.

26. Based on the foregoing, the record shows that home health aide services would not be "individualized, specific and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment and are in excess of Petitioner's needs. See ¶ ¶ 6, 7, & 9. Therefore, the record does not demonstrate that the requested services are medically necessary. Looking at all


the evidence relevant to the particular needs of Petitioner, Petitioner has not proven that the services at issue are necessary to correct or ameliorate defect or a physical and mental illness or condition.

27. Upon consideration of Petitioner's Composite Exhibit 1, Respondent's Composite Exhibit 1, testimony provided, and applicable policies, the undersigned concludes that Respondent has proven by a preponderance of evidence that Respondent's denial of Petitioner's request for home health aide services was correct.

IT IS THEREFORE ORDERED AND ADJUDGED THAT:

Respondent's denial of home health aide services is **AFFIRMED**. Petitioner's appeal based on Respondent's denial is **DENIED**.

DONE and **ORDERED** this 16th day of August, 2024, in Tallahassee, Leon County, Florida.

 George L. Winslow, Jr.
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GEORGE WINSLOW, Hearing Officer
Agency for Health Care Administration
Office of Fair Hearings
2727 Mahan Drive, Mail Stop # 11
Tallahassee, FL 32308-5407
Office: (850) 412-3649

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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