

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED
JUL 29 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03109

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 01 Escambia
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 30, 2009, at 10:00 a.m., in Pensacola, Florida. The petitioner was represented by her father, [redacted]. Testifying on behalf of the petitioner was her mother, [redacted]. The respondent was represented by Cindy Henline, Medical Health Care Program Analyst (MHCA), Agency for Health Care Administration (AHCA). Testifying on behalf of the respondent was Jeanette Richard, RN specialist, AHCA.

ISSUE

At issue is whether or not it was correct to deny Prescribed Pediatric Extended Care (PPEC) services due to "this service is not considered medically necessary."

FINDINGS OF FACT

1. Prescribed Pediatric Extended Care (PPEC) is a program established to enable children with medically-complex conditions to receive medical care at a non-residential pediatric center. PPEC facilities provide a cost effective and less restrictive alternative to private duty nursing (PDN) or institutionalization, and reduce the isolation that homebound children may experience.

2. The petitioner was born on [REDACTED]. Because of serious health problems since birth, she began receiving PPEC services from at least October 2008 under state-plan Medicaid. Her parents are the primary caregivers. The mother works outside the home and the father has recently lost employment. He is seeking employment.

3. [REDACTED]; Pediatric Extended Care Center was the PPEC service provider. Request to continue PPEC was submitted by the PPEC service provider on April 9, 2009. Administrative guidelines and documentation from the AHCA review are in Respondent's Exhibit 2.

4. PPEC services were requested for the certification period of April 20, 2009 through October 16, 2009. The petitioner is a 15 month old child with a history of Down Syndrome, seizure disorder, Infantile Spasms, Vesicoureteral Reflux and Gastroesophageal Reflux. The prior authorization request indicated the petitioner "has not had any signs of infection during the past certification period. Her appetite has increased in recent weeks and she is beginning to gain some weight. She is making

progress in crawling with the help from PT. We have not observed any seizure activity or spasms this past certification period. Her current medications seem to be working well.”

5. Following AHCA review in April 2009, the agency denied PPEC services for the period under appeal based on the contention that the services were not medically necessary. The parents were encouraged to research other day care possibilities. The petitioner’s representative believes that no other day care facilities will accept his daughter due to her complex medical conditions. He expressed concern that the petitioner would regress if she is not permitted to remain at [redacted]. To support his testimony, the petitioner provided medical statements from [redacted], pediatric neurologist, [redacted] and [redacted] Children’s Clinic. The medical statements indicate that based on their medical opinion, the petitioner would benefit from continued care at [redacted]. [redacted] stated that it was his “opinion that it is medically necessary for” the petitioner “to remain at [redacted] for continued services.”

6. [redacted], a pediatric physician consultant for AHCA, completed a review for medical necessity. The respondent’s pediatric physician recommended the termination of PPEC services due to not being medically necessary. Notice was issued on April 28, 2009 (Respondent's Exhibit 1) and was appealed.

7. There were no services provided that required skilled intervention. The petitioner is able to take feedings by mouth with supervision to prevent choking. The

petitioner's Plan of Care indicated no feeding tubes or oxygen and no surgeries or hospitalizations requiring skilled care during the past certification period.

8. The Plan of Care indicated the petitioner tolerates feedings and is gaining weight. She has been free of respiratory problems, had no seizure activity and shows no signs of pain or aspiration noted. She is becoming more mobile and learning to crawl. The parents acknowledged that the petitioner's seizure activity is currently under control with medication. She will have to be monitored and medication adjusted as she grows.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Families and Children, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80 F.S.

The petitioner requested recertification for Prescribed Pediatric Extended Care (PPEC) services through the provider,

Florida Statute 409.913 addresses Oversight of the integrity of the Medicaid program, with (1)(d) describing "medical necessity or medically necessary" standards and saying in relevant part that: "...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity..." Consistent with statute, Fla. Admin. Code 59G-1.010 (166) defines "medically necessary," informing that such services must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. 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;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. 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; and
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker or the provider. ...

(c) 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).

Additionally relevant is Fla. Admin. Code 59G-4.260, addressing Prescribed

Pediatric Extended Care Services. Subsection (2) informs as follows:

All Medicaid enrolled prescribed pediatric extended care service providers must be in compliance with the Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook, February 2007, incorporated by reference, and the Florida Medicaid Reimbursement Handbook, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent's website....

The Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook informs in Chapters 1 and 2 as follows:

Purpose

The purpose of the Florida Medicaid Prescribed Pediatric Extended Care (PPEC) Program is to enable children with medically-complex conditions to receive medical care at a non-residential pediatric center. PPECs provide a cost effective and less restrictive alternative to institutionalization, and reduce the isolation that homebound children may experience.

Description

A PPEC is a non-residential facility that serves three or more children under the age of 21 who require short, long-term, or intermittent medical care due to medically-complex conditions. A PPEC offers services that meet the child's physiological, developmental, physical, nutritional, and social needs.

...

Who Can Receive Services

To receive PPEC services, a recipient must meet the following criteria:

- Be Medicaid eligible;
- Be medically complex or medically fragile...
- Be age 20 or under;
- Be medically stable; **and**
- Require short, long-term or intermittent continuous therapeutic interventions or skilled nursing supervision due to a medically-complex condition.

Definition of Medically Necessary or Medical Necessity

Medicaid reimburses for services that are determined medically necessary, do not duplicate another provider's service...

Recommendation for PPEC Services

An attending physician must order PPEC services before the services begin. The order must be written on letterhead or printed prescription, and must :

- Indicate that PPEC is an appropriate place for care; and
- Specify the duration of PPEC service not to exceed six months.
(PPEC services must be reordered every six months.)

An order that includes the above constitutes an attending physician's recommendation for PPEC services and medical necessity. ...

Medicaid reimbursement for PPEC services is based on the definition for medical necessity on page 2-2 of this chapter....

Approval of Services

PPEC services must be:

- Ordered by an attending physician or the Medicaid physician consultant;
- Outlined in the plan of care that is written by the PPEC center...
- Authorized by Medicaid or an approved designee.

The petitioner presented three medical opinions from treating physicians. The petitioner argued that the treating physician's statements should be given more "merit" or consideration. The treating physicians are aware of PPEC services. The hearing officer agrees, in general, that a treating physician's opinion would carry more weight. For the case at hand, though the petitioner's treating physicians have extensive medical knowledge of the petitioner's medical conditions and knowledge of PPEC services in general, there was no indication of an awareness of the Agency's Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook, etc., related to PPEC services. As shown in the Findings of Fact, the petitioner's treating physicians indicate that the petitioner would continue to benefit from receiving care at [redacted] and one gives the opinion that the service is medically necessary. There was no indication that the petitioner needed services that required skilled intervention or that her needs could not be met in a regular day care arrangement. A review of the previous services provided during the prior certification showed that the petitioner is able to take feedings by mouth with supervision to prevent choking. The petitioner's Plan of Care indicated no feeding tubes or oxygen and no surgeries or hospitalizations requiring skilled care during the past certification period and that there was no seizure activity. None of the above information complies with the definition noted in the legal authorities or the Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook. Thus the hearing officer finds the treating

physician's medical necessity definition does not conform to or meet the Agency's definition as per the above cited authorities for the PPEC services.

Under governing statute and administrative guidelines, AHCA is charged with determining whether medical necessity has been adequately established and AHCA must assess whether the Medicaid reimbursement criteria have been met. AHCA's procedure to review the continuation of PPEC for the petitioner involved a registered nurse collecting and reviewing the documentation compared with the Medicaid handbook and forwarding the documentation and request to its reviewing pediatric physician, _____, for his expert opinion of medical necessity of the service. _____ determined that the medical necessity criteria were no longer met.

While the petitioner's parents argued that medical necessity standards would best be met in PPEC and that no other day care providers would take care of the petitioner during work hours due to her medical condition, evidence did not support such during the review process or before date of hearing. Moreover nutrition at PPEC was not achieved via GTube and there has been no seizure activity during the previous six months per the provider's Plan of Care and the parent's testimony. The above Medicaid authorities require that a recipient of PPEC must require short, long-term or intermittent continuous therapeutic interventions or skilled nursing supervision due to a medically-complex condition.

According to the above authorities, 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. As of the April 2009 review period and cancellation on April 28, 2009, the information available from the appropriate source did not support the need for skilled intervention or supervision of a medically complex situation as set forth in the above authorities. Available information supported the AHCA plan to discontinue PPEC services as set forth on notice of April 28, 2009. Thus, it is concluded that cancellation notice was justified as issued. The petitioner's representative is encouraged to reapply for PPEC services should there be a change in her medical condition that could change the medical necessity for such services

DECISION


The appeal is denied.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

FINAL ORDER (Cont.)
09F-03109
PAGE - 10

DONE and ORDERED this 29th day of July, 2009,
in Tallahassee, Florida.


Linda Garton
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Copies Furnished To:
Amber Vaughn, AHCA