

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

FILED

AUG 05 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03487

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 14 Bay
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer telephonically on July 23, 2009, at 8:30 a.m., in Panama City, Florida. All parties appeared by telephone. The petitioner was not present but was represented by his grandmother and authorized representative The respondent was represented by Gina Nolan, RN Specialist, Agency for Health Care Association (AHCA). Also testifying on behalf of the respondent was Nita French, RN Specialist (AHCA).

The hearing was originally scheduled to be held on July 22, 2009 but was continued at the request of the petitioner.

ISSUE

At issue is whether or not it was correct to decrease Prescribed Pediatric Extended Care (PPEC) part time days after school to only full-time when school is out due to Holiday or Spring/Summer Break, effective May 16, 2009 due to “this service is not considered medically necessary because the caregiver is available to provide care.” The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner was born on [redacted]. The petitioner receives Supplemental Security Income (SSI) and SSI-related Medicaid. Because of serious health problems since birth, he began receiving PPEC services from at least February 2009 under state-plan Medicaid. The petitioner attends [redacted], during the school year Monday through Friday, 8:30 am to 2:30 pm. He attends summer school Tuesday and Wednesdays from 8 am to noon. The petitioner receives PPEC services part time after school from 2:30 pm until 6 pm during the regular school year and full time on school breaks and non-contagious sick days while his grandparents work.

2. His grandmother is his primary caregiver. He lives with his maternal grandmother, grandfather and uncles aged 19 and 21. The petitioner’s mother gave custody to the maternal grandmother who is also his payee on SSI. No legal documents granting guardianship have been completed and the child’s mother provides no care. The grandparents are self-employed in a lawn and garden service business.

necessity. During the home visit, medical necessity for PPEC services was in question. The Plan of Care and documentation received from PPEC along with the RNS observations were forwarded to Dr. Deeb, a Pediatric Medical Consultant, for review. After review, the Pediatric Medical Consultant concurred with the Respondent's recommendations to reduce PPEC to only when school is out for breaks and holidays and to deny part-time PPEC after school from 2:30 to 5 pm during the regular school year. The petitioner may receive PPEC during summer school from noon to 5 pm however, the petitioner's representative has not been using those services as she was concerned she would be required to repay them should her appeal be denied.

5. The petitioner argued that planting was part of the landscaping business and not for her pleasure. She further indicated that missed calls or calls allowed to go to the answering machine would result in lost business opportunities. If the child is at home with her while she is attending to business she must focus her attention to his needs. This could cause her to miss calls and potential customers. In addition, if she is required to go anywhere, it is difficult to put the child in the car seat and to watch him, which impacts her ability to conduct business.

6. Information submitted during the appeal showed the petitioner has a seizure disorder, microcephaly, is at increased risk for failure to thrive, aspiration, severe developmental delay and is blind. There is a concern that he will require g-tube placement due to the failure to thrive. He is monitored for breath holding episodes to prevent his from passing out. He wears a diaper and needs stimulation. The need for

PPEC services and plan of care indicate the petitioner requires more one-on-one care than a typical day care can safely and effectively provide. This was signed by the petitioner's physician.

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.

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.

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.

Under appropriate 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, Dr. Deeb, for his expert opinion of medical necessity of the service. Dr. Deeb determined that the medical necessity criteria were no longer met.

The grandmother argued that the petitioner's medical condition and needs would best be met in PPEC and that regular day care providers could not provide him with the one on one attention that he requires during her work hours due to his medical condition. There is no evidence to support that there is not a medical necessity for the care other than the respondent's belief that the caretaker is available to provide for him on at least a part time basis after school.

The above Medicaid authorities require that PPEC services be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider. The respondent characterized the planting as "respite" care which is not a Medicaid covered service. The petitioner indicated the planting she was about to do when the visit concluded, is a part of the business in that landscaping is a part of that enterprise and was not done for her pleasure. Further, she must be available to answer the telephone so that business opportunities are not lost. The respondent has determined that there is medical necessity for PPEC services at least during periods that school is out due to holiday or spring/summer breaks and is seeking to terminate PPEC part-time days after school because of the belief that the caregiver is available to provide care.

The undersigned concludes that the petitioner's argument is persuasive in that she is not utilizing PPEC services for "respite" but rather is involved in work activities

related to the family business. It is not unusual that lawn care business is a seasonal activity or that individuals would be "breaking" during the heat of the day or in between jobs. The petitioner indicated business and her livelihood would be impacted by the loss of part-time PPEC services and that the need for services is medically necessary and not being utilized for convenience.

After consideration of the evidence and arguments, the undersigned concludes that AHCA's plan to decrease PPEC services as set forth on the notice of May 6, 2009 is not justified as issued.

DECISION

The appeal is granted. The respondent's action is reversed. PPEC services are to be restored for the remainder of the certification period or until August 18, 2009 based on the above Conclusions of Law.

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.)

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DONE and ORDERED this 5th day of August, 2009,

in Tallahassee, Florida.



Linda Garton

Hearing Officer

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Copies Furnished To

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