

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

[REDACTED]

APPEAL NO. 11F-09775

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened telephonically in this matter before the undersigned hearing officer on February 17, 2012, at 3:05 p.m.

APPEARANCES

For the Petitioner:

[REDACTED]

For the Respondent:

[REDACTED]

Agency for Health Care Administration

STATEMENT OF ISSUE

The issue is the denial of petitioner's request for a commercially prepared enteral nutrition product (formula).

PRELIMINARY STATEMENT

This is an appeal resulting from the denial of the petitioner's request for formula.

[REDACTED] petitioner's mother, presented the case on behalf of [REDACTED] ("petitioner"), who did not attend. [REDACTED] may sometimes hereinafter be referred to as the petitioner's "representative".

The Agency for Health Care Administration (sometimes hereinafter referred to as the "Agency" or "AHCA") was present and represented [REDACTED], the Area 10 Fair Hearing Coordinator for the Agency. Also appearing telephonically on behalf of the Agency were the following: [REDACTED] UMQI Director at [REDACTED]; [REDACTED]; [REDACTED] Appeals Grievance Coordinator at [REDACTED]; [REDACTED] Pediatric Medical Director at [REDACTED]; [REDACTED] Registered Nurse Consultant with the [REDACTED]; [REDACTED], Regional Nursing Director for the [REDACTED]; [REDACTED], Nursing Supervisor with [REDACTED] and [REDACTED], [REDACTED] Project Case Manager at [REDACTED]

At the hearing, petitioner's mother requested a reconsideration of the decision denying the petitioner's request for formula.

The AHCA representative and the Agency's witnesses presented testimony explaining why the request was denied. The Agency produced copies of the various documents generated during the review and appellate processes. The documents were accepted into evidence and marked as Respondent's Composite Exhibit "1".

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. The petitioner is a [REDACTED] year old male. He has a history of heart disease; heart surgery; spinal cord injury; vocal cord paralysis; reflux; bowel perforation; and failure to thrive.

2. The petitioner receives Medicaid State Plan benefits through [REDACTED] [REDACTED] (sometimes hereinafter referred to as [REDACTED] is a provider service network in [REDACTED] County.

3. In July 2011, a request was submitted to [REDACTED] [REDACTED] on behalf of petitioner for a supplemental nutritional formula called Pediasure with fiber ("Pediasure"). The request was for three (3) cans daily.

4. The supporting documentation provided with this request consisted of the clinical notes associated with the petitioner's May 4, 2011 visit to a pediatric gastroenterologist. The clinical notes indicate the petitioner was having breakfast, lunch and dinner. Breakfast consisted of eight (8) ounces of Pediasure; lunch included fish and mashed potatoes; and dinner consisted of a cheeseburger, eight (8) ounces of Pediasure, and 12 to 16 ounces of fruit juice. The diagnosis given by the petitioner's pediatric gastroenterologist at that time was failure to thrive.

5. After receiving this request, [REDACTED] called the petitioner's pediatric gastroenterologist to discuss the case. Upon learning petitioner had not undergone a nutritional evaluation with the last year, [REDACTED] approved the use of the supplemental

materials until a nutritional evaluation could be performed and the petitioner could again meet with a pediatric gastroenterologist.

6. The petitioner underwent a nutritional evaluation at the [REDACTED]

[REDACTED] on November 29, 2011.

7. The nutritional evaluation describes the petitioner as follows. The petitioner's weight is 36.9 pounds. This falls at the 5th percentile per age. His height is 40.9 inches. This also falls at the 5th percentile per age. His body mass index ("BMI") is 16, which falls just below the 75th percentile per age.

8. Petitioner's swallowing test revealed no abnormalities with swallowing.

The petitioner can eat a normal diet; there is no danger of aspiration.

9. The nutritional evaluation concludes the following

His growth pattern seems to be normal, he is small for age most likely related to underlying diagnosis, however, he is very proportionate for weight for height. He is in need of the supplementation due to history of extreme picky eater, apparently there is not physiological impairment for him to eat and receive his calories from the foods. It is just a matter of preference and again picky eating habits....

10. The nutritionist discussed the correct use of supplementation with the petitioner's mother. She suggested that the mother only use Pediasure after meals and that she give the petitioner cues and suggestions designed to decrease his dependence on the product.

11. On December 7, 2011, petitioner's provider submitted a second request for three (3) cans of Pediasure per day to [REDACTED]. The request was accompanied by a note from the petitioner's gastroenterologist explaining

the petitioner was eating breakfast, lunch, and dinner. The note further explained each meal was accompanied by one (1) can of Pediasure.

12. The information accompanying the petitioner's request for formula indicates the three (3) cans of Pediasure daily will provide 50 percent (50%) of the petitioner's daily total caloric intake ("TCI").

13. Pediasure is a commercially prepared enteral product.

14. Florida Medicaid guidelines do not allow approval of commercially prepared enteral products to augment normal dietary sources of nutrition. The patient must have a medical condition that limits his or her ability to ingest, digest, or absorb regular food. Enteral products are not approved for the diagnosis of failure to thrive.

CONCLUSIONS OF LAW

15. By agreement between the Agency for Health Care Administration and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Fla. Stat. § 120.80.

16. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

17. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the respondent.

18. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Agency for Health Care Administration administers the Florida Medicaid Program.

19. Fla. Stat. 409.912 states, in relevant parts:

Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program.

(3) The agency may contract with health maintenance organizations certified pursuant to part I of chapter 641 for the provision of services to recipients. This subsection expires October 1, 2014.

20. The Florida Medicaid Provider General Handbook, incorporated by reference in the Medicaid Services Rules by Fla. Administrative Code Chapter 59G-4, states on Page 1-22, in part:

Medicaid contracts with Health Maintenance Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.

Medicaid pays each HMO a monthly capitation fee for managing and providing care to each enrolled recipient. In accordance with certain contractual agreements with Medicaid, the HMO provides a specified, comprehensive package of medical services for this monthly Medicaid fee.

21. The Florida Medicaid Program Summary of Services lists the services each HMO must provide. This list includes durable medical equipment and medical supplies, including commercially prepared enteral nutrition products.

22. For enteral nutrition products to be approved under the Medicaid State Plan, the products must be shown to be medically necessary and meet the further requirements set forth in the Florida Medicaid Enteral Feeding Formula Policy.

23. Although the terms medically necessary and medical necessity are often used interchangeably and may be used in a variety of contexts, their definition for

Florida Medicaid purposes is contained in the Florida Administrative Code. Fla. Admin.

Code R. 59G-1.010 states

(166) "Medically necessary" or "medical necessity" means that the medical or allied care, goods or services furnished or ordered 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.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(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.

24. § 409.913, Fla. Stat. governs the oversight of the integrity of the Florida

Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows

"Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice....

Section (1)(d) goes on the further state

...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.

25. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary; however, the hearing officer is the final decision making authority for the Agency.

26. In the present case, an analysis of medical necessity is not necessary because the petitioner does not meet the requirements set forth in the Enteral Feeding Formula Policy.

27. The Florida Medicaid Enteral Feeding Formula Policy states as follows

Patients under age 21:

Commercial enteral products are covered if such products constitute 50% or more of total patient caloric intake. Products are not approved to augment normal dietary sources of nutrition.

Patient must have medical condition that limits his or her ability to ingest, digest, or absorb regular food.

Enteral products will not be approved for the diagnosis of "failure to thrive."

28. Although the request submitted by the petitioner's provider indicates that the Pediasure will account for 50 percent (50%) of the petitioner's daily caloric intake, the petitioner does not have a "medical condition that limits his or her ability to ingest, digest or absorb regular food." Furthermore, the Pediasure is being requested to augment the petitioner's normal dietary sources of protein. Therefore, the petitioner does not meet the requirements for receiving the product through Medicaid.

29. This decision is based on the rules and regulations regarding the approval of commercially prepared enteral nutrition products. Nothing herein purports to imply the supplement is not medically necessary for the petitioner. Medical necessity was not addressed in this decision because the rules categorically deny the approval of such a product if the patient does not have a medical condition that limits his or her ability to ingest, digest, or absorb regular food or if the product is to be used to augment normal dietary sources of nutrition.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby 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.

DONE and ORDERED this _____ day of _____, 2012,
in Tallahassee, Florida.

Peter J. Tsamis
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Copies Furnished To: [REDACTED] Petitioner
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