

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

FILED

APR 17 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-00507

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 11 Dade

UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 25, 2014 at 10:07 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner: [REDACTED] mother

For the Respondent: Dianna Chirino, senior program specialist, Agency For Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the Agency's denial of an iPad for the certification period 11/13/2013 – 5/11/2014.

PRELIMINARY STATEMENT

Dr. Ellen Theophilopoulos, physician consultant for eQHealth Solutions, appeared as witness for the respondent. Respondent entered a 46 page composite

exhibit for the agency's action into evidence marked as Respondent's Exhibit 1. The exhibit contains documentation of eQHealth Solutions' initial decision as well as documentation from the provider in support of the therapy services requested. Chapter 2 of the Therapy Services Coverage and Limitations Handbook, dated August 2013, was also included in the exhibit.

Petitioner was represented by her mother, [REDACTED] [REDACTED] petitioner's assistant behavior analyst, also appeared on the petitioner's behalf.

Because the matter under appeal is an initial request for services, the burden of proof was assigned to the petitioner. No administratively approved services were applicable. The petitioner requested an iPad for her 3 year old daughter which was denied by the agency as not medically necessary.

FINDINGS OF FACT

1. The petitioner is a 3 year 8 month old (at the time of the hearing) and is a recipient of the Medicaid program. She has a history of autism and has been diagnosed with developmental language deficit, cognitive problems, and problems with social interaction. She is non-verbal with restless behavior and short attention span.

2. EQHealth Solutions has been authorized to make Prior (service) Authorization Process decisions for the Agency. The Prior Authorization Process was completed for the petitioner by eQHealth Solutions. A board certified pediatrician is the consultant reviewer for eQHealth Solutions. The petitioner's request for an iPad was submitted to Medicaid on 11/13/13. A Medicaid Health Care Program Analyst, Ms. Jones-Garrett

submitted the request to EQHealth Solutions for a determination of medical necessity since the iPad is not a covered Medicaid device.

3. On January 9, 2014, Ms. Jones-Garrett sent a letter to the petitioner and the petitioner's physician, Dr. Martinez regarding the "Request for Medically Necessary Special Services". In the letter, the basis for denial was...

The information provided does not meet the medical necessity criteria as defined in 59G-1.010 (166), Florida Administrative Code, specifically the service must be:

- Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.
- Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caregiver, or the provider.

4. The provider did not submit a request for a reconsideration.

5. The petitioner submitted a timely hearing request on 1/14/2014.

6. The assistant behavior analyst stated that the petitioner is non-verbal but that the iPad could be instrumental in improving her language skills. She stated the petitioner is more focused with the iPad and that the images "get her attention." The analyst was not familiar with other Augmentative and Alternative Communication (AAC) devices, but felt the iPad would yield the fastest results for the petitioner.

7. The mother stated that when her daughter was at The Debbie School, she was loaned an iPad for a 6 month program. At the end of the program, if the parents wanted an iPad for their child they would need to buy one. The petitioner's mother cannot afford an iPad and is asking Medicaid to buy one for her daughter. The mother admitted that no formal evaluation of the iPad and her daughter's progress in using it

was done. She stated the petitioner's doctors, speech therapist, neurologist all recommend the iPad. The mother also acknowledged she was not aware of any Augmentative and Alternative Communication (AAC) devices.

8. The physician consultant for the respondent explained that the petitioner may or may not benefit from an AAC device; however, the iPad is not an appropriate device to meet the petitioner's speech and language deficits. She noted that no speech therapist has provided support for the iPad and the doctors' recommending the iPad do not specifically mention any benefit for her speech/language deficits. She stated the petitioner's speech and language deficits should be addressed by a speech therapist.

CONCLUSIONS OF LAW

9. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

10. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

11. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof was assigned to the petitioner.

12. Fla. Admin. Code 59G-1.010 states in part:

(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;

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...[emphasis added]

13. Because the petitioner is under twenty-one-years-old, the requirements of Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) must be considered. Florida Statute § 409.905, Mandatory Medicaid services, provides that Medicaid services for children must include:

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.--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 provide treatment to correct or ameliorate these problems and conditions. These services include all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

14. In reviewing the appeal for compliance with EPSDT requirements, speech therapy services are part of Florida's Medicaid state plan of services. However, the

iPad is not a Medicaid covered item, the agency properly reviewed the request for medical necessity.

15. The agency's Therapy Services Coverage and Limitations Handbook, dated August 2013, page 1-4, provides the following description of Speech-Language

Pathology services:

Speech-language pathology services involve the evaluation and treatment of speech-language disorders.

Services include the evaluation and treatment of disorders of verbal and written language, articulation, voice, fluency, phonology, mastication, deglutition, cognition, communication (including the pragmatics of verbal communication), auditory processing, visual processing, memory, comprehension and interactive communication as well as the use of instrumentation, techniques, and strategies to remediate, maintain communication functioning, acquire a skill set, restore a skill set, and enhance the recipient's communication needs, when appropriate. Services also include the evaluation and treatment of oral pharyngeal and laryngeal sensorimotor competencies.

Examples are techniques and instrumentation to evaluate the recipient's condition, remedial procedures to maximize the recipient's oral motor functions and communication via augmentative and alternative communication (AAC) systems.

16. The Handbook also provides the following description for Augmentative and Alternative Communication (AAC), on page 2-21:

AACs are designed to allow individuals the capability to communicate. As defined by the American Speech-Language Hearing Association (ASHA), an AAC attempts to compensate for the impairment and disability patterns of individuals with severe, expressive communication disorders, i.e., individuals with severe speech-language and writing impairments.

Dedicated systems are designed specifically for a disabled population.

Non-dedicated systems are commercially available devices such as laptop computers with special software. **Medicaid does not reimburse for non-dedicated systems.[emphasis added]**

17. Both the analyst and the mother testified that the iPad was being used by the petitioner as a means of communicating because she is non-verbal. Neither were aware of augmentative and alternative devices specifically developed for speech and language deficits.

18. The physician consultant noted that while the petitioner may or may not benefit from an AAC device, the iPad was not an appropriate device to meet the petitioner's speech and language deficits. She stated a speech therapist should address the needs of the petitioner.

19. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer finds that the petitioner has not met her burden of proof. While the iPad may be providing some benefits to the petitioner, it is not an appropriate device to address the petitioner's speech and language deficits.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency action AFFIRMED.

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.

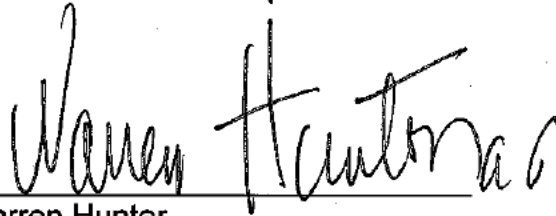
FINAL ORDER (Cont.)

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DONE and ORDERED this 017th day of April, 2014,

in Tallahassee, Florida.



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Rhea Gray, Area 11, AHCA Field Office Manager