

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

FILED

APR 07 2014

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-00803

PETITIONER,

Vs.

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 10, 2014 at 8:30 a.m.

APPEARANCES

For the Petitioner:



petitioner's mother


For the Respondent:

Yadira Carasquillo, Registered Nurse Specialist
Agency for Health Care Administration (AHCA)

STATEMENT OF ISSUE

At issue is whether the respondent's action to deny licensed practical nurse (LPN) service hours that were requested for the petitioner for the certification period December 12, 2013 through June 9, 2014, was correct.

PRELIMINARY STATEMENT

Appearing as a witness for the petitioner was his mother, 

The petitioner did not submit any documents as evidence for the hearing.

Appearing as a witness for the respondent was Ellyn Theophilopoulos, M.D., physician-consultant with eQ Health Solutions. Respondent's composite Exhibit 1 was entered into evidence, consisting of the documentation considered by eQHealth Solutions' physicians in making their decision.

FINDINGS OF FACT

1. The petitioner's home health agency, Kidcare/RGR, LLC (hereafter referred to as "the provider"), requested the following LPN service hours for the certification period at issue: 10 hours per day, Monday to Thursday, 11 hours Friday, and 10 hours per day, Saturday and Sunday.

2. eQHealth Solutions, Inc. is the Quality Improvement Organization (QIO) contracted by the respondent to perform prior authorization reviews for home health services. The provider submitted the service request through an internet based system. The submission included, in part, information about the petitioner's medical conditions; his functional limitations; and other pertinent information related to the household.

3. eQHealth Solutions' personnel had no direct contact with the petitioner, his family, or his physicians, other than a telephone call to the petitioner's physician to explain eQ's medical review decision. All pertinent information was submitted by the provider directly to eQ.

4. The medical information submitted by the provider contained, in part, the following information in regard to the petitioner:

- 4 years old and resides with his mother
- Diagnosis includes kidney disease, prior kidney and liver transplant, and developmental delay
- Ambulatory
- Incontinent

- Consumes a regular diet

5. The petitioner underwent a kidney and liver transplant in May, 2012 and had been receiving dialysis prior to the transplant. He attends school from 8:00 a.m. to 2:00 p.m., Monday to Friday. He was hospitalized for 4 days in February, 2014 due to coughing and shortness of breath. He takes approximately 8 medications per day.

6. The petitioner's mother works a variable schedule of 37.5 hours weekly. She also attends college classes at Miami Dade College.

7. A Plan of Care was also submitted by the provider. The document was signed by a physician and outlined the type of assistance to be provided by a LPN. The duties include, in part:

- Administer medications
- Monitor for signs of organ rejection
- Assess respiratory and hydration status

8. A physician at eQHealth Solutions, who is board-certified in pediatrics, reviewed the submitted information and denied the requested LPN service hours. This physician-reviewer wrote, in part: *"Since the transplant in May, 2012, the patient has been doing well and has demonstrated that he no longer requires skilled nursing services. The patient has continued to not be dependent on any mechanical devices and does not appear to require skilled nursing interventions. It appears the child's needs are medication administration which can be done by the mother and routine care which can be provided by a responsible adult or mother."* A notice of this determination was sent to all parties on December 18, 2013.

9. The above notice stated that a reconsideration review of this determination by eQHealth could be requested, and additional information could be provided with the

request for reconsideration. A reconsideration review was requested on January 9, 2014 by the petitioner's provider.

10. A second physician at eQ Health Solutions reviewed the submitted information and upheld the initial decision. A notice of this reconsideration decision was mailed to all parties on January 10, 2014. The petitioner thereafter requested a fair hearing and this proceeding followed. The respondent administratively approved the requested nursing hours during the pendency of this proceeding.

11. The respondent's witness, Dr. Theophilopoulos, testified that the petitioner does not appear to require constant skilled nursing care at this time since he is currently doing well and the submitted Plan of Care only provides for monitoring of his condition and does not list any required skilled nursing interventions. Dr. Theophilopoulos also stated that medication administration does not require continuous skilled nursing care, and the medications could be administered by the mother. Dr. Theophilopoulos also testified that the petitioner should qualify for skilled nursing visits (rather than continuous nursing hours) and could possibly qualify for personal care services.

12. The petitioner's mother testified that the nursing service hours should be continued because her son was recently hospitalized, he takes 8 or 9 medications per day (including albuterol every 3 hours for asthma), and his blood pressure drops if he does not drink enough fluids.

13. Home health care for minors, including nursing care, is a covered service under the Medicaid State Plan in Florida. These services are provided in accordance with the respondent's Home Health Services Coverage and Limitations Handbook (effective March, 2013).

CONCLUSIONS OF LAW

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

15. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

16. This hearing was held as 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. 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.).

18. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Medicaid Program is administered by the respondent.

19. The petitioner has requested LPN nursing services. As the petitioner is under 21 years of age, the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements apply to the evaluation of the petitioner's eligibility for or amount of this service.

20. The Centers for Medicare and Medicaid Services, State Medicaid Manual makes available to all State Medicaid agencies informational and procedural material needed by the States to administer the Medicaid program. It is the method by which the Health Care Financing Administration (HCFA) issues mandatory, advisory, and optional Medicaid policies and procedures to the Medicaid State agencies.

21. The State Medicaid Manual in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services section states in part:

5010. Overview

A. Early and Periodic Screening, Diagnostic and Treatment Benefit.-- Early and periodic screening, diagnostic and treatment services (EPSDT) is a required service under the Medicaid program for categorically needy individuals under age 21...

5110. Basic Requirements

OBRA 89 amended §§1902(a)(43) and 1905(a)(4)(B) and created §1905(r) of the Social Security Act (the Act) which set forth the basic requirements for the program. Under the EPSDT benefit, you¹ must provide for screening, vision, hearing and dental services at intervals which meet reasonable standards of medical and dental practice established after consultation with recognized medical and dental organizations involved in child health care. You must also provide for medically necessary screening, vision, hearing and dental services regardless of whether such services coincide with your established periodicity schedules for these services. Additionally, the Act requires that any service which you are permitted to cover under Medicaid that is necessary to treat or ameliorate a defect, physical and mental illness, or a condition identified by a screen, must be provided to EPSDT participants regardless of whether the service or item is otherwise included in your Medicaid plan.

22. The service the petitioner has requested (LPN nursing services) is one of the services provided by the state to treat or ameliorate an individual's conditions under the State plan. Chapter 409, Fla. Stat., states, in part:

Any service under this section shall be provided only when medically necessary ...

*(4) (a) In providing home health care services, the agency may require prior authorization of care based on diagnosis
(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services ... The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing*

¹ "You" in this manual context refers to the state Medicaid agency.

services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for any other family dependents.

23. The issue to be decided is the medical necessity of the service or amount of service. The State Medicaid Manual provides for limitations on services as follows:

5110. Basic Requirements...

...Services under EPSDT must be sufficient in amount, duration, or scope to reasonably achieve their purpose. The amount, duration, or scope of EPSDT services to recipients may not be denied arbitrarily or reduced solely because of the diagnosis, type of illness, or condition. Appropriate limits may be placed on EPSDT services based on medical necessity.

5122. EPSDT Service Requirements

F. Limitation of Services.--The services available in subsection E are not limited to those included in your State plan.

Under subsection E, the services must be "necessary . . . to correct or ameliorate defects and physical or mental illnesses or conditions . . ." and the defects, illnesses and conditions must have been discovered or shown to have increased in severity by the screening services. You make the determination as to whether the service is necessary. You are not required to provide any items or services which you determine are not safe and effective or which are considered experimental.

5124. Diagnosis and Treatment

B. Treatment.--

1. General. - You must make available health care, treatment or other measures to correct or ameliorate defects and physical and mental illnesses or conditions discovered by the screening services. Treatment services may be limited as described in §5122 F.

24. Once a service has been identified as requested under EPSDT, the Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. The Fla. Admin. Code R. 59G-1.010 defines medical necessity:

(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...*

(c) The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services do not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

25. Based upon the information submitted by the petitioner's provider, eQHealth Solutions completed a prior authorization review to determine medical necessity for the requested nursing services.

26. In the petitioner's case, the respondent has determined that continuous nursing service hours are not medically necessary at this time.

27. Section 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 to 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.

28. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary. As stated above, this proceeding is a de novo proceeding for the purpose of the Agency reaching its final decision. The final decision making authority for this proceeding has been delegated to the hearing officer in Fla. Admin. Code R. 65-2.066.

29. The Home Health Services Handbook on page 2-18 sets forth the requirements for private duty nursing services, as follows:

Private duty nursing services must be all of the following:

- *Ordered by the attending physician.*
- *Documented as medically necessary.*
- *Provided by a registered nurse or a licensed practical nurse.*
- *Consistent with the physician approved POC.*
- *Prior authorized before services are provided.*

30. The Home Health Services Handbook (March, 2013) on page 1-5 states in relevant part:

Private Duty Nursing

Private duty nursing services are medically necessary skilled nursing services that can be provided to recipients under the age of 21 in their home or other authorized settings to support the care required by their complex medical condition.

Private duty nursing is furnished for the purposes of performing skilled interventions or monitoring the effects of prescribed treatment.

31. The petitioner's physician ordered a service frequency greater than that approved by eQHealth Solutions. Rule 59G-1.010(166) (c), however, specifically states a prescription does not automatically mean the requirements of medical necessity have been satisfied.

32. The respondent's witness, Dr. Theophilopoulos, stated that continuous nursing service hours were no longer medically necessary for the petitioner, although he should be able to qualify to receive intermittent nursing visits and could possibly qualify to receive personal care service hours.

33. The petitioner's mother stated she believed the nursing services should continue due to her son's medical conditions and medication needs.

34. After considering all the documentary evidence and witness testimony presented, the undersigned concludes the respondent has met its burden of proof in demonstrating it was correct in its decision to deny the requested LPN service hours. The respondent established that the requested services were no longer medically necessary. However, since Dr. Theophilopoulos stated that the petitioner should qualify for skilled nursing visits, the effective date of this order is delayed for 30 days to allow the petitioner to apply for those other services.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is DENIED. However, this decision shall not be effective until 30 days from the date below in order to allow the petitioner to apply for skilled nursing visits and/or personal care services.

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 7th day of April, 2014,

in Tallahassee, Florida.


Rafael Centurion 

Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662

Copies Furnished To:

 Petitioner
Rhea Gray, AHCA Area 11, Field Office Manager