

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

JAN 20 2015

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-08795

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 05 Hernando
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, a telephonic hearing was convened on November 20, 2014 at 8:33 a.m.

APPEARANCES

For the Petitioner: [REDACTED] Petitioner's mother

For the Respondent: Cecila Young, Registered Nurse Specialist
Agency for Healthcare Administration

STATEMENT OF ISSUE

At issue is whether it is proper for Respondent, the Agency for Healthcare Administration (AHCA), to terminate Petitioner's Prescribed Pediatric Extended Care (PPEC).

PRELIMINARY STATEMENT

At hearing, the minor Petitioner was not present, but was represented by his mother, [REDACTED] Also appearing on behalf of Petitioner was his father,

██████████ Petitioner offered 3 exhibits which were accepted and marked into evidence as Petitioner's Exhibits 1 through 3.

Respondent was represented by Cecelia Young, RN Specialist with AHCA.

Darlene Calhoun, M.D., Medical Director of eQHealth Solutions testified on behalf of respondent. Alice Reshard, Public Administrator Field Office 3, AHCA, observed the proceedings.

Respondent offered 6 exhibits which were accepted and marked into evidence as Respondents Exhibits 1 through 6. Administrative Notice was taken of Fla. Stat. § 400.901, § 400.902, and § 409.965; Fla. Admin. Code R. 59G-1.010, and pages 2-1 – 2-10, 3-1 – 3-2; and pages 1-1, 1-2, 2-1 – 2-4, and 2-9 – 2-12 of the September 2013 Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook (PPEC Handbook).

FINDINGS OF FACT

1. Petitioner is a two-year old male, born ██████████. He lives in the family home with his mother. His parents are divorced, but his father spends significant time with him.
2. Petitioner is and has been eligible to receive Medicaid services at all times pertinent to this matter.
3. Petitioner had been receiving Prescribed Pediatric Extended Care (PPEC) services for the previous certification period. The current certification period is September 10, 2014 through March 8, 2015.
4. Petitioner has been diagnosed with asthma, esophageal reflux and dysphasia. He has allergies to milk, eggs and wheat and is monitored for contact to those

allergens. He has been discharged from Gastroenterology for the treatment of his esophageal reflux. He was on a thickened diet, but as of the hearing, that was no longer the case. He has a prescription for an epi-pen, but there has been no need for usage of that while at Prescribed Pediatric Extended Care (PPEC).

5. Petitioner received Speech Therapy (ST) and Occupational Therapy (OT) while at PPEC. Petitioner has not been attending PPEC or receiving ST or OT pending this matter.

6. Petitioner is on a regular diet and is not medically fragile and does not require skilled nursing care.

7. On August 28, 2014, petitioner's provider requested a continuation of PPEC services, which were provided by Tender Care Medical Services Extended Care Facility (TCMS).

8. This prior service authorization request was submitted to AHCA's peer review organization (PRO), along with information and documentation required to make a determination of medical necessity. The PRO contracted by AHCA to review PPEC requests is eQHealth Solutions, Inc. (eQ).

9. On September 8, 2014, the PRO reviewed Petitioner's request for services and all supporting documentation. On September 8, 2014, eQ sent petitioner and his physician a letter denying the request. On September 17, 2014, petitioner requested a reconsideration of the denial. The reconsideration was completed and denied on September 17, 2014. PR Principal Reason – Denial:

The reason for the denial is that the services are not medically necessary as defined in 59G-1.010(166), Florida Administrative Code, specifically the services 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.

~~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. (Respondent's Exhibit 2)~~

10. The Clinical Rationale for Decision stated:

The patient is a 2 year-old with a history of reflux and food allergies. The patient has been discharged from Gastroenterology for his reflux. The patient is on thickened formula and an age-appropriate diet excluding his food allergens. The patient has a prescription for an Epi-pen but it has not been administered while a PPEC. The patient has a history of asthma for which he was treated with nebulizers and antibiotics in April, 2014. The patient is status post T&A on August 25, 2014 with no reported complications. The patient is not medically Fragile and does not appear to require any continuous intermittent therapeutic interventions or skilled nursing intervention. The patient does not meet the medical complexity requirement for PPEC services. (Respondent's Exhibit 2)

11. Petitioner filed a request for a hearing on October 17, 2014. The request for reconsideration provided no new information.

12. Petitioner lives with his mother, who works weekends and takes care of her 90-year old mother. Petitioner's father does not live in the home.

13. At hearing Dr. Calhoun explained that she reviewed petitioner's request for services in conjunction with his Plan of Care, and all other documents submitted in support of his request. The Plan of Care reflects that the staff at TCMS maintains an allergen-free environment and closely monitor petitioner for any problems related to his diagnoses. The Plan of Care does not indicate, aside from a daily assessment by a nurse, that petitioner requires any on-going medical assistance or the need for skilled nursing services.

14. Petitioner's mother indicated that he is "doing okay" when at home, but that he needs the social interaction he got at TCMS. His asthma is controlled by treatment from one of his doctors. The mother provides all of petitioner's medications prior to his arrival at his PPEC facility, except for those which may be needed in an emergency. No emergencies have been documented to date. She also asserted that she feels he needs the on-going OT and ST services that he received at PPEC so that "he can be the best he can."

15. Dr. Calhoun confirmed that no skilled nursing services are provided to petitioner. No evidence of medical fragility was presented.

CONCLUSIONS OF LAW

16. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing, pursuant to Florida Statutes Chapter 120.

17. Respondent, the Agency for Healthcare Administration, administers the Medicaid Program. Legal authority governing the Florida Medicaid Program is found in Fla. Stat., Chapter 409, and in Chapter 59G of the Florida Administrative Code.

18. The September 2013 Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook (PPEC Handbook) has been promulgated into rule by Fla. Admin. Code R. 59G-4.260.

19. This is a Final Order, pursuant to § 120.569 and § 120.57, Fla. Stat.

20. This hearing was held as a de novo proceeding, in accordance with Fla. Admin. Code R. 65-2.056.

21. The burden of proof in the instant case is assigned to the Respondent. The standard of proof in an administrative hearing is preponderance of the evidence. (See Fla. Admin. Code R. 65-2.060(1).)

22. Fla. Stat. § 409.905 addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law....

(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 all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

23. Page 1-1 of the PPEC Handbook notes that, “[t]he purpose of the Florida Medicaid Prescribed Pediatric Extended Care (PPEC) Services Program is to enable recipients under the age of 21 years with medically complex conditions to receive medical and therapeutic care at a non-residential pediatric center.” Page 1-2 adds that “PPEC services are not emergency services,” (emphasis added).

24. On page 2-1 – 2-2, the PPEC Handbook lists the requirements for PPEC services.

To receive reimbursement for PPEC services, a recipient must meet all of the following criteria:

- Be Medicaid eligible.
- Diagnosed with a medically-complex or medically fragile condition as defined in Rule 59G-1.010, F.A.C.

- Be under the age of 21 years.
- Be medically stable and not present significant risk to other children or personnel at the center.
- Require short, long-term, or intermittent continuous therapeutic interventions or skilled nursing care due to a medically-complex condition.

25. Fla. Admin. Code R. 59G-1.010 defined “medically complex” and “medically fragile” as follows:

(164) “Medically complex” means that a person has chronic debilitating diseases or conditions of one or more physiological or organ systems that generally make the person dependent upon 24-hour-per-day medical, nursing, or health supervision or intervention.

(165) “Medically fragile” means an individual who is medically complex and whose medical condition is of such a nature that he is technologically dependent, requiring medical apparatus or procedures to sustain life, e.g., requires total parenteral nutrition (TPN), is ventilator dependent, or is dependent on a heightened level of medical supervision to sustain life, and without such services is likely to expire without warning.

26. Consistent with the law, AHCA’s agent, eQHealth, performs service authorization reviews under the Prior Authorization Program for Medicaid recipients in the state of Florida. Once eQHealth receives a PPEC service request, its medical personnel conduct file reviews to determine the medical necessity of requested services, pursuant to the authorization requirements and limitations of the Florida Medicaid Program.

27. Florida Administrative Code Rule 59G-1.010(166) defines medical necessity, as follows:

“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 does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

28. As the petitioner is under the age of 21, a broader definition of medically necessary applies, to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements. Both EPSDT and Medical Necessity requirements (both cited, above) have been considered in the development of this Order.

29. EPSDT augments the Medical Necessity definition contained in the Florida Administrative Code via the additional requirement that all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of problems be addressed by the appropriate services.

30. United States Court of Appeals for the Eleventh Circuit clarified the states' obligation for the provision of EPSDT services to Medicaid-eligible children in Moore v. Reese, 637 F.3d 1220, 1255 (11th Cir. 2011). The Court provided the following guiding principles in its opinion, (which involved a dispute over private duty nursing):

- (1) [A state] is required to provide private duty nursing services to [a child Medicaid recipient] who meets the EPSDT eligibility requirements, when such services are medically necessary to correct or ameliorate [his or her] illness and condition.

(2) A state Medicaid plan must include "reasonable standards ... for determining eligibility for and the extent of medical assistance" ... and such standards must be "consistent with the objectives of" the Medicaid Act, specifically its EPSDT program.

(3) A state may adopt a definition of medical necessity that places limits on a physician's discretion. A state may also limit required Medicaid services based upon its judgment of degree of medical necessity so long as such limitations do not discriminate on the basis of the kind of medical condition. Furthermore, "a state may establish standards for individual physicians to use in determining what services are appropriate in a particular case" and a treating physician is "required to operate within such reasonable limitations as the state may impose."

(4) The treating physician assumes "the primary responsibility of determining what treatment should be made available to his patients." Both the treating physician and the state have roles to play, however, and "[a] private physician's word on medical necessity is not dispositive."

(5) A state may establish the amount, duration, and scope of private duty nursing services provided under the required EPSDT benefit. The state is not required to provide medically unnecessary, albeit desirable, EPSDT services. However, a state's provision of a required EPSDT benefit, such as private duty nursing services, "must be sufficient in amount, duration, and scope to reasonably achieve its purpose."

(6) A state "may place appropriate limits on a service based on such criteria as medical necessity." In so doing, a state "can review the medical necessity of treatment prescribed by a doctor on a case-by-case basis" and may present its own evidence of medical necessity in disputes between the state and Medicaid patients (citations omitted).

31. In the instant case, PPEC is requested to treat and ameliorate the supervisory needs which Petitioner's allergen and asthmatic conditions present. As such, in a general sense, PPEC is in keeping with Fla. Admin. Code R. 59G-1.010(166)(1). Because PPEC is a recognized Medicaid service, it is consistent with generally accepted medical standards, per Fla. Admin. Code R. 59G-1.010(166)(3).

32. More specifically, however, Fla. Admin. Code R. 59G-1.010(166) also requires that any authorized service not be in excess of a patient's needs, be furnished in a manner not intended for convenience, and be a service for which no equally effective

and less-costly treatment is available. In order for PPEC to fulfill these criteria, the Petitioner must fulfill the requirements for PPEC, as provided in the PPEC Handbook.

33. There is no evidence to suggest that the Petitioner is dependent upon 24-hour per day medical or nursing care, or that he is dependent upon life-sustaining medical equipment, such that he would properly be deemed 'Medically Fragile.' His need for supervision, occasional medication administration, and general monitoring for allergic or asthmatic reactions do not constitute a need for "intermittent continuous therapeutic interventions or skilled nursing care." As such, his needs do not support the authorization of PPEC, because there are alternative services, such as in-school nursing care, that are better designed to meet those needs without being excessive. PPEC cannot be authorized as a substitute for school, or as a sitting service, particularly when there is no skilled therapy or intervention provided at the PPEC site. In essence, this would constitute approval of PPEC as an emergency service, in direct violation of the PPEC Handbook (page 1-2).

34. When jointly considering the requirements of both ESPDT and Medical Necessity, along with a review of the totality of the evidence and legal authority, the undersigned concludes that the agency has met its burden of proof, and shown that denial of PPEC services is appropriate in the instant case.

DECISION

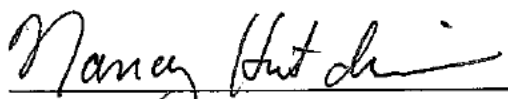
Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner's appeal is DENIED.


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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 20th day of January, 2015,

in Tallahassee, Florida.



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