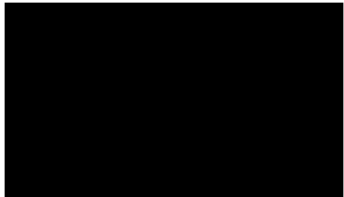


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

MAY 20 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-00889

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 13 Hillsborough
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened two telephonic administrative hearings in the above-referenced matter on February 24, 2014 at 3:04 p.m. and on March 21, 2014 at 10:04 a.m. All parties appeared in different locations by phone.

APPEARANCES

For the Petitioner:  mother

For the Respondent: David Beaven, fair hearings coordinator Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is the Respondent's action in partially denying petitioner's initial request for three hours per week of physical therapy (PT) hours is correct.

PRELIMINARY STATEMENT

The Agency for Healthcare Administration ("AHCA or Agency") is responsible for administering Florida's Medicaid Program. The Agency contracts with a Quality

Improvement Organization (QIO), eQHealth Solutions, to perform medical utilization reviews for therapy services through a prior authorization process for medicaid beneficiaries. Through this contractual agreement, eQHealth Solutions is authorized to make determinations of medical necessity on behalf of the Agency and act as a witness in all related fair hearing proceedings.

Witness for petitioner who testified at both hearings was [REDACTED] Physical Therapist with Kid Pro Therapy Services. Witness for the Respondent who testified at both hearings was Darlene Calhoun, M.D., Physician Consultant with eQHealth Solutions. Petitioner submitted seven exhibits, which were accepted into evidence and marked Petitioner Exhibits "1" through "7". Respondent submitted five exhibits, which were accepted into evidence and marked Respondent Exhibits "1" through "5".

FINDINGS OF FACT

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

1. Petitioner is a 16 year-old female who is diagnosed with Fibromyalgia, Hashimoto's disease, Sjogrens Syndrome, Gastroesophageal reflux disease (GERD), Juvenile Rheumatoid Arthritis (RA), and Tachycardia. She is positive for the cellac gene as well. Petitioner also suffers from Dysautonomia; extensive inflammatory and auto-immune diseases; decreased muscle strength and endurance; muscle pain; tight hamstrings and lumbar paraspinals; and impaired skeletal alignment in standing.
2. On November 1, 2013, eQHealth received an initial request for physical therapy (PT) services in the amount of four (4) units, three (3) times per week from Kid Pro

Therapy. Petitioner is presently authorized to receive PT services in the total amount of four (4) units one (1) time per week. Services requested are for the certification period spanning from November 1, 2013 through April 26, 2014.

3. Respondent contracts with a Peer Review Organization (PRO) to perform medical utilization reviews for physical therapy services through a prior authorization process. The prior authorization review is a paper review that does not include any face to face contact with petitioner, petitioner's family, or petitioner's physician when it determines the medical necessity of petitioner's requested PT hours. Respondent's PRO is eQHealth Solutions.

4. Petitioner previously received PT services through Children's Medical Services and became Medicaid eligible effective November 1, 2013.

5. Petitioner's physical therapist has worked with petitioner since December 2012; has been a physical therapist since 1980; and has work with approximately one hundred individuals who suffered from RA since 1980. Therefore, the petitioner's physical therapist is considered an expert in physical therapy services.

6. Physical Therapy Annual Re-Assessment, dated December 16, 2013, indicates petitioner has been receiving physical therapy services from KidPro since December 14, 2012; is being homeschooled as she is unable to attend school regularly; has improved in the areas of flexibility, core strength and endurance, and extremity strength and endurance; and is scheduled to attend PT sessions three times per week, but her attendance is inconsistent due to conflicts with appointments and health issues.

7. The assessment also indicates petitioner's gait depends on her health as she has no deviations in her gait on "good days" but uses a guarded pattern on "bad days".

8. The assessment further indicates when preparing for PT sessions, petitioner receives MicroCurrent Point Stimulation (MPS) following the fibromyalgia protocol. She then (1) performs active and passive stretching to hamstrings, pelvic girdle, and low back; and (2) performs core and spinal stabilization exercises on a therapy ball.

Petitioner hopes to begin using the "surge" training protocol for endurance when she is physically capable of performing it. Petitioner's PT program advances pursuant to her tolerance and abilities to complete the exercises.

9. The assessment further indicates petitioner's has eight short term goals of which three have been met; two have shown improvement; one is ongoing; and one has not been met. Petitioner has four long term goals, but the assessment does not indicate petitioner's progress on any of the four goals.

10. Petitioner was re-evaluated on January 27, 2014 and the assessment indicates that petitioner hopes that by concentrating on her health, she will gain sufficient endurance and pain reduction to be able to attend college after graduating from high school; remains below age and gender-matched expectations in spite of any improvements; requires intensive physical therapy to manage pain; continues to progress towards physical and functional goals; and is unable to participate in activities, such as attending school, driving a car, going to the mall, or participating in sports, that a normal sixteen year old girl should be able to do.

11. The re-evaluation assessment further indicates that petitioner's core strength is below expectations. Petitioner was administered five tests from the President's Physical Fitness Challenge (PPFC), which provides standardized age and gender-matched comparison. She scored a 0-10th percentile in all five exercise areas for her

age group. Petitioner was also administered the Gross Motor Function Measure (GMFM), which is a standardized test designed for children with Cerebral Palsy and the test views five dimensional areas of movement. She was finally administered the Gross Motor Function Classification System-Expand & Revised (GMFCS-E & R), which determines her functional level. For the GMFM, petitioner scored 100% on two areas; 100% with pain on one area; 92% with pain on one area; 89% with pain on one are; and has an overall score of 90.5%. For the GMFCS-E & R, petitioner is classified as a Level II with her going being a Level 1. A Level II means that although petitioner is ambulatory, environmental factors, such as uneven terrain, inclines, long distances, and times limits her ability to participate; furthermore, she requires a railing or physical assistance to climb stairs.

12. Respondent asserted that any studies performed on adults have not been duplicated on children under the age of eighteen; therefore, there is no evidence supporting its effects on children. She also asserted that the American Academy of Pediatrics (AAP) does not currently recommend any PT treatment plans for children who suffer from juvenile arthritis. The AAP is the governing body for all pediatricians and are the guidelines to follow as part of their training.

13. Petitioner submitted an American College of Sports Medicine (ACSM) training guideline that indicates the guidelines and types of training programs petitioner requires for pain management, and extremity and core strengthening. The guidelines also documents the types of stretching, spinal stabilization exercises, resistance and strength training, and flexibility exercises petitioner's physical therapist recommends for her. The ACSM lists the guidelines for the exercise frequency for the training

progression of an apparently healthy participant varies from three (3) to five (5) sessions per week. Furthermore, the ACSM lists guidelines for cardiorespiratory training, resistance weight training, and proper stretching. The recommended training frequency for cardiorespiratory and resistance weight training varies from two (2) days to five (5) days per week.

14. The respondent does not agree with petitioner using the aforementioned guidelines as it is meant for adults and not children. However, no specific alternative guidelines were submitted or suggested; therefore, the undersigned concludes the guidelines are appropriate for petitioner in this instance.

15. Petitioner described exercise techniques that she believes will benefit and is safe for individuals with cardiovascular and metabolic disorders. Petitioner's believed High Intensity Interval Training in Clinical Population ("surge training") would benefit petitioner because she lacks the flexibility, strength, and medical stability. Individuals engaging in surge training should participate in two (2) to three (3) sessions per week in a "real world setting". Petitioner further asserted the petitioner is able to participate in these exercise programs because (1) petitioner will be an adult in two years and no longer a child; and (2) petitioner would benefit from the exercises at the intensity and frequency described in aforementioned articles and guidelines.

16. Respondent does not agree with petitioner using the aforementioned exercises as they are for adults and the petitioner is a child. However, no specific alternative exercise techniques were submitted or suggested; therefore, the undersigned concludes the exercises are appropriate for petitioner in this instance.

17. Petitioner's therapist has customized a physical therapy program that meets petitioner's needs.

18. Petitioner suffers from constant and at times severe pain that impacts her functional abilities and quality of life. She requires a supervised exercise program to remain safe while training; cannot engage in non-medically supervised exercise programs because of her complex medical issues and medical instability; is able to perform maintenance stretching at home; requires guidance from a trained healthcare professional to learn to exercise independently; engages in an exercise program that decreases pain, muscle spasms, and promotes comfortable stretching and flexibility.

19. Petitioner's physical therapist models petitioner's PT sessions after the ACSM guidelines and surge training program, which indicates that an individual's participation in their exercise training program should vary from two (2) to five (5) days per week. Therefore, petitioner should receive PT hours at four (4) units three (3) times per week because the ACSM guidelines and surge training program support petitioner's requested number of PT hours.

20. The petitioner's does not have a successful course of treatment for her RA as the medication she currently takes does not control her disease. Petitioner's RA also affects her ability to complete her ADLs; however, petitioner is able to bath and feed herself. Petitioner's ability to ambulate varies each day. She can ambulate short distances or be bedridden all day depending on the amount of pain she experiences each day. She can also sleep up to fourteen hours per day because of her disease.

21. The petitioner's believes that limiting or terminating petitioner's PT would be detrimental to her and PT once per week is not sufficient enough to meet her needs.

22. After reviewing the documentation, respondent concluded petitioner is eligible for the PT services once per week due to no evidence to justify the increase of PT services to three times per week. The respondent considered all of petitioner's medical conditions and needs when determining the amount of PT hours to approve for her. Petitioner has normal to good strength and a full range of motion (ROM), which is excellent for a child with her medical conditions. The reasons petitioner requires PT is to improve her strength, ROM, mobility, and endurance. Respondent believed after reviewing the documentation and based on petitioner's impairments, needs, and goals, there is insufficient evidence to increase her PT hours to four (4) units, three (3) times per week.

23. Respondent asserted petitioner's chronic pain should be managed with medications and not physical therapy.

CONCLUSIONS OF LAW

24. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 120.80, Fla. Stat. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

25. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency for Health Care Administration.

26. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

27. The burden of proof was assigned to the petitioner in accordance with Fla.

Admin. Code R. 65-2060(1). This request is for an initial request for services.

28. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

29. Fla. Admin. Code R. 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.

30. Since the Petitioner is under twenty-one years-old, a broader definition of

medical necessity applies to include the Early and Periodic Screening, Diagnosis, and

Treatment Services (EPDST) requirements. Fla. Stat. § 409.905, Mandatory Medicaid

services, provide that Medicaid services for children 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.

31. Under the above statute, the Agency offers physical therapy as an EPSDT service to Medicaid-eligible recipients less than twenty-one years of age.
32. The 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 my present its own evidence of medical necessity in disputes between the state and Medicaid patients. (see (citations omitted)).

33. Consistent with these requirements, the state is obligated to provide services to recipients under twenty-one years of age, but only to the extent such services are medically necessary. The definition of medical necessity for services provided under the EPSDT benefit is established by the state. The state is authorized to establish the amount, duration, and scope of such services.

34. The Florida Medicaid Home Therapy Services Coverage and Limitations Handbook - August 2013 ("Therapy Handbook") is incorporated by reference into Florida Administrative Code Rule 59G-4.320(2).

35. Page 1-3 of the Therapy Handbook states in pertinent part:

Physical therapy is a specifically prescribed program to develop, maintain, improve or restore neuro-muscular or sensory-motor function, relieve pain, acquire a skill set, restore a skill set, or control postural deviations to attain maximum performance.

36. The undersigned is in agreement with the petitioner's medical expert's analysis that the currently authorized hours are not adequate to meet petitioner's needs and four (4) units three (3) times per week would be medically necessary to assist with petitioner's physical therapy needs because petitioner requires the additional physical therapy hours to alleviate her pain and to improve her flexibility, endurance, strength, and functional ability.

37. The cumulative evidence shows that (1) petitioner requires four (4) units at three (3) times per week of physical therapy hours as the documentation submitted supports the increased number of physical therapy hours because the ACSM guidelines and surge training program indicates individuals who participate in exercise programs

should engage in sessions that vary from two (2) to five (5) times per week. and; (2) the increase in physical therapy hours would meet the criteria of medical necessity because the testimony from petitioner's physical therapist, who has direct knowledge of petitioner's medical condition and limitations, has indicated the increased number of physical therapy hours has assisted petitioner in controlling her pain and has assisted her with achieving her short term goals, which then allows her to begin achieving her long term goals.

37. After reviewing the totality of the evidence and the relevant laws set forth above, the undersigned concludes the petitioner's burden has been met and the Agency should approve for petitioner four (4) units three (3) times per week of physical therapy hours for the remainder of the certification period.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the petitioner's appeal is hereby GRANTED and the Agency's is ORDERED to approve for petitioner four (4) units three (3) times per week of physical therapy hours for the remainder of the certification period.

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.

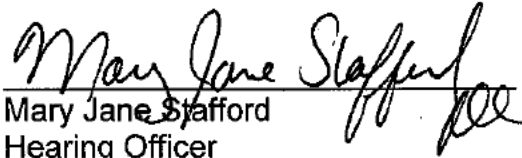
FINAL ORDER (Cont.)

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DONE and ORDERED this 20th day of May, 2014,

in Tallahassee, Florida.



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