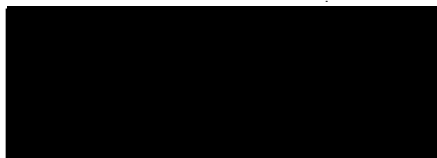


STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

MAR 31 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-09007

PETITIONER,

Vs.

CASE NO.

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 10, 2015, at 10:30 a.m.

APPEARANCES

For the Petitioner:  the petitioner's mother.

For the Respondent: Carol King, Registered Nurse Specialist, Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is whether the Agency action of October 7, 2014 canceling the petitioner's Prescribed Pediatric Extended Care Services (PPEC) is correct.

PRELIMINARY STATEMENT

Present as a witness for the respondent was Dr. Rakesh Mittal, Physician
Reviewer, eQHealth Solutions.

The respondent submitted into evidence Respondent's Exhibits 1 through 4.

FINDINGS OF FACT

1. The petitioner, who is three years of age, has been diagnosed with asthma, skin problems, developmental delay, and requires an evaluation for services as provided by the Agency for Health Care Administration (AHCA) under Florida's Medicaid State Plan. The petitioner's condition(s) is further outlined in Respondent Composite Exhibit 1. AHCA will be further addressed as the "Agency."

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. On October 7, 2014, eQHealth Solutions denied the petitioner's request for continued Prescribed Pediatric Extended Care Services (PPEC) for the certification period of October 6, 2014 through April 3, 2015.

3. According to the October 7, 2014 notice, the principal reason for the decision was the clinical information provided did not support the medical necessity of the requested services. The notice provided the following clinical rationale for the decision:

The patient is a 3 year old with asthma, speech delay with eczema. The patient is on scheduled and as needed nebulizer treatments. The patient has not received any unscheduled nebulizers while attending PPEC. The patient is on an age-appropriate diet. The patient receives occupational therapy, physical therapy and speech therapy. The clinical information provided does not appear to support skilled nursing services; however 30 days will be approved to allow the caregiver to transition the patient to regular daycare. The additional services are not approved. The patient

no longer requires skilled nursing interventions and does not meet the medical complexity requirements of PPEC services.

4. A reconsideration review was completed on October 10, 2014 for the above decision, but eQHealth Solutions upheld the initial decision. Based on the petitioner's timely hearing request, PPEC services have continued for the petitioner.

5. The petitioner, based on his medical condition of asthma, receives scheduled nebulizer treatments, both at the PPEC center and at home. He is on an age appropriate regular diet. He receives speech therapy, occupational therapy, and physical therapy while at the PPEC.

6. The petitioner's mother (caretaker) is not employed and stays at home but has asthma herself. She indicated that she is hospitalized from time to time due to asthma. She provides care for the petitioner when he is at home. She indicated that the petitioner needs nebulizer treatments everyday and has to have low fat milk. She also indicated that the petitioner has acid reflux and vomits a lot. She indicated that the petitioner is in need of continued speech therapy. She argued that she was told the petitioner is underweight (36 pounds) and needs the care of the medical daycare center (PPEC).

7. The physician reviewer witness for this hearing indicated and reiterated the decision for this case is correct and agrees with the issued notice. He pointed out that the petitioner's Plan of Care, which has been submitted into evidence and was reviewed by eQHealth Solutions, indicates that the petitioner is "totally dependent" under functional limitations. He indicated that there was not anything else submitted to

indicate why this was written in the plan but maybe the provider has a different understanding of the meaning of "totally dependent."

8. The physician reviewer indicated that the petitioner could still receive all of his therapies, including speech, even if the PPEC is terminated. He indicated that the petitioner could receive his nebulizer treatments at home by his mother. He also indicated that the petitioner's current weight of 36 pounds is at the medium weight for a child his age. He indicated that the petitioner was previously approved for PPEC services based on infections he had when he was two years old, but he has improved. He also indicated that he reviewed this case under EPSDT and concluded that the petitioner does not meet the medical necessity definition to receive PPEC services.

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 R. 65-2.056.

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

12. Fla. Admin. Code R. 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.

(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...

13. 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

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

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.

14. Fla. Stat. § 409.913 addresses "Oversight of the integrity of the Medicaid program," with (1)(d) describing "medical necessity or medically necessary" standards and saying in relevant part: "For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity."

15. The Prescribed Pediatric Extended Care Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.260 (2). The Prescribed Pediatric Extended Care Services Coverage and Limitation Handbook, September 2013, on page 1-1, states:

The purpose of the Florida Medicaid Prescribed Pediatric Extended Care (PPEC) services 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.

16. The Prescribed Pediatric Extended Care Services Coverage and Limitation Handbook, September 2013, on page 2-1, provides standards for who can receive services and states recipients must meet all of the following criteria:

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.

17. Rule 59G-1.010, F.A.C., defines the terms "medically complex" and "medically fragile" as follows:

"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.

"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, i.e., requiring 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.

18. As shown in the Findings of Fact, the Agency, through eQHealth Solutions denied the petitioner's request to receive continuous PPEC services because the clinical information provided did not support the medical necessity of the requested services.

19. The petitioner's representative argued that the petitioner is still in need of PPEC service based on his asthma and other medical conditions.

20. The respondent's witness argued that the petitioner does not have any diagnoses or medical needs that would indicate the petitioner would meet the definition of either medically complex or medically fragile. He argued that that the petitioner does not meet the medical necessity requirements for the PPEC as found in the Prescribed Pediatric Extended Care Services Coverage and Limitation Handbook. The hearing officer agrees with the respondent's arguments.

21. Based upon the evidence provided, the petitioner does not have a chronic debilitating condition requiring 24-hour health supervision; his condition is not of a

nature that makes him technologically dependent to sustain life; nor is his condition of a nature that makes him dependent on a heightened level of medical supervision to sustain life, as required by the above cited authorities.

22. After considering the evidence and all of the appropriate authorities set forth above, the hearing officer concludes that the Agency has met its burden of proof and its action to deny the petitioner's request for continued PPEC services, due to not demonstrating medical necessity and not meeting the criteria of PPEC, is correct.

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

DONE and ORDERED this 31st day of March, 2015,

in Tallahassee, Florida.



Robert Akel
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700

FINAL ORDER (Cont.)

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Copies Furnished To [REDACTED] Petitioner

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