S0TATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

[redacted]

APPEAL NO. 14F-09058

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 November 24, 2014 at 11:30 a.m.

APPEARANCES

For the Petitioner: [redacted] petitioner's mother

For the Respondent: Linda Latson, Registered Nurse Specialist
Agency for Health Care Administration (AHCA)

STATEMENT OF ISSUE

At issue is whether the respondent's action to deny petitioner's request for Prescribed Pediatric Extended Care (PPEC) services for the certification period October 3, 2014 through March 31, 2015 was correct.

PRELIMINARY STATEMENT

Appearing as a witness for the respondent was Darlene Calhoun, D.O., Physician Consultant with eQHealth Solutions.

Respondent's composite Exhibit 1 was entered into evidence, consisting of the documentation considered by eQHealth Solutions' physicians in making their decision. The petitioner did not submit any documents into evidence for the hearing.

FINDINGS OF FACT

1. The petitioner's PPEC service provider, Pediatric Network Holdings (hereafter referred to as "the provider"), requested the following PPEC service hours for the certification period at issue: full day and partial day services, Monday to Friday.

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

3. eQHealth Solutions' personnel had no direct contact with the petitioner, her family, or her physicians. All pertinent information was submitted by the provider directly to eQHealth Solutions.

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

- 5 years old
- Diagnosis includes epilepsy, GERD, developmental delay, Turner Syndrome, and sleep apnea
- Receives one subcutaneous injection daily (Genotropin)

5. The petitioner attends public school during the day and attends the PPEC facility after school, from approximately 2:30 p.m. until 6:30 p.m. In addition, she attends the PPEC facility on school holidays and vacation periods.

6. The petitioner also currently receives physical therapy, speech therapy, and occupational therapy services through the Medicaid Program.

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 the PPEC facility. The duties include, in part:

- Perform daily head-to-toe assessment
- Monitor vital signs
- Provide daily hygiene requirements
- Provide follow-up of developmental therapies
- Administer medications

8. A physician at eQHealth Solutions, who is board-certified in pediatrics, reviewed the submitted information, and denied all the requested PPEC service hours. This physician wrote, in part: "*The clinical information provided does not support the medical necessity of the requested PPEC services. There does not appear to be any skilled nursing interventions and the patient does not meet the medical complexity requirement of PPEC. If the mother requires assistance with giving the subcutaneous injection, a skilled nursing visit can be requested.*" A notice of this determination was sent to all parties on October 14, 2014.

9. The above notice stated that a reconsideration review of the determination by eQHealth could be requested, and additional information could be provided with the request for reconsideration. A reconsideration review was not requested in this case.

10. The petitioner thereafter requested a fair hearing and this proceeding followed. The respondent administratively approved the requested PPEC services during the pendency of this proceeding.

11. The respondent's medical expert testified that the denial of the petitioner's request for PPEC services was appropriate because there are no skilled nursing interventions required at the PPEC. Respondent's medical expert also stated a skilled nursing visit can be requested to administer the daily injection.

12. The petitioner's mother stated she would like her daughter to remain at the PPEC since she was receiving all her therapies there and would not have to travel to outside appointments for those therapies. She also stated she does not want to administer the daily injection to her daughter because her daughter is afraid of needles and it takes two or more persons to hold her down.

13. PPEC service for children is a covered service under the Medicaid State Plan in Florida. These services are provided in accordance with the respondent's Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook ("PPEC Handbook"), effective September, 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 § 120.569 and § 120.57, Fla. Stat.

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 since the petitioner had been previously approved for the PPEC services at issue. 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 PPEC 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, you[1] 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 (PPEC services) is one of the services provided by the state to treat or ameliorate an individual's conditions under the State plan. Chapter 409.905, Fla. Stat., states, in part:

> Any service under this section shall be provided only when medically necessary ...
>
> (4) (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 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...

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

> ...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 PPEC services.

26. In the petitioner's case, the respondent has determined that PPEC service is not medically necessary.

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 Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook (PPEC Handbook) has been incorporated by reference into Florida Administrative Code Rule 59G-4.260. The purpose of PPEC services is described on page 1-1 of the PPEC Handbook as follows:

> 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.

30. The PPEC Handbook on page 2-1 sets forth the requirements for PPEC services, as follows:

> 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.

31. 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.

32. The petitioner's physician ordered a PPEC 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.

33. The respondent's medical expert stated that the petitioner did not meet the requirements for PPEC service since she does not require skilled nursing interventions, other than the daily injection which can be provided by a skilled nursing visit each day.

34. The petitioner's mother stated she would like her daughter to remain at the PPEC since she receives her therapies there and because the mother prefers for PPEC personnel to administer the daily injection.

35. The undersigned concludes the respondent has met its burden of proof in demonstrating it was correct in denying the petitioner's request for PPEC services, since she does not require daily skilled nursing interventions other than the daily injection which can be provided by a nursing visit. Additionally, the evidence fails to show that petitioner meets the definition of "medically complex" or "medically fragile" as required by the above authorities.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the 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 agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 20th day of January, 2014, in Tallahassee, Florida.

Rafael Centurion
Hearing Officer
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Copies Furnished To: [redacted] Petitioner
Rhea Gray, AHCA Area 11, Field Office Manager