

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

**FILED**

JAN 16 2015

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 14F-09200

PETITIONER,

VS.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 10 POLK  
UNIT: AHCA

RESPONDENT.

FINAL ORDER

The undersigned convened a telephonic administrative hearing on December 16, 2014 at 3:09 p.m. All parties appeared by telephone.

STATEMENT OF ISSUE

At issue is whether Respondent's denial of Petitioner's request for Statewide Inpatient Psychiatric Program (SIPP) treatment was proper.

PRELIMINARY STATEMENT

On October 20, 2014, Petitioner's representative requested a hearing to challenge AHCA's denial. Petitioner's mother [REDACTED] represented the Petitioner [REDACTED]. Petitioner's targeted case manager from the [REDACTED] Center, appeared as a witness.

David Beaven, Medical Healthcare Program Analyst, represented the Respondent. Karen Wessel, Senior Program Specialist from the Agency was also

present. Respondent's witnesses from Magellan Complete Care Health Plan included Anthony Como (Internal Counsel), Dr. Gabriela Cora (Medical Director), Carrie Marian (Vice President of Health Services), Lenny Burgos (Appeals Manager), and Audrey Cohen (Contract Manager).

The hearing officer took administrative notice of Florida Administrative Code Rule 65E-9.008 and Section 394.492 Florida Statutes (2014).

Respondent entered three exhibits into evidence, which were entered into evidence as Respondent's exhibit 1-3. Petitioner entered two exhibits, which were entered into evidence as Petitioner's exhibit 1-2. The record closed on December 17, 2014.

#### **FINDINGS OF FACT**

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

1. Petitioner is under 21 years of age. She is diagnosed with an unspecified mood disorder, ADHD, and unspecified disruptive behavior. She is noted as obese. She lives at home with her mother.

2. Petitioner received her Medicaid services through Magellan Complete Care Health Plan (MCC). On October 17, 2014, Petitioner submitted a request for Statewide Inpatient Psychiatric Program services (SIPP). Utilization management staff and physician reviewers from MCC reviewed the request. A peer review was conducted afterwards and the request was denied. The reason for the denial was Petitioner's condition did not meet the criteria of medical necessity.

3. MCC denied Petitioner's request for inpatient treatment (SIPP) by notice dated October 24, 2014. The letter stated that the denial was based on Dr. [REDACTED] determination. A second letter on the same date indicated denial based on Dr. [REDACTED] determination.

4. Petitioner's mother has difficulty controlling Petitioner because of her large size. She cannot force Petitioner to do anything she does not want to do. There is no other available natural support besides the mother due to safety concerns and relationship breakdown. She has concerns the petitioner engages in inappropriate behavior, such as, running away, offering sex to strangers online, and other behaviors that dangerous to Petitioner's welfare.. Petitioner has been violent to both her mother and in her school Petitioner was expelled from Polk County schools for the remainder of 2014-2015 school year as a result of a violent incident.

5. Petitioner's mother asserted she called the police on multiple occasions due to her daughter's behavior. She alleged her daughter threatened her with a knife.

6. The mother asserted that as result of police intervention, the petitioner was involuntarily hospitalized for short periods. She was hospitalized pursuant to the Florida Mental Health Act. Chapter 394, Part I, Fla. Stat., commonly referred to as the Baker Act. Once her behavior was stabilized, she was released.

7. After MCC received the request for SIPP, Petitioner's medical records were forwarded to two independent physician consultants who are experienced in child psychiatry. Both of the consultants determined that Petitioner did not meet MCC's utilization guidelines for the SIPP program, and thus SIPP was not medically necessary.

8. The independent physician consultants concluded Petitioner's outpatient treatment failed because Petitioner was inconsistently compliant with her medications and she missed appointments. They also concluded that the family relationship was conflictual. Based on the notes they reviewed from [REDACTED] they each concluded that there were no suicidal or homicidal ideations nor hallucinations.

9. The first consultant, Dr. [REDACTED], noted that "[t]he patient is not suicidal, self-injurious, homicidal, physically aggressive, psychotic, or gravely disabled" and she does not have any co-morbid substance abuse or medical issues. As a result, Petitioner does not meet Magellan Medical Necessity Guidelines for SIPP.

10. The second consultant, Dr. [REDACTED] noted that Petitioner had two incidents of physical aggression towards her mother in the past but she is compliant with multiple medications. The reviewer noted the same information as Dr. [REDACTED] and suggested outpatient treatment would be more appropriate based on her current level of function.

11. MCC's Medical Director did not make the decision in this case as she is not very experienced with child psychiatric issues. However, she opined that because Petitioner does not have a co-morbid diagnosis of a more specific mood disorder, that the ADHD diagnosis would be best treated in an outpatient setting.

12. Respondent convened a Child Specific Staffing Team (CSST) on October 17, 2014 and another on November 4, 2014. The CSST is a requirement for admission to SIPP. Petitioner's mother, a representative from the Agency, a representative from MCC, Petitioner's targeted case manager, and a representative from [REDACTED] participated in the meeting on November 4, 2014. The CSST reviews both

medical records and parent reports and then makes a recommendation for treatment. The CSST recommended SIPP treatment during both meetings for this Petitioner.

13. There is also a letter from [REDACTED] dated June 26, 2014, in support of residential treatment. The letter has a signature but it is unclear who wrote this letter. The letter describes Petitioner's diagnoses, medications, inconsistent treatment, and suggests that she would benefit from stable residential placement.

### **CONCLUSIONS OF LAW**

14. 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.

15. Legal authority governing the Florida Medicaid Program is found in Fla. Stat. Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, administers the Medicaid Program.

16. This is a Final Order, pursuant to Sections 120.569 and 120.57, Florida Statutes.

17. This hearing was held as a *de novo* proceeding, in accordance with Florida Administrative Code Rule 65-2.056.

18. The burden of proof was assigned to the Petitioner in accordance with Florida Administrative Code Rule 65-2.060(1). The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

19. Section 409.905, Florida Statutes, 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.

20. The Code of Federal Regulations at 42 C.F.R. 441.152, Inpatient Psychiatric Services, sets forth the determination of need for inpatient psychiatric services for individuals under age 21 in psychiatric facilities or programs, in part as follows:

Certification of need for services.

(a) A team specified in Sec. 441.154 must certify that—

(3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed.

21. The Florida Administrative Code Rule 59G-1.010(166) addresses relevant definitions within the Medicaid Program, which apply to this specific Medicaid decision of residential treatment under the SIPP. Services provided under SIPP must be defined as "medically necessary." "Medically necessary" 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.

22. As the petitioner was under 21 at the time of the initial request and decision, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements. The undersigned must, therefore, consider both EPSDT and Medical Necessity requirements (both cited, above) when developing a decision.

23. 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.

24. 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).

25. During the hearing, the plan was unaware of the EPSDT standard. The undersigned concludes that the Agency did not, in fact, fully consider the Petitioner's age and the broader definition of medical necessity under the EPSDT standard. However, as the hearing is a *de novo* review, this error is harmless.

26. In addition to the medical necessity requirement, residential placement requires a recipient to meet certain criteria. These criteria, set forth in Florida Administrative Code Rule 65E-9.008(4) are:

(4) Children placed by the department and funded in full or in part by state, Medicaid, or local matching funds shall be admitted only after they have on recommendation of the appropriate multidisciplinary team, been personally examined and assessed for suitability for residential treatment.... Children in parental custody must be assessed by a clinical



psychologist or by a psychiatrist licensed to practice in the State of Florida, with experience or training in children's disorders.... The assessment must result in a report whose written findings are that:

(a) The child has an emotional disturbance as defined in Section 394.492(5), F.S., or a serious emotional disturbance as defined in Section 394.492(6), F.S.;

(b) The emotional disturbance or serious emotional disturbance requires treatment in a residential treatment center;

(c) All available treatment that is less restrictive than residential treatment has been considered or is unavailable;

(d) The treatment provided in the residential treatment center is reasonably likely to resolve the child's presenting problems as identified by the qualified evaluator;

(e) The provider is qualified by staff, program and equipment to give the care and treatment required by the child's condition, age and cognitive ability;

(f) The child is under the age of 18; and

(g) The nature, purpose and expected length of the treatment have been explained to the child and the child's parent or guardian and guardian ad litem.

27. The applicable definitions of "emotional disturbance" referenced in the above rule are found in Section 394.492(5) and (6), Florida Statutes (2014):

(5) "Child or adolescent who has an emotional disturbance" means a person under 18 years of age who is diagnosed with a mental, emotional, or behavioral disorder of sufficient duration to meet one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, but who does not exhibit behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community. The emotional disturbance must not be considered to be a temporary response to a stressful situation. The term does not include a child or adolescent who meets the criteria for involuntary placement under s. 394.467(1).

(6) "Child or adolescent who has a serious emotional disturbance or mental illness" means a person under 18 years of age who:

(a) Is diagnosed as having a mental, emotional, or behavioral disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; and

(b) Exhibits behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community, which behaviors are not considered to be a temporary response to a stressful situation.

The term includes a child or adolescent who meets the criteria for involuntary placement under s.394.467(1).

28. At issue is whether Petitioner meets the criteria for SIPP. As Petitioner lives with her mother, the above rule states that a psychologist or psychiatrist must assess Petitioner and issue a report supporting inpatient treatment. Specifically it should address, per the rule, that Petitioner has an emotional disturbance, requires treatment in an inpatient setting, less restrictive alternatives were considered, and this treatment is reasonably likely to resolve the child's presenting problems as identified by the evaluator.

29. There is no report from an evaluating psychologist or psychiatrist that indicates Petitioner requires inpatient treatment. The only psychiatric reports presented are from Magellan's external clinicians who reviewed treatment records, and who did not suggest inpatient treatment was necessary. The letter from [REDACTED] even if from her treating psychiatrist, states that she would benefit but not that inpatient is the only option.

30. The progress notes from [REDACTED] were completed by different staff members and there does not appear to include a report indicating what the rule requires. There is one note regarding residential treatment dated June 27, 2014, by a psychiatrist which states "consider residential." This single entry also discusses a medication change, but nothing more regarding residential placement as a requirement to treat Petitioner, effectiveness, or a qualified emotional disturbance. Other notes mention residential only to note that Petitioner's mother wants it and was getting a referral.

31. Petitioner was evaluated by the staffing team and recommended to SIPP placement. The less restrictive alternatives included the outpatient treatment she was receiving and having difficulty complying with. The staffing team is not a substitute for the rule required trained psychiatric clinician.

32. Magellan provided its own criteria for utilization management of services for determining when SIPP placement is appropriate. These guidelines are used to determine whether a particular case fits the broader definition of medical necessity set forth in the Florida Administrative Code (and above). Within Magellan's policy, the following portions are relevant:

5.A. ... A reasonable course of acute inpatient treatment and/or intensive outpatient services has failed to bring about adequate resolution of significant symptoms to permit placement in a less restrictive setting in the community.

To meet this requirement, one of the following shall be established:

1. A lower level of care will not meet the enrollee's treatment needs.

Examples of lower levels of care include

a. Family or relative placement with outpatient therapy; ...

g. Partial hospitalization; and

h. Custodial care.

2. An appropriate lower level of care is unavailable or inaccessible and a reasonable course of acute inpatient treatment has failed to resolve significant symptoms to permit a safe return to the community.

33. Petitioner has tried outpatient therapy and was inconsistently compliant.

However, when compliant, her behaviors did improve. Additionally, she was released from involuntary hospitalizations very quickly, indicating stability resulted from this acute inpatient treatment. The next relevant portion of Magellan's policy is as follows:

B. Proper treatment of the enrollee's psychiatric condition requires services on an inpatient basis under the direction of a physician (42 CFR 441.152(a)).

To meet this requirement, all of the following criteria must be met:

1. An ICD-9 diagnosis is present and has been established through a documented comprehensive bio-psychosocial diagnostic assessment. The diagnosis must indicate the presence of a psychiatric disorder that is severe in nature and requires more intensive treatment than can be provided on an outpatient basis....
2. The rating on DSM IV Axis V at admission is less than 70.

34. Petitioner is diagnosed with a mood disorder that is not specified. She also has a diagnosis of ADHD. According to testimony, a vague mood disorder is not a severe psychiatric disorder requiring intensive treatment. Nor is ADHD, which is typically treated in an outpatient setting. The hearing officer finds this testimony credible. Her diagnosis alone does not indicate a severe psychiatric disorder. Respondent conceded that Petitioner does meet the criteria of (B)(2) above. The remaining criteria will not be addressed as Petitioner has failed at the first and second steps.

35. Petitioner does not meet Magellan's utilization guidelines. SIPP treatment must be medically necessary in order for it to be a covered service. As set forth above, "medical necessity" means that it must be necessary to protect Petitioner's life, not be in excess of her needs, be consistent with medical standards, be the most cost effective and least restrictive, and not primarily for convenience.

36. Petitioner's life does not appear to be in any immediate jeopardy, nor those around her. She has had a few instances of violence, which seem to occur less when she is medication compliant and working in therapy. Multiple medical doctors have suggested outpatient therapy is the most cost effective, least restrictive treatment, although she has failed it before. Additionally, it appears that residential will be primarily for the mother's convenience as the notes indicate she wants a break from the bad behaviors.

37. Petitioner had the burden of proof in this case. She did not provide the required psychiatric report where a child-psychiatry trained clinician supports and requires inpatient treatment. Her diagnosis of "mood disorder-NOS" is vague and does not support a severe psychiatric condition.

38. Petitioner has not met her burden of proof to show that she meets the rule requirements for SIPP placement.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED.

### **NOTICE OF RIGHT TO APPEAL**

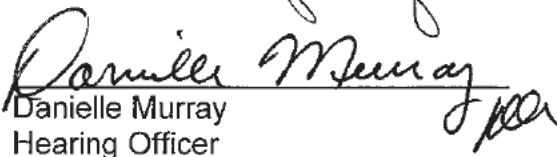
This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 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.


FINAL ORDER (Cont.)

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DONE and ORDERED this 10 day of January, 2015,  
in Tallahassee, Florida.

  
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