

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-09214

PETITIONER,

vs.

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, a hearing convened on November 20, 2014 before Hearing Officer Patricia C. Antonucci of the Department of Children and Families. All parties and witnesses appeared via teleconference.

APPEARANCES

For the Petitioner: [REDACTED], Petitioner's mother

For the Respondent: Diane Van Cleef, Registered Nurse Specialist,
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) via a 30-day fade/transition.

PRELIMINARY STATEMENT

At hearing, the minor Petitioner was not present, but was represented by her mother, [REDACTED]. Also appearing on behalf of Petitioner was Linda Wilson, Regional Administrator of Petitioner's Ocala PPEC provider program. Respondent was represented by Diane Van Cleef, RN Specialist with AHCA. Respondent presented one additional witnesses: Ellyn Theophilopoulos, M.D., Associate Medical Director of Care Coordination with eQHealth Solutions. Respondent's Exhibits 1 through 7, inclusive, were admitted into evidence. Administrative Notice was taken of Fla. Stat. § 400.913 (1&2), Fla. Admin. Code R. 59G-4.260, Fla. Admin. Code R. 59G-1.010(166), and pertinent pages of the September 2013 Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook (PPEC Handbook).

FINDINGS OF FACT

1. The Petitioner is a 6-year old female, born [REDACTED]. She lives with her mother and stepfather in the family home. Petitioner's mother has been trained by the PPEC provider to administer Petitioner's care when in the home environment.
2. Petitioner is and has been eligible to receive Medicaid services at all times relevant to these proceedings.
3. Petitioner is diagnosed with Down Syndrome, developmental delay, failure to thrive, poor weight gain, and tetralogy of Fallot. She currently exhibits normal oxygen saturations, and sees her cardiologist annually.
4. The Petitioner has not experienced any recent hospitalizations. She takes one thyroid medication, administered by her mother, Nasonex (for allergies), and other

medications as needed or over-the-counter. She has a standing order for an EpiPen, in case of emergency, but this has not been used for approximately one and a half years.

5. The Petitioner does not require any dressing changes for wound care, and has no gastrostomy or tracheostomy tubes. She does require assistance with all activities of daily living (ADLs) – some because of her age, and others because of her developmental delays. She needs multiple diaper changes each day, as she is not yet potty trained, and she occasionally has toileting accidents.

6. The Petitioner was enrolled in a “Hospital Homebound” program with the Marion County School Board, where she was receiving educational training alongside PPEC. She currently receives both speech and physical therapy. She does not attend school, but her family and PPEC are working to transition her to an exceptional student education program under an individual education plan.

7. Petitioner’s mother reports that the Petitioner contracts respiratory infections, which require isolation in PPEC or keeping Petitioner at home for long periods to ensure her immune system is not jeopardized. She has not been treated for such infections in the past year.

8. On or about September 10, 2014, Petitioner’s PPEC provider submitted a request on behalf of the Petitioner, to continue her previously authorized PPEC services (5 days per week) into her new certification period, spanning September 21, 2014 through March 19, 2015.

9. 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. (eQHealth).

10. On September 19, 2014, the PRO reviewed Petitioner's request for services and all supporting documentation, including information received in response to a September 10, 2014 Request for Additional Information. By letter dated September 22, 2014, the PRO notified Petitioner's provider of its decision to approve services only until October 21, 2014 (Respondent's Exhibit 5), stating, in pertinent part:

PR Principal Reason – Denial: Requested services are denied because the clinical information does not support the medical necessity.

Clinical Rationale for Decision: The patient is a 5 year old with Down Syndrome, tetralogy of Fallot, failure to thrive and developmental delay. The patient is not on a complex medication regimen. The patient has had no emergency room visits or hospitalizations. The patient requires assistance with all activities of daily living. The clinical information provided does not appear to support skilled nursing services; however, 30 days will be approved to provide the caregiver [opportunity] to transition the patient to school. The additional services are not approved. The patient no longer requires skilled nursing interventions and does not meet the medical complexity requirement of PPEC services.

11. In response to this notice, on or about October 20, 2014, Petitioner requested a hearing to challenge the PROs determination. Petitioner's services did not continue pending the outcome of this appeal.

12. At hearing, Dr. Theophilopoulos explained that she reviewed Petitioner's request for services in conjunction with her Plan of Care and PPEC Assessment and Daily Progress Notes.

13. Petitioner's Plan of Care reflects that she is totally dependent on others for ADL care, due to her functional limitations. While she requires precautions/monitoring, the

only intervention (aside from physical and speech therapy) indicated on the Plan is the administration of oxygen "in an emergency situation." The "Current Medical Condition" portion of Petitioner's Plan states that she has continued respiratory, aspiration, thyroid, and weight assessments, and is monitored for vomiting, diarrhea, and allergic reactions. Specifically, Petitioner is fed her meals in small pieces over the course of an hour, then kept upright for 30-60 minutes thereafter.

14. PPEC Nursing and Progress Notes show that Petitioner's neurological, cardiovascular, respiratory, gastrointestinal, and safety status are monitored each day, that her meals are recorded, and her urine output measured. On September 5, 2014, Petitioner's day at PPEC included vital sign assessment, multiple diaper changes, meals (with aspiration precautions), entertainment, nap/quiet time, physical therapy, snack (with aspiration precaution), and story time. No distress was noted, and no skilled nursing interventions occurred.

15. It is Dr. Theophilopoulos' opinion that at this time, Petitioner's tetralogy of Fallot is not requiring skilled nursing, as Petitioner's oxygen saturation levels are normal, and she is only being seen by a cardiologist once per year.

16. Petitioner's mother contends that the Petitioner is safer at PPEC than in a non-skilled environment because she has little language development, and could not express herself if she needed to notify her guardians of her needs or of abuse/exploitation.

17. Ms. Wilson, the PPEC Administrator, noted that the Petitioner had an allergic reaction to an unknown substance approximately a year and a half ago, which required emergency procedures and hospitalization. This has not occurred since. Ms. Wilson is

working to transition Petitioner to school, but has encountered delays with the School Board. She does not feel that Petitioner's mother needs further education or training in Petitioner's care, and confirmed that Petitioner would continue to receive physical and speech therapies (provided they are approved), regardless of whether she continues PPEC services.

18. Following testimony from Petitioner's mother and provider, Dr. Theophilopoulos confirmed that because there are no skilled nursing interventions, which are provided to Petitioner on a regular basis, there is no requirement for nursing services via PPEC.

CONCLUSIONS OF LAW

19. 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.

20. 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.

21. 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.

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

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

24. The burden of proof in the instant case is assigned to the Respondent, who seeks to terminate a previously authorized service. The standard of proof in an

administrative hearing is preponderance of the evidence. (See Fla. Admin. Code R. 65-2.060(1).)

25. 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.

26. 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).

27. 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.

28. 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 dependant, or is dependent on a heightened level of medical supervision to sustain life, and without such services is likely to expire without warning. (emphasis added)

29. 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.

30. 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.

31. 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.

32. 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.

33. 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).

34. In the instant case, PPEC is requested to treat and ameliorate the supervisory and monitoring needs which Petitioner's developmental disorders and tetralogy of Fallot 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).

35. 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.

36. There is little evidence to suggest that the Petitioner is dependent upon 24-hour per day medical or nursing care, or that she is dependent upon life-sustaining medical equipment, such that she would properly be deemed 'Medically Fragile.' Her need for supervision, occasional medication administration, and general monitoring and precautions, including extended time for feeding, do not constitute a need for "intermittent continuous therapeutic interventions or skilled nursing care." As such, her 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).

37. The Petitioner may require continued speech and physical therapy, so that she is better able to express herself and aid in her own ADL care. While it is understandable that Petitioner's mother is concerned for her daughter's safety, PPEC cannot be authorized merely to reduce chances of abuse or exploitation of a developmentally delayed – but not medically complex – child. Additionally, because therapy services are authorized and billed separately from PPEC, should these services be reduced or discontinued in the future, Petitioner will retain the right to request an appeal based on that particular action.

38. 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 AHCA 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.

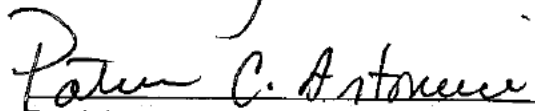
FINAL ORDER (Cont.)

14F-09214

Page 13 of 13

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

in Tallahassee, Florida.



Patricia C. Antonucci

Hearing Officer

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