

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

FILED

JAN 15 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-09431

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on December 19, 2014 at 10:14 a.m.

APPEARANCES

For the Petitioner:



Petitioner's mother


For the Respondent:

Carol King, Fair Hearing Coordinator
David Nam, Esq.

ISSUE

Whether respondent's denial of the continuation of residential treatment through the Statewide Inpatient Psychiatric Program (SIPP) was proper.

PRELIMINARY STATEMENT

Petitioner was not present but represented by his mother. Petitioner's exhibit "1" was entered into evidence. Present for the petitioner from: 

██████████ were ██████████ Director of Utilization Review and ██████████
Therapist.

At the onset of the hearing, Mr. Nam appeared as an observer. During the hearing Mr. Nam became a co-representative with Ms. King. Also present from the Agency for Health Care Administration was Melissa Eddleman, Program Administrator. Present as observers were Joyce Amarqueaye, Program Administrator and Robin Mitchell, Behavior Health Specialist. Present from Cenpatico were Suzette Fleischmann, Clinical Manager; Tonia James, Clinical Manager; and Anika Bowen, Utilization Manager. Present from Sunshine Health was India Smith, Appeals and Grievance Coordinator. Respondent's exhibit "1" was entered into evidence.

Administrative notice was taken of the following:

- Florida Administrative Code Rules 56G-1.010; 65A-1.702; and 65G-2.048
- Florida Statute: §394.457; §394.4781; §409.963; §409.965; §409.972; §409.977; and §409.973
- Code of Federal Regulations Title 42 Part 441 Subpart D; Part 482 Subpart E; and Part 483 subpart G
- Summary Memorandum: Medical Necessity as a Limitation on Medicaid Services, Including EPSDT

The record was held open through December 29, 2014 for respondent to provide SIPP Guidelines and the treatment plans and clinical information reviewed by Cenpatico. Respondent was also allowed through December 29, 2014 to provide memorandum regarding whether, based on the date of petitioner's appeal, a continuation of residential placement was warranted. Information from Cenpatico was timely received and was entered as respondent's exhibit "2". A memorandum from respondent regarding continuation of residential placement was not received.

The record was also held open through December 29, 2014 for petitioner to provide treatment recommendations from West Palm Hospital. Information was timely received and entered as petitioner's exhibit "2".

Both parties were allowed through January 5, 2015 to respond to post hearing submissions. A response was not received from either party.

FINDINGS OF FACT

Based on 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 17 years of age. His date of birth is [REDACTED]. His diagnoses include: bipolar disorder with history of psychosis; posttraumatic stress disorder; borderline personality disorder; and bulimia. He also self-injures by cutting himself with sharp objects.
2. Petitioner has been Medicaid eligible at all times relevant to this proceeding.
3. Effective August 1, 2014 petitioner transitioned to the Statewide Medicaid Managed Care Program. Specifically, the Managed Medical Assistance (MMA) Program. Since August 1, 2014 date, Medicaid services have been provided by Sunshine Health.
4. Sunshine Health contracts with Cenpatco to review requests for behavioral health services. This includes inpatient psychiatric treatment through SIPP.
5. SIPP services are covered through the Florida Medicaid Program. The need must be medically necessary.
6. A SIPP Medicaid Coverage and Limitations Handbook has not been promulgated into rule.

7. Petitioner's most recent SIPP services were received at [REDACTED] in Tequesta, Florida. He was readmitted to [REDACTED] on October 13, 2014. Cenpatico approved a stay through October 27, 2014.

8. [REDACTED] Utilization Review Concurrent Review Form (review date of October 24, 2014) contains the following:

[REDACTED] is a 16 yo male referred to this facility for mood instability, suicidal threats and ideations, risk taking behaviors, and self injury. [REDACTED] has been Baker Acted 8x's since 9/13. He reportedly started superficially cutting 5/13 and then it became worse in the summer, making deeper cuts. He was recently Baker Acted for severe cuts across arms and legs for which he required numerous liquid stitches. [REDACTED] reportedly told his mother he thinks about killing himself all day every day. Records indicate [REDACTED] has had several serious suicide attempts via overdose in the past. Records indicate a history of sexual trauma (by a stranger while on a Field Trip at age 10 causing [REDACTED] to experience flashbacks). He reportedly engages in cutting to relieve the sensation. Reports indicate [REDACTED] may be engaging in prostitution. [REDACTED] reports symptoms of depression and anxiety. He reportedly has low self esteem. [REDACTED] reports he engages in bingeing and purging and sometimes will restrict his food. He also reported experiencing auditory hallucinations daily.

9. While at [REDACTED] petitioner frequently had a dedicated staff person to be with him at all times. Despite the 1:1 coverage, he was able to cut himself on October 6, 2014. The injuries required emergency room treatment. He was then involuntarily hospitalized under Florida's Baker Act for acute psychiatric treatment at [REDACTED]. While at [REDACTED] petitioner once again cut himself. Additional stitches were required.

10. Petitioner returned to [REDACTED] on October 13, 2014. He was once again assigned 1:1 staff supervision. He was only allowed to have food which could be eaten with his fingers. He was not permitted to wear clothing with pockets.

11. A [REDACTED] case note dated October 14, 2014 states, in part:

Although [REDACTED] is reporting no urges to self-harm at the time of my evaluation, he has a long history of denying urges to self-harm preceding serious self-injury episodes. There is great concern that he may deny urges to self-harm in order to gain the trust of the treatment team and have opportunities for further self-harm. He will remain on a 1 to 1.

12. On October 20, 2014 a case note states, in part, "continues to be a high and imminent risk of harming himself ... He will need to remain on a 1:1 around the clock ..."

13. A final note states [REDACTED] staff is "actively working towards transitioning [REDACTED] home." The notes indicate petitioner was becoming more ambivalent about cutting and more open about urges to self-harm. A change of medications occurred. Petitioner reported his mood thereafter improved. It is also reported that the petitioner started to view his family as part of his support system. When discharged to the family home, individual and family therapy would continue. It was also written "The treatment team strongly recommends a PHP (partial hospitalization) or an IOP (intensive outpatient program).

14. On October 27, 2014 Cenpatico received a request for a continuation of SIPP services for the period October 28, 2014 through November 26, 2014.

15. A clinical review of information provided by Sandy Pines was then conducted by Cenpatico. A telephone conference was also held with Dr. [REDACTED] MD.

Dr. [REDACTED] is affiliated with [REDACTED]

16. On October 28, 2014 Cenpatico issued a denial of ongoing SIPP services. The notice stated, in part:

We have looked at services requested for [REDACTED] After review of the information received on 10/27/2014 for coverage of Residential Treatment Cenpatico Physician Advisor, Daniel Harrop, MD, who is a licensed psychiatrist, has determined the requested services is denied 10/28/2014 to date of discharge because [REDACTED] does not meet criteria for this level of

care. Based on the clinical information received, [REDACTED] is able to care of his daily needs. There is no evidence that [REDACTED] is an immediate risk of harm to himself or others. It appears there are no mental health issues reported that require this level of care. [REDACTED] can be treated at a lower level of care for his diagnosis of Bipolar Disorder.

17. The above determination was mailed to petitioner's parents. [REDACTED] was notified by telephone.

18. An internal appeal was immediately requested.

19. Geetha Chandrasekhar, MD and licensed psychiatrist reviewed all submitted information. Dr. Chandrasekhar upheld the original decision. On October 29, 2014 a notice was issued to petitioner's parents. The notice stated should a Medicaid Fair Hearing be requested with 10 business days, services would continue pending the outcome of the hearing process.

20. On November 5, 2014 the Office of Appeal Hearings timely received petitioner's request for a Medicaid Fair Hearing.

21. On December 12, 2014 [REDACTED] discharged the petitioner to the family home. The discharge was based on the level of progress achieved by the petitioner.

22. Upon returning home, a representative from the IOP Program attended by the petitioner spoke to the mother regarding possible new arm scratches. Following a conversation with her son, the petitioner proceeded to a porch and cut himself on his arm, wrist, and neck. When discovered, the petitioner stated he wanted to die. An ambulance was summoned. Petitioner was transported to a medical facility for emergency medical treatment. On December 18, 2014 petitioner was once again involuntarily committed for psychiatric evaluation under Florida's Baker Act.

23. On December 28, 2014 petitioner's mother submitted additional information to the undersigned. At that time, petitioner remained under psychiatric care at the West Palm Hospital.

24. Petitioner's representative's position is that her son should not have been released from [REDACTED] His self-injurious behaviors had not been resolved. As such, he is a danger to himself.

25. Respondent states medical necessity criteria regarding ongoing inpatient psychiatric care was not satisfied.

CONCLUSIONS OF LAW

26. 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 § 120.80, Fla. Stat.

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

28. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof is assigned to the respondent. At the time of respondent's action, petitioner was a SIPP patient at Sandy Pines. The notices of October 28, 2014 and October 29, 2014 terminated that service.

29. The standard of proof in an administrative hearing is by a preponderance of the evidence. (See Fla. Admin. Code R. 65-2.060(1).) The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed).

30. The Findings of Fact establish notices were issued on October 28, 2014 and October 29, 2014.

31. Regarding the above referenced notices, 42 C.F.R. provides, in part:

§431.201 Definitions.

Action means a termination, suspension, or reduction of Medicaid eligibility or covered services ...

Date of action means the intended date on which a termination, suspension, reduction, transfer or discharge becomes effective ...

32. The Findings of Fact establish respondent's action would terminate SIPP services effective October 28, 2014.

33. 42 C.F.R. continues by stating:

§431.211 Advance notice.

The State or local agency must send a notice at least **10 days before the date of action** [emphasis added], except as permitted under §§431.213 and 431.214.

34. Exemptions to the above notice requirements are not apparent. As such, the notices issued to the petitioner failed to comply with the above regulation. The 10 day requirement is relevant in this matter regardless of when a hearing is requested.

35. Regarding continuation of Medicaid services. 42 C.F.R. states:

§431.231 Reinstating services.

(c) The agency must reinstate and continue services until a decision is rendered after a hearing if—

(2) The beneficiary requests a hearing within 10 days from the date that the individual receives the notice of action. The date on which the notice is received is considered to be 5 days after the date on the notice, unless the beneficiary shows that he or she did not receive the notice within the 5-day period; and

36. The Findings of Fact establish notices were issued on October 28, 2014 and October 29, 2014. Petitioner's request for a Medicaid Fair Hearing was received on November 5, 2014. As such, petitioner's SIPP services should have continued. Petitioner's hearing request was based on the proposed termination of SIPP services. Regardless of whether sufficient progress existed for discharge, the service should have continued pending the outcome of this proceeding.

37. Services covered under Medicaid must be "medically necessary". The definition of medically necessary is found in Fla. Admin. Code R. 59G-1.010 which states:

(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 does not, in itself, make such care, goods, or services medically necessary or a medical necessity or a covered service.

38. As the petitioner is under 21, the requirements associated with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) are applicable. Section

409.905, Fla. Stat., *Mandatory Medicaid services*, defines Medicaid services for children to 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, ...

39. In regard to EPSDT requirements, The State Medicaid Manual, published by the Centers for Medicare and Medicaid Services states, in part:

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 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. 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.

40. The State Medicaid Manual continues by stating, in part:

5110. Basic Requirements...

...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

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

necessity.

41. The Findings of Fact establish SIPP services are covered by the Medicaid State Plan. The issue before the undersigned, therefore, focuses upon whether petitioner's need for SIPP services is medically necessary.

42. Regarding SIPP, Fla. Admin. Code 65A 1-702 provides as follows:

(16) Statewide Inpatient Psychiatric Program (SIPP) waiver. This program provides inpatient mental health treatment and comprehensive case management planning to enable discharge to less restrictive settings in the community for children under the age of 18 who are placed in an inpatient psychiatric program ...

43. The Code of Federal Regulations at 42 C. F. R. addresses Inpatient Psychiatric Services for Individuals Under Age 21 in Psychiatric Facilities or Programs. 42 C.F.R. §441.152 states:

Certification of need for services.

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

(1) Ambulatory care resources available in the community do not meet the treatment needs of the recipient;

(2) Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

(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.

(b) The certification specified in this section and in Sec. 441.153 satisfies the utilization control requirement for physician certification in Sec. Sec. 456.60, 456.160, and 456.360 of this subchapter.

44. It is noted that the petitioner has been involuntary hospitalized under Florida's Baker Act on multiple occasions.

45. The evidence and testimony establish petitioner's self-injurious behaviors jeopardize his own health and safety.

46. In December 2014 petitioner was discharged from [REDACTED] to a less restrictive setting (the family home). Within several days, self injurious behaviors returned. Self cutting resulted not only in emergency medical treatment but also led to another involuntary hospitalization under Florida's Baker Act.

47. The community ambulatory service accessed upon release from [REDACTED] (IOP Program), was not effective in alleviating petitioner's self injurious behaviors.

48. The greater weight of evidence establishes petitioner's psychiatric condition requires inpatient psychiatric treatment. It is reasonable that further treatment will positively impact his psychiatric status.

49. Respondent has failed to establish, by the required evidentiary standard that SIPP services are not medically necessary. Rather, the evidence and testimony establish all criteria of medical necessity have, at this time, been satisfied.

50. The undersigned also concludes SIPP services should have continued. It is noted, however, the petitioner may currently be in another psychiatric setting.

Regardless, the respondent's action in this matter is not upheld and petitioner can, if desired, return to [REDACTED]

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is GRANTED. The respondent's action to terminate Medicaid SIPP services, per the notices of October 28, 2014 and October 29, 2014, is reversed.

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 15th day of January, 2015,
in Tallahassee, Florida.



Frank Houston
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