

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

**FILED**

**MAR 11 2015**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-09755

PETITIONER,

Vs.

AGENCY FOR HEALTH  
CARE ADMINISTRATION  
CIRCUIT: 04 Duval  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on February 9, 2015 at 10:08 a.m.

**APPEARANCES**

For the Petitioner: [REDACTED] mother

For the Respondent: Sheila Broderick, registered nurse specialist with AHCA

**STATEMENT OF ISSUE**

At issue is the Agency's decision terminating the petitioner's Prescribed Pediatric Extended Care (PPEC) services.

**PRELIMINARY STATEMENT**

The Agency for Health Care Administration (AHCA or Agency or Respondent) administers the Florida Medicaid Program.

By notice dated September 29, 2014 the Agency informed the petitioner that her request for continued PPEC services was denied. The notice reads in part: “[t]he reason for the denial is that the services are not medically necessary...” The petitioner requested reconsideration. By notice dated October 8, 2014, the Agency informed the petitioner that the original decision was upheld.

On November 14, 2014, the petitioner timely requested a hearing to challenge the Agency’s decision. The services have been continued pending the outcome of the hearing.

The proceeding was initially scheduled to convene on January 12, 2015. The petitioner did not appear. The petitioner later contacted the undersigned and requested that the hearing be rescheduled. The request was granted. The hearing was rescheduled for February 9, 2015.

There were no additional witnesses for the petitioner. The petitioner did not submit exhibits.

Dr. Darlene Calhoun, physician reviewer with eQ Health Solutions (eQ) was present as a witness for the Agency. Respondent’s Composite Exhibits 1 and 2 were admitted into evidence.

**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. The petitioner (age 5) is a Florida Medicaid recipient. The petitioner suffers from spinal muscular atrophy (SMA), developmental delay, attention deficit hyperactivity disorder (ADHD), and esophageal reflux. The petitioner is ambulatory; she wears ankle braces to assist with balance and mobility. The petitioner is verbal and can articulate her needs and wants. The petitioner feeds and takes medications by mouth. The petitioner requires some physical assistance with all the activities of daily living. The petitioner attends school weekdays 9:45 a.m. – 2:45 p.m.

2. The petitioner lives in the family home with her parents and three siblings (ages 6 mos, 3, 6). The oldest sibling also suffers from SMA. There are no other known medical impairments for the family. The father is employed outside the home. The mother is a fulltime homemaker.

3. PPEC provides skilled nursing services to children with complex medical conditions. PPEC services supplement the care provided by family and caregivers who are temporarily unable (due to work or other similar circumstances) to provide care. Prior to the action under appeal, the petitioner was approved for PPEC services five days per week; as needed, no set hours. The petitioner attends PPEC when school is not in session or she is unable to attend school for medical reasons.

4. Continued eligibility for PPEC services must be reviewed every six months. In order to receive any Medicaid service, the service must be medically necessary, as

determined through a prior authorization process. The Agency contracts with eQ to complete prior services authorizations for PPEC services.

5. The petitioner requested his PPEC services be continued for another six month certification period, October 2014 through March 2015.

6. eQ registered nurses complete the first stage of the review process. First level denial decisions are forwarded to a board certified pediatrician for final review. Only a board certified physician can make a final denial decision.

7. eQ denied the petitioner's request for continued PPEC services. eQ concluded that the services are not medically necessary because the petitioner does not require skilled nursing care. eQ concluded that the petitioner's primary need is for supervision and monitoring because she is a fall risk (due muscle weakness). eQ's reviews notes read:

Mandatory Documents Present and Reviewed: Y

NR Recommendation: Denial of current request for PPEC services. [REDACTED] is able to ambulate independently and navigate around/over furniture. She is verbal and able to express her needs and interacts with other children.

NR Rationale: [REDACTED] is 4 yoa and Dx: SMA, Delayed Milestones and Asthma. She was born 2 weeks early and diagnosed July 2012 with SMA. She also has Asthma that is treated with nebulizer treatments PRN. She wears bilateral ankle AFO. Sending to PR for determination of medical necessity. Roseanne White, RN

ADMIN ADDITIONAL INFO: 9/24/14 Case has been assigned to Care Coordinator, Roseanne White, RN. (813) 867-8865. She will be contacting your facility within the next few days.

CLINICAL RATIONALE FOR DECISION: The patient is a 4 year old with spinal muscular atrophy and asthma and the request is for PPEC services; however, PPEC is not medically necessary. She is ambulatory, verbal and able to express her needs, interacts well with other children, and her only medication is nebulizer treatments pm.

RECON ADMIN INFO: Additional information submitted for reconsideration from provider ||JR 10/2/2014

[REDACTED] has been attending the PPEC since October 2013. She was diagnosed with SMA in July 2012 and has main issues with muscle weakness and decreased muscle tone. Her older sister is already requiring forearm crutches to walk. [REDACTED] has unsteady gait and falls frequently at the PPEC. She requires constant supervision and fall precautions at all times. She is currently receiving PT at the PPEC 2x/week. [REDACTED] and her sister are attending school now and only attend the PPEC on occasion after school and on non school days. Mom states that her daughters have not attended a traditional daycare and she will not send them there while she works due to the safety and fall risk. PR RECON DETERMINATION: The patient is a 4 year old with SMA, delayed milestones and asthma. The patient requires as needed nebulizer treatments. The patient is on an age-appropriate diet. The patient is ambulatory but wears bilateral ankle AFOs. The patient is transitioning to a pre-K program. The clinical information provided does not support the medical necessity of the requested PPEC services. There no longer appears to be any skilled nursing interventions and the patient does not meet the medical complexity requirement of PPEC. Monitoring alone does not support PPEC services. The requested services are deemed not medically necessary. The denial should be UPHOLD.

8. Dr. Calhoun, physician reviewer with eQ, concurred with the final review decision. Dr. Calhoun opined that PPEC services are not medically necessary in the

instant case. Supervision and monitoring for falls can be performed by a responsible adult and do not require the services of a skilled nurse.

9. The petitioner asserts that her needs are in excess of standard adult supervision. The petitioner has been experiencing chronic increases in muscle weakness in her legs. She will ask to be carried when experiencing an episode. Her physician has not recommended a change in her care, the situation is being monitored. The ADHD diagnoses occurred after the last certification. The petitioner takes medication once per night, before bed. There have been no other changes in her care as a result of the ADHD diagnoses.

#### **CONCLUSIONS OF LAW**

10. 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.

11. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

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

13. The issue under appeal is based on a termination of existing PPEC services. In accordance with Fla. Admin. Code R. 65-2.060(a), the burden of proof was assigned to the Agency.

14. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Rule 65-2.060(1), Florida Administrative Code.

15. The Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency.

16. The PPEC Handbook (September 2013) has been incorporated by reference into Fla. Admin. Code R. 59G-4.260.

17. Page 1-1, the PPEC Handbook 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 received medial and therapeutic care at a non-residential pediatric center."

18. Page 2-1 of the PPEC Handbook explains that to receive PPEC services, the recipient must, among other criteria be "Diagnosed with a medically-complex or medically fragile condition ..." and "Require short, long-term, or intermittent continuous therapeutic interventions or skilled nursing care due to a medically complex condition."

19. Regarding medically-complex and medically fragile, Fla. Admin. Code R. 59G-1.010 provides the following definitions:

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

20. The PPEC Handbook sets forth on page 2-2 that "Medicaid reimburses services that are determined medically necessary, and do not duplicate another provider's service."

21. Fla. Admin. Code R. 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...

22. The petitioner is under 21 years-old, a broader definition of medical necessity applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements. Fla. Stat. § 409.905, Mandatory Medicaid services, provides that Medicaid services for children 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 and conditions. These services include all

services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

23. The Agency denied the petitioner's request for renewal of her PPEC services. The petitioner suffers from muscle weakness due to SMA, developmental delays, ADHD and esophageal reflux. The petitioner requires monitoring and supervision because she is a fall risk. However, the petitioner has no complex medical or nursing needs. The petitioner primarily attends PPEC only when school is not in session.

24. After carefully reviewing the evidence, the undersigned concludes that PPEC services are not medically necessary in the instant case because the services are in excess of the petitioner's needs. The petitioner's primary need is for supervision services. Even under EPSDT's broader definition of medical necessity, there is no provision for supervisory services. The undersigned concludes respondent's decision in this matter was correct.

### **DECISION**

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

DONE and ORDERED this 11<sup>th</sup> day of March, 2015,

in Tallahassee, Florida.

  
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Copies Furnished To: [REDACTED] Petitioner  
Lisa Broward, Area 4, AHCA Field Office Manager