

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

FILED

APR 13 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-10263
14F-10264

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 02 Leon
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 30, 2015 at 10:08 a.m.

APPEARANCES

For the Petitioner:


Petitioners' mother

For the Respondent:

Cindy Henline, Program analyst
Agency for Health Care Administration

STATEMENT OF ISSUE

Whether respondent's action denying the petitioners' request for personal care services (PCA) through State plan Medicaid was correct.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (AHCA or Agency or respondent) administers the Florida Medicaid program. The respondent contracts with eQ Health Solutions (eQ) to complete prior service authorizations for PCA services, among other services.

By notices dated October 31, 2014, eQ informed the petitioners that their requests for PCA services through State plan Medicaid was denied.

On November 13, 2014 the petitioners timely requested a hearing to challenge the denial decisions.

The hearing was scheduled to convene on February 20, 2015, but was continued in order for the parties to conduct a settlement conference. The matter was not settled and the final hearing convened on March 30, 2015.

Present as witnesses for the petitioner were [REDACTED], father and [REDACTED] [REDACTED] waiver support coordinator. Petitioner's Composite Exhibits 1 and 2 were admitted into evidence.

Present as a witness for the respondent was Dr. Darlene Calhoun, physician reviewer with eQ. Respondent's Composite Exhibits 1 and 2 were admitted into evidence.

FINDINGS OF FACT

1. The petitioners (twin boys, age 14) are enrolled in the Florida Medicaid program. The petitioners suffer from severe autism, moderate intellectual disability (formerly known as mental retardation), and obsessive compulsive disorder (OCD).

2. The petitioners are approximately six feet tall and weigh approximately 185 pounds. They are ambulatory without restriction. They are non-verbal; they communicate by signaling. They are on a regular diet. They feed and take medications by mouth. The petitioners require physical assistance and verbal prompts to complete the activities of daily living (ADLs). The petitioners' cognitive functioning level is comparable to that of a two year old. They suffer from extreme anxiety when out in the community; they are particularly anxious during medical appointments. They soil themselves and/or attempt to elope. The petitioners require constant supervision, monitoring, verbal redirection, and physical redirection to address aggressive behaviors (grabbing and pushing) and prevent elopement.

3. The petitioners live in the family home with their mother and father. Both parents are able bodied and have no impairments which prevent them from caring for the children. The father does not work outside the home; he quit his job in order to care for the children. The mother is employed outside the home; she works Monday – Friday from 8:00 a.m. to 5:00 p.m.

4. The petitioners attend school weekdays. They leave home at approximately 7:15 a.m. and return at approximately 4:15 p.m. School aides assist the petitioners with ADLs during school hours.

5. The Agency for Persons with Disabilities (APD) administers the Developmental Disabilities Waiver (DD Waiver). The DD Waiver provides funding for support services to individuals who suffer from one (or more) of six developmental disabilities; autism and intellectual disability are two of the six.

6. The petitioners were approved for APD waiver services in 2013. They receive the following annual services:

Consumable Medical Supplies	\$2,016.00 -		\$2,016.00 -	
In Home Supports (PCA)	\$7,786.65 -		\$6,675.84 -	
Total	\$9,802.65 -		\$8,691.84 -	

7. The petitioners are enrolled in the DD Waiver's Consumer Directed Care Plus (CDC+) program. CDC+ allows program participants to have more control of the provision and delivery of waiver services. Participants have their choice of service providers. The petitioners may use waiver funds in total or in part to hire community service/outside providers or have family members provide the services and receive the funds. In the instant case, the petitioners' parents are the chosen PCA service providers.

8. PCA waiver services provide assistance with the ADLs (bathing, dressing, grooming, toileting, etc.). The petitioners' parents receive \$14,462.49 (total annual

funds received for both children) from APD to assist the children with ADLs. Their funding level equates to approximately 36 hours per month of PCA services per child.

9. In late 2014, the petitioners requested additional PCA services through State plan Medicaid. This is separate and apart from the PCA services they receive from APD through the DD Waiver. The petitioners explained their need for additional PCA services in a letter written by their waiver service coordinator, [REDACTED]:

My name is [REDACTED] and I am an Independent Support Coordinator with the Agency for Persons with Disabilities for [REDACTED] and [REDACTED]. [REDACTED] and [REDACTED] are 14 year-old males diagnosed with Mental Retardation, severe Autism with behaviors. The [REDACTED] twins are non-verbal and have no identified method to communicate decisions and choices to others. They make limited eye contact and do not engage others in cooperative play. [REDACTED] is also diagnosed with Oppositional Defiant Disorder. The twins' height is close to 6 feet tall and weigh between 185-210 pounds. They reside with both parents and their mother works a full time job which often requires her to work after hours during the week, weekends and to travel out of town several times during the year.

[REDACTED] and [REDACTED] were scheduled to have a complete physical examination and immunization with their primary care physician [REDACTED]. In August 2014, however, the doctor was unable to fully complete the examination and or administer immunization due to their high level of anxiety. It was very noticeable that both experienced severe anxiety while at the physician's office as [REDACTED] had three bowel movements while waiting, and made several attempts to escape. Both parents and support coordinator intervened and monitored their behaviors to avoid them hurting themselves or others. [REDACTED] referred them to [REDACTED] a psychiatrist at Florida Therapy to find out if their anxiety could be related to their physical health and to check for signs of an underlying mental health conditions that may need treatment. The twins were scheduled for 08/26/14, and were unable to be evaluated for services as the psychiatrist stated that the twins posed a threat to the medical staff due their aggressive and resistant behavior. The twins appears to be triggered by seeing the medical staff in their uniforms. Redirection and calming techniques were unsuccessful in aiding [REDACTED] and [REDACTED] and as a result they were asked to leave the office.

██████ and ██████ require substantial prompting and physical assistance with all of their daily living skills. ██████ and ██████ are in need of one on one personal care assistance to assist, cue and train with eating and meal preparation, bathing, dressing, personal hygiene, and other self-care activities of daily living. They need assistance with meal preparations and intermittent physical and verbal prompts to eat. Both require supervision while eating to ensure that they are eating a proper diet and to avoid choking from overstuffing their mouth and to make sure that the

food is cut into chewable sizes as well as chewed properly. ██████ continues to display pica-like behaviors and will often chew and eat non-food substances. At times, they both will attempt to get up from the table or lose interest in starting and completing their meals. Personal Care assistance is needed to assist/cue ██████ and ██████ to access the toilet, washing their hands and face, combing their hair, personal appearance, to dress themselves for outdoors and following toileting. Verbal and physical prompting is needed from personal care services to provide one or one assistance, training and both physical and verbal prompting with brushing their teeth, maintaining hygienic conditions, diaper changes bathing and washing due to irregular bowel/bladder habits as well as incontinent episodes that requires one on one assistance to clean and change to prevent the onset of a diaper rash and or skin breakage and redirections and interventions for aggressive behaviors towards others and self.

10. All PCA services must be medically necessary as determined through a prior service authorization completed by the respondent or a contracted agent. eQ is the contracted agent in the instant cases.

11. eQ determined that additional PCA services are not medically necessary because the father does not work outside the home and has no impairments which prevent him from being able to provide care for the petitioners. The mother works, but is available to also care for the petitioners weeknights and weekends (as her work schedule allows).

12. The parents argued that the petitioners need health care professionals to potty train them, to teach them how to complete ADLs as independently as possible, to teach them coping skills which will allow them to go out in public without experiencing anxiety attacks. The parents argued that they lack the professional skills necessary to reach their ultimate goal, for the children to live and function successfully in society.

13. Due to a history of physical aggression (including pushing and grabbing) and tantrums, it has been difficult to secure outside service providers for the petitioners. Multiple day programs for autistic children have also refused to accept the petitioners due to their behaviors. [REDACTED], the APD service coordinator, argued that with additional funding, she could hire the same PCA providers who work with the petitioners at school. Those providers are specifically trained to assist autistic children with behavioral issues.

14. Dr. Darlene Calhoun is a physician reviewer with eQ. She is a board certified pediatrician. She reviewed the petitioners' files in preparation for the hearing and concurred with the denial decisions. Dr. Calhoun explained that the petitioners' primary needs are behavior modification and supervision. PCA providers address ADLs only. They are not behavioral specialists; they do not have the education and training required to toilet train the children; to teach them calming and coping techniques to address their behaviors; to teach them life skills lessons. PCA providers are not child care providers; they do not supervise or monitor for maladaptive behaviors.

15. Dr. Calhoun opined that additional PCA services are not medically necessary.

CONCLUSIONS OF LAW

16. 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.

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

18. At issue is the request for Medicaid services. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the petitioner.

19. 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.).

20. The Florida Medicaid program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G. The Medicaid program is administered by the respondent. Section 409.905, Fla. Stat. 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...

(4) HOME HEALTH CARE SERVICES.--The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home...

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. 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 other family dependents; and a determination of the medical necessity for private duty nursing instead of other more cost-effective in-home services.

(c) The agency may not pay for home health services unless the services are medically necessary ...

21. The definition of medically necessary is found in the 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.

22. The petitioners are under 21; a broader definition of medically necessary applies to include the EPSDT requirements. 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 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. In accordance with the cited authority, the respondent must provide services to Medicaid recipients under 21 years of age, but only to the extent such services are medically necessary. The definition of medical necessity for services provided under the EPSDT benefit is established by the state. The state is authorized to establish the amount, duration, and scope of such services.

24. The Florida Medicaid Home Health Services Coverage and Limitations Handbook (The Handbook) has been incorporated by reference into Florida Administrative Code Rule 59G-4.130(2).

25. The Handbook addresses personal care services on page 1-2 and states in pertinent part:

Personal care services provide medically necessary assistance with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) that enable the recipient to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability.

ADLs include:

- Eating (oral feedings and fluid intake);
- Bathing;
- Dressing;
- Toileting;
- Transferring; and
- Maintaining continence

(examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control his bowel or bladder functions)

IADLs (when necessary for the recipient to function independently) include:

- Personal hygiene
- Light housework
- Laundry
- Meal preparation
- Transportation
- Grocery shopping
- Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments)
- Medication management
- Money management

...

26. The cited authority explains that PCA services provide assistance with ADLs and IADLs. The service does not include a provision for behavior management.

27. The Handbook, on pages 2-11 through 2-12, provides additional examples of services not reimbursable as a home health services. The list includes supervision.

28. The Handbook addresses who can receive PCA services on page 2-24:

Medicaid reimburses personal care services for recipients under the age of 21 who meet all of the following criteria:

...

* Do not have a parent or legal guardian able to provide ADL or IADL care.

29. The Handbook addresses parental responsibility on page 2-25 and states in pertinent part:

Personal care services can be authorized to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. ...

30. The petitioners receive PCA services from APD via the DD Waiver. Page 2-2 of the handbook reads: "Medicaid does not reimburse for home health services when the service duplicates another provider's service under the Medicaid program or other state or local program or if a comparable home and community-based service is provided to the recipient at the same time on the same day."

31. The respondent denied the petitioners' request for PCA services through State plan Medicaid. The respondent determined that the services were not medically necessary because the petitioners' father is not employed outside the home and has no impairments which prevent him from providing their care. The mother does not have any impairments which prevent her from providing care either and she is available during non-working hours.

32. The petitioners already receive PCA services from APD's DD Waiver, another Medicaid program. The petitioners may use those funds in total or in part for community/outside service providers.

33. The controlling legal authorities state that Medicaid goods and service cannot be in excess of a patient's needs. In addition, Medicaid will not duplicate services. After reviewing ESPDT and medical necessity requirements, the undersigned concludes that the respondent's actions were correct. The evidence does not prove that it is medically necessary for the petitioners to receive additional PCA services. The petitioners did not meet their burden in this matter.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeals are denied. The respondent's actions are affirmed.

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 13th day of April, 2015,

in Tallahassee, Florida.



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Copies Furnished To: [REDACTED] Petitioners
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