

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

FILED

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OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-10374

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 06 Pinellas
UNIT:

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above referenced matter telephonically on February 5, 2015, at 1:40 p.m.

APPEARANCES

For the Petitioner:


Petitioner's Grandmother and Adoptive Mother

For the Respondent:

Stephanie Lang, R.N.
Registered Nurse Specialist/Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is the action taken by the Agency for Health Care Administration to deny a request for services under the Statewide Inpatient Psychiatric Program ("SIPP"). The Agency for Health Care Administration may sometimes hereinafter be referred to as "AHCA" or the "Agency".

PRELIMINARY STATEMENT

██████████ the petitioner's grandmother and adoptive mother, appeared on behalf of the petitioner, ██████████ ("petitioner"). ██████████ may sometimes hereinafter be referred to as the petitioner's "representative".

Stephanie Lang, R.N., Registered Nurse Specialist and Fair Hearing Coordinator with the Agency for Health Care Administration, appeared on behalf of the Agency for Health Care Administration. The following individuals appeared as witnesses on behalf of the Agency for Health Care Administration: Tracey Smithey, M.D., psychiatrist and Behavioral Health Medical Director of Amerigroup; Susan Bramer, LCSW, licensed clinical social worker and Director of Behavioral Health of Amerigroup; and Tracy Parks, Manager of Clinical Quality at Amerigroup. Lou Esposito, Medical Health Care Program Analyst with the Agency for Health Care Administration, was present solely for the purpose of observation.

The petitioner's representative introduced Exhibits "1" through "3", inclusive, at the hearing, all of which were accepted into evidence and marked accordingly. The respondent introduced Exhibits "1" through "9", inclusive, at the hearing, all of which were also accepted into evidence and marked accordingly.

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 is a 15-year-old female. Her date of birth is ██████████
██████████

2. The petitioner has a history of behavioral problems and substance abuse. The petitioner is diagnosed with oppositional defiant disorder and attention deficit hyperactivity disorder ("ADHD").

3. The petitioner alternates living with her aunt and adoptive mother.

4. The petitioner was involuntarily committed to an in-patient crisis center for stabilization on October 10, 2014 pursuant to an ex-parte order initiated by petitioner's adoptive mother. The petitioner remained at this facility from October 10, 2014 through October 13, 2014.

5. At the time of this involuntary commitment, a blood screen of the petitioner revealed alcohol and marijuana use.

6. On October 30, 2014, petitioner's provider submitted a prior authorization request to Amerigroup for residential treatment services to be provided to the petitioner through the Statewide Inpatient Psychiatric Services Program beginning November 3, 2014. This prior authorization included an assessment by the petitioner's psychiatrist who is licensed to practice in the State of Florida.

7. Amerigroup sent a notice to the petitioner's provider dated November 1, 2014 denying the request for residential treatment services. The notice states:

The service(s) is not approved on 10/30/2014 because:

We used McKesson InterQual 2012 Adolescent Psychiatry Residential and Community-Based Treatment guidelines to evaluate your adolescent's provider's request for residential treatment. Admissions to residential treatment are very serious and should happen when an adolescent is so ill that she/he can only be helped with such an admission. In other cases of even significant illness, treatment outside of the hospital helps people get better and stay better. Your adolescent's provider told us why he/she thought your adolescent needed to be admitted. The information suggested that your adolescent could have been helped

outside the hospital in a setting such as an intensive outpatient program. Specifically, the information that your provider gave us did not include a serious danger to self or others or other serious problems that could not be treated as successfully in a lower level of care without getting worse.

8. The petitioner's representative sent a letter dated November 18, 2014 to Amerigroup asking it to reconsider its decision to deny residential treatment services. This internal appeal was denied by Amerigroup's Medical Director on December 4, 2014.

9. Petitioner's adoptive mother found petitioner wandering and incoherent on or about December 13, 2014 after the petitioner had run away from home. She took the petitioner to All Children's Hospital where the petitioner remained for approximately 10 hours. A blood screen of the petitioner completed at All Children's Hospital revealed the petitioner had a blood-alcohol level of .226 as well as marijuana in her system. The petitioner's adoptive mother called the police after the petitioner was released from the hospital and petitioner was involuntarily committed under the State's Baker Act statute. Petitioner was involuntarily detained from December 13, 2014 to December 17, 2014 under the Baker Act statute.

10. At the time of the petitioner's second involuntary commitment, Amerigroup authorized substance abuse treatment for the petitioner. Amerigroup planned for the petitioner to receive substance abuse treatment directly after being released from her involuntary commitment.

11. The petitioner's adoptive mother described the petitioner as incorrigible. She explained that if she will not allow the petitioner to do something she wants to do,

the petitioner will run away from home. She expressed concerns about the petitioner's health and safety when the petitioner runs away from home.

12. Children accepted into the Statewide Inpatient Psychiatric Program generally have a major mental illness, whereas the petitioner has more of a behavior and defiance problem toward her adoptive mother and her aunt, as well as a substance abuse problem.

13. Residential treatment services under the Statewide Inpatient Psychiatric Services Program are generally the last option for children who cannot remain in the community. All treatment opportunities in the community should be exhausted before resorting to a SIPP placement.

14. The Amerigroup psychiatrist testified that the petitioner has no clinical psychological problems that require psychotropic medications. However, the petitioner's adoptive mother disagreed with this assertion and explained that the petitioner was prescribed a psychotropic medication and that she refused to take it. The letter from the petitioner's psychiatrist contained in the respondent's evidence states that the petitioner was prescribed Abilify.

15. The Amerigroup psychiatrist offered a number of alternatives to residential treatment services at the hearing including in-home counseling, substance abuse counseling, working with the school regarding the petitioner's truancy problem, and family therapy. She also suggested that the petitioner's representative file a Person In Need of Supervision Petition with the Pinellas County Sheriff's Office. A Person In Need of Supervision Petition is designed to solicit the assistance of law enforcement in dealing with incorrigible children.

16. The petitioner had a truancy problem at school but this problem was resolved when the petitioner's adoptive mother enrolled her in a lock down school.

17. The discharge summary from the program in which the petitioner was involuntarily committed in December 2014 states, in part:

Upon arrival to the unit here last week, [Petitioner] was very dismissive of her substance abuse issues. She had a BAL of 226, and she weighs very little and has a very small frame, and that could have killed her. She could not explain why she could not stop drinking that night, only that it tasted good when it was mixed with Red Bull, and she drank an entire bottle of vodka she said. [Petitioner] has severe substance abuse issues and she is only 14. She stayed with us a week. We were working with her trying to encourage her to go to inpatient PAR. Her family had been talking with her as well. We had everything set up for her to go to PAR today. They had a bed available, and then [Petitioner] backed out and said that she would not participate in the program. She has to voluntarily sign into that program and now she is refusing.

18. Operation PAR (Pinellas Advocacy Resources) is a substance abuse program for adolescents. Individuals may not be forced to participate in the program; they must do so voluntarily.

19. The report from Suncoast Center submitted to Amerigroup along with the prior authorization request for residential treatment services does not indicate that the petitioner has a severe psychological problem.

20. The outpatient programs that Amerigroup is suggesting as alternatives to residential treatment require the consent of the petitioner. The petitioner is unwilling to participate in these programs.

21. The petitioner's representative has tried to arrange counseling for the petitioner but has been asked by counselors not to bring the petitioner back due to the petitioner's lack of cooperation.

22. It is the position of the petitioner's adoptive mother and representative that the petitioner's substance abuse and behavioral issues are tantamount to "involuntary suicide".

23. The petitioner's substance abuse and behavior are placing the petitioner at risk of death or serious bodily injury.

CONCLUSIONS OF LAW

24. By agreement between the Agency for Health Care Administration and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Fla. Stat. § 120.80.

25. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat., and Chapter 59G, Florida Administrative Code.

26. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

27. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof is assigned to the respondent.

28. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

29. 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.

30. Florida Administrative Code 59G-4.050. Community Behavioral Health

Services sets the guidelines for compliance for providers and states:

(1) This rule applies to all providers of community behavioral health services who are enrolled in the Florida Medicaid program.

(2) All providers of community behavioral health services who are enrolled in the Florida Medicaid program must be in compliance with the provisions of the Florida Medicaid Community Behavioral Health Coverage and Limitations Handbook, March 2014, available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-03749>, incorporated by reference. The handbook is available from the Medicaid fiscal agent agent's Web site at www.mymedicaid-florida.com. Select Public Information for Providers, then Provider Support, and then Provider Handbooks. Paper copies of the handbook may be obtained by calling the Provider Services Contact Center at 1(800) 289-7799 and selecting Option 7.

31. Medical services covered under Medicaid are defined as being "medically necessary". The definition of medically necessary is set forth in Florida Administrative Code Rule 59G-1.010(166)(a)(c), which states 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.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(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.

32. Since the petitioner is under age 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements.

33. The 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. Fla. Admin. Code Rule 65A-1.702 defines SIPP as:

(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. Those who are Medically Needy and those who are Medicare recipients are excluded from this program. Services must be received from a designated provider selected by AHCA. This program provides an exception to provisions that residents of an institution for mental disease (IMD) are not eligible for Medicaid.

35. The Code of Federal Regulations at 42 CFR 441.152 Inpatient Psychiatric

Services for Individuals Under Age 21 in Psychiatric Facilities or Programs 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.

36. In addition to the medical necessity requirement, residential placement requires a recipient to meet certain criteria. These criteria are set forth in Florida Administrative Code Rule 65E-10.018, which explains as follows:

(1) To be eligible to be admitted to a program encompassed by these rules, a child must:

(a) Be under the age of 18;

(b) Be currently assessed within 90 days prior to placement by a psychologist or a psychiatrist licensed to practice in the State of Florida, with experience or training in children's disorders; who attests, in writing, that:

1. 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.A.C.;

2. The emotional disturbance or serious emotional disturbance requires treatment in a residential treatment setting;

3. A less restrictive setting than residential treatment is not available or clinically recommended;

4. The treatment provided in the residential treatment setting is reasonably likely to resolve the child's presenting problems as identified by the psychiatrist or psychologist;

5. The nature, purpose, and expected length of treatment have been explained to the child and the child's parent or guardian.

(c) Have been reviewed at a minimum by the child and family specific team and been presented with all available options for treatment.

(2) General revenue funds designated as children's mental health funding shall not be used to maintain children over the age of 18 in programs encompassed by these rules or to place a child for whom no appropriate services are available in Florida in an out of state residential treatment program which is not an approved Medicaid provider in the state where the child is being placed.

(3) Placement of children and youth in therapeutic out of home settings with general revenue funds is dependent on the availability of funds.

37. The applicable definitions of "emotional disturbance" referenced in the above Rule are found in Section 394.492(5)(6), Florida Statutes (2015): Section 394.492, Florida Statutes states as follows:

(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.

37. The testimony and evidence presented in this matter indicate petitioner has a severe substance abuse problem that is placing her health and safety in jeopardy. However, there is nothing in the record demonstrating that the petitioner has a severe emotional or psychological problem that warrants institutionalization through the Statewide Inpatient Psychiatric Program. The Statewide Inpatient Psychiatric Program is designed to aid individuals with a severe psychological illness and, even then, is only to be used as a last resort when the individual can no longer remain in the community. In the present case, although the petitioner has a severe substance abuse problem, the

Statewide Inpatient Psychiatric Program is not the appropriate place for the petitioner to receive the help she requires.

38. After careful consideration of the testimony, evidence, and the above-cited authorities, the hearing officer finds that the petitioner has not met her burden of proof to show that the Agency incorrectly denied her request for approval of services through the Statewide Inpatient Psychiatric Program.

39. It is evident that petitioner's adoptive mother is concerned for the health and safety of the petitioner. The petitioner's mother is hereby encouraged to explore other available resources in the community and to continue to work with Amerigroup in order to discover other more appropriate alternatives available for dealing with a non-compliant adolescent with substance abuse issues.

DECISION

The petitioner's appeal is hereby 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 2nd day of March, 2015,

in Tallahassee, Florida.

Peter J. Tsamis

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