

**FILED**

**FEB 27 2015**

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

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DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-10487

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 11 Dade  
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 January 29, 2015, at 9:00 a.m.

**APPEARANCES**

For the Petitioner: [REDACTED] the petitioner's mother.

For the Respondent: Dianna Chirino, Senior Program Specialist, Agency for Health Care Administration (AHCA).

**STATEMENT OF ISSUE**

At issue is the Agency action through Magellan to deny the petitioner's request for residential placement through the Statewide Inpatient Psychiatric Program (SIPP), based on not meeting medical necessity requirements.

**PRELIMINARY STATEMENT**

Present as witnesses for the petitioner were [REDACTED] Psychotherapist and [REDACTED] Case Manager, both with the Institute [REDACTED]

Present as witnesses for the respondent were Dr. Gabriela Como, Psychiatrist and Medical Director and Lance Burgos, Appeals Manager, both from Magellan Complete Care. Present as an observer was Audrey Cohen, Contract Manager with Magellan Complete Care. Present as counsel for Magellan Complete Care was Anthony Como, Esq.

The respondent submitted into evidence Respondent Exhibits 1 through 6.

**FINDINGS OF FACT**

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. The petitioner is sixteen years of age and is a Medicaid recipient residing in Miami-Dade County, Florida.
2. On October 16, 2014, the petitioner, through Citrus Health, filed a request for SIPP residential placement with Magellan Complete Care. Magellan Complete Care is a Managed Care Organization that has been authorized by AHCA to make certain prior service authorization decisions for individuals enrolled in the Medicaid Managed Medical Assistance (MMA) Program.
3. On October 27, 2014, Magellan sent the petitioner a Notice indicating:  
  
This letter is in response for your request for Statewide Inpatient Psychiatric Program. Magellan Complete Care has made the following decision:

Our Doctor, Dr. Barbara Center, Board certified in Psychiatry and Neurology, made the decision that your request for Statewide Inpatient Psychiatric Program is not medically necessary because of the following reason(s):

In the opinion of this reviewer, the patient does not meet Magellan medical necessity nature and will not respond to psychiatric treatment. The patient presents with primary issues around substance use and delinquency. He was in a Department of Juvenile Justice placement related to his substance use and attempt to elope. He made suicidal threats in the context of no longer wanting to be in the placement.

However, there is no indication that his primary issues are psychiatric. Continued stabilization in a substance use setting with possible outpatient services such as TBOS, a psychiatric evaluation, and ongoing substance use interventions appears appropriate.

....

Therefore, Magellan is not able to approve services for Statewide Inpatient Psychiatric Program.

4. A reconsideration request was made by the petitioner after the above noted decision and was reviewed by a different physician at Magellan than the physician noted above. The first decision for this case was upheld and a Notice was mailed to the petitioner on November 26, 2014 indicating the reason for the decision:

1. The patient has no active suicidal or homicidal ideation and no psychotic symptoms. He has no evidence of grave disability on the unit. The last documented episode of aggression was on 10/24/14.
2. The patient has no medical problems that require SIPP/residential treatment. He has no substance abuse issues that require residential treatment. There is no medication interventions proposed which appear to require SIPP treatment.
3. There is no documentation of family context causing escalation of the patient's symptoms. There is no documentation that discharge to available community resources would result in an exacerbation of symptoms such that hospitalization would be required.

4. In the opinion of this reviewer, Magellan Complete Care Medical Necessity Criteria for continued stay at the SIPP level of care are not met (continued stay criteria A and B not met). Care could be provided in a less restrictive setting such as outpatient treatment.

5. The respondent's physician witness indicated that she agreed with the determinations made by both of the physicians from Magellan, who reviewed the request for the SIPP placement. She pointed out that the petitioner's conditions of attention deficit disorder, oppositional defiance disorder, conduct disorder, and polysubstance use, along with his delinquency situation are not psychiatric conditions that would require SIPP placement.

6. The petitioner's witness pointed out that the petitioner was also diagnosed as bipolar and having a mood disorder, which would appear to meet psychiatric conditions that would require SIPP placement. She also pointed out that the petitioner was prescribed Seroquel and Thorazine for his conditions. She indicated that it was her understanding that these medications are for major mental illnesses.

7. The respondent physician witness indicated that the petitioner's bipolar condition was reviewed by Magellan for this request and that no information was provided to indicate that any treatment was provided to the petitioner for this condition. Additionally, she indicated that the petitioner's mood disorder diagnosis is "mood disorder NOS". NOS means "not otherwise specified". What this means, she indicated is that the petitioner has mood symptoms, but they are not of the intense variety. Otherwise a more concise "description" of mood disorder would be used for the diagnosis. Thus, she indicated, these conditions do not meet the diagnosis of a severe mental illness. She indicated that the dosages for the medication prescribed noted

above for the petitioner were of low dosage (200mg for Seroquel and 50 mg for Thorazine), and such low dosages would only amount to a "tickle" for the petitioner and are not the amount normally prescribed for serious mental illness.

8. The petitioner's treating physician, Dr. [REDACTED] provided a statement dated November 10, 2014, provided as part of Respondent Exhibit 5, indicating "given the lack of success in less intensive and less structured environments, [REDACTED] meets the medical necessity to be treated in the Statewide inpatient Psychiatric Program (SIPP), which is the next progression in his treatment interventions."

9. The respondent physician witness indicated that the decision for this case was considered and reviewed under Florida Administrative Code Rule 59G-1.010 (166). She addressed each part of this rule on record including "[t]he 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."

10. This witness also indicated that she was aware of the EPSDT criteria.

#### **CONCLUSIONS OF LAW**

11. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

12. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

13. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the petitioner.

14. Fla. Admin. Code R. 59G-1.010 states in part:

(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;
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...

15. Federal Regulations at 42 C.F.R. § 440.230, Sufficiency of amount, duration, and scope, informs:

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

16. The State Medicaid Manual in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services section states in part:

5010. Overview

A. Early and Periodic Screening, Diagnostic and Treatment Benefit.-- Early and periodic screening, diagnostic and treatment services (EPSDT) is a required service under the Medicaid program for categorically needy individuals under age 21...

#### 5110. Basic Requirements

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, you<sup>1</sup> 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.

17. § 409.913, Fla. Stat. addresses "Oversight of the integrity of the Medicaid program," with (1)(d) describing "medical necessity or medically necessary" standards and saying in relevant part "for purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity."

18. As shown in the Findings of Fact, the Agency through Magellan denied the petitioner's request for SIPP residential placement based on not meeting medical necessity requirements.

19. The petitioner's representative and witness argued that the information presented for this hearing does show that the petitioner is in need of the SIPP treatment.

20. The respondent witness and representative argued that the information presented indicates that the petitioner, when looking at his disorders, conditions and

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<sup>1</sup> "You" in this manual context refers to the state Medicaid agency.

delinquency situation, would not require SIPP placement, and thus the request for SIPP does not meet the medical necessity requirements of the program. The controlling authorities make clear that Medicaid services must be reflective of the level of service for which no equally effective and more conservative or less costly treatment is available, such as outpatient treatment. The hearing officer agrees with the respondent's witness's analysis.

21. After considering the evidence and all of the appropriate authorities set forth in the findings above, the hearing officer concludes that the petitioner has not met his burden of proof and the Agency action to deny the petitioner's request for SIPP residential placement is correct based on not meeting medical necessity requirements.

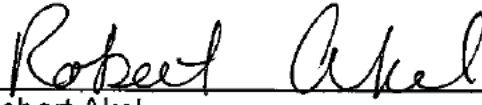
### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Agency action 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 27<sup>th</sup> day of February, 2015,  
in Tallahassee, Florida.



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