

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

FILED

MAY 16 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02290

PETITIONER,

Vs.

CASE NO. 29982631

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 11 Dade

UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on April 29, 2014 at 8:36 a.m. in Doral, Florida.

APPEARANCES

For the Petitioner: , mother

For the Respondent: Monica Otalora, senior human services program specialist,
Agency For Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is the Agency's partial denial of speech therapy services requested for the certification period 3/4/2014-8/30/2014.

PRELIMINARY STATEMENT

Dr. Darlene Calhoun, physician reviewer for eQHealth Solutions, appeared as witness for the respondent. Respondent entered a 72 page composite exhibit for the agency's action into evidence marked as Respondent's Exhibit 1. The exhibit contains

documentation of eQHealth Solutions' initial decision as well as documentation from the provider in support of the speech therapy services requested. Chapter 2 of the "Therapy Services Coverage and Limitations Handbook", dated August 2013, was also included in the exhibit.

Petitioner appeared and participated in the proceedings. Because he is 15 years of age, he was represented by his mother, [REDACTED]

During the hearing the mother submitted 4 pages into the record that included 2 pages of speech therapy progress notes. This document was entered as Petitioner's Exhibit 1.

The matter under appeal is an initial request for speech therapy services, therefore the burden of proof was assigned to the petitioner. Additionally, there are no administratively approved services while this appeal is pending. Petitioner is currently receiving 4 units (1 hour) of speech therapy a week the respondent approved, pending the outcome of this appeal.

FINDINGS OF FACT

1. The petitioner is a 15 years old and is a recipient of the Medicaid program. He was diagnosed in September 2013 with mild autism and has articulation and pragmatic language deficits.

2. EQHealth Solutions has been authorized to make Prior (service) Authorization Process decisions for the Agency. The Prior Authorization Process was completed for the petitioner by eQHealth Solutions. A board certified pediatrician is the consultant reviewer for eQHealth Solutions. The petitioner's initial request for 4 units of speech

therapy three times a week was submitted by his provider, Florida Rehab Professionals Group, Inc., on March 7, 2014. An eQHealth physician consultant completed a review of the request on March 8, 2014 and sent a "Notice of Outcome-Partial Denial...." to the petitioner on March 10, 2014. The notice stated,

"The reason for the denial is that the services are not medically necessary as defined in 59G-1.010 (166), Florida Administrative Code (F.A.C.), specifically the services must be:

Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

3. On March 10, 2014 a "Notice of Outcome-Partial Denial...." was also sent to the petitioner's provider. The notice provided the clinical rationale for the decision as...

This is a 15 year old with mild autism and pragmatic language delay who may benefit from speech therapy; however, the request is excessive based on the severity of delay with receptive and expressive skills being normal. Based on the patient's deficits and needs, 4 units 1 time a week are approved. The additional requested units are not approved as they have been deemed excessive.

4. The provider did not submit a request for a reconsideration.

5. The petitioner submitted a timely hearing request on 3/17/2014.

6. In support of the request for the 4 units of speech therapy 3 times a week (3 hours per week), the mother stated that when her son is talking, people don't understand what he is saying. In school he doesn't fit in well because the other children are not able to understand him. She stated that when he is in a challenging situation he makes up words. She stated that she had requested the 3 hours because that is what the provider suggested and she wanted the most services her son could receive. She

noted that her son has made progress since receiving the 1 hour a week speech therapy and feels more hours would improve his progress.

7. The witness for the respondent, Dr. Calhoun, reviewed eQHealth's decision noting that while the petitioner was found to be within normal range for receptive and expressive language, the short term goals included 1 goal for receptive language and 2 goals for expressive language. Meanwhile, pragmatic language and oral motor skills that were identified as deficits had one short term goal each. The witness noted that there was insufficient documentation, including the petitioner's exhibit to support the request. Nevertheless, she indicated that only because the request was the first service request she felt it would be reasonable to approve an additional hour per week. She explained that this was offered during the pre-hearing conference and the mother had declined the additional hour.

CONCLUSIONS OF LAW

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

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

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

11. Fla. Admin. Code 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.

(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...**[emphasis added]

12. The Therapy Services Coverage and Limitations Handbook, dated August 2013, page 2-12 (page 63 of Respondent's Exhibit 1), provides the Initial Plan of Care components which are applicable for this initial request for speech therapy services. It states:

The plan of care must include the following information:

- Recipient's name, date of birth, and Medicaid ID number;
- The specific therapy to be provided;
- Specific, achievable, measurable, time-related long and short term therapeutic goals and objectives that are related to the functioning of the recipient and are based on the primary care provider's, ARNP's or PA designee's, or designated physician specialist's prescription;
- Medications, treatments, and equipment relevant to the plan of care;

- Description of medical condition, including the most specific diagnosis codes within the therapist's scope of practice contributing to the recipient's need of therapy shown in the current edition of the International Classification of Diseases, Clinical Modification;
- Functional limitations;
- Frequency, length of each treatment and the duration of the treatment;
- Therapy methods and monitoring criteria;
- Methods for monitoring equipment needs and recommendations for equipment needs;
- Diet as indicated, if applicable and relevant to the plan of care;
- Methods of demonstrating and teaching the recipient;
- **Methods of demonstrating and teaching the family and other relevant caregivers who are involved with the recipient (emphasis added);** and,
- How the treatment will be coordinated with the other service needs prescribed for the recipient.

13. Because the petitioner is under twenty-one-years-old, the requirements of Early and Periodic Screening, Diagnostic, and Treatment services (EPSDT) must be considered. Florida Statute § 409.905, Mandatory Medicaid services, provides that Medicaid services for children must 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.

14. In reviewing the appeal for compliance with EPSDT requirements, speech therapy services are part of Florida's Medicaid state plan of services. The agency is providing these services to the petitioner for the certification period under appeal, and is therefore, in compliance with this EPSDT requirement. The remaining matter to

consider is compliance with the EPSDT definition of medical necessity, which includes the amount and duration of the services.

15. The respondent presented evidence and testimony that the petitioner's speech and language delays are mild or minimal and, therefore, 4 units (1 hour) twice a week was appropriate. However, an additional hour was offered as "reasonable" only because this was an initial request for services.

16. The mother stated she understood the explanation offered by the respondent's witness and explained she had requested the 3 hours because that's what the provider suggested.

17. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer finds that the petitioner has not met his burden of proof. While the respondent's witness indicated it was reasonable to approve an additional 1 hour of speech therapy because this is an initial request, she also noted that the provider did not submit sufficient documentation to support the requested 3 hours of speech therapy. In determining the number of service hours medically necessary to address the petitioner's articulation and pragmatic language deficits, the undersigned finds it significant that the provider failed to provide a plan of care that addresses "Methods of demonstrating and teaching the family and other relevant caregivers who are involved with the recipient", who is 15 years old. This is one of the requirements for an initial plan of care, as noted in paragraph 12 above.

18. The respondent's witness also advised that "If the recipient's condition changes such that an increase in services is warranted during the certification period, the provider may submit a modification request."

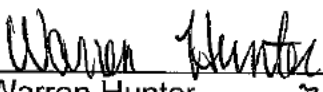
DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency action of approving 4 units (1 hour) of speech therapy service a week is 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 agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 16th day of May, 2014,
in Tallahassee, Florida.


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