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

[redacted]

APPEAL NO. 14F-02295

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 (Dade)
UNIT: AHCA

RESPONDENT.

_____/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 21, 2014 at 1:30 p.m.

APPEARANCES

For the Petitioner: [redacted] petitioner's mother

For the Respondent: Luis Davila, Senior Program Specialist
Agency for Health Care Administration (AHCA)

STATEMENT OF ISSUE

At issue is whether the respondent's action to partially deny Occupational Therapy (OT) service hours that were requested for the petitioner for the certification period December 10, 2013 through June 7, 2014, was correct.

PRELIMINARY STATEMENT

Appearing as a witness for the petitioner was her mother, [redacted]

The petitioner did not submit any documents as evidence for the hearing.

Appearing as a witness for the respondent was Rakesh Mittal, M.D., physician-consultant with eQHealth Solutions, Inc. Respondent's composite Exhibit 1 was entered into evidence, consisting of the documentation considered by eQHealth Solutions' physicians in making their decision.

Also present for the hearing was a Spanish language interpreter, Boris Rodriguez, from Propio Language Services.

FINDINGS OF FACT

1. The petitioner's OT service provider, Adriana Tafur Services (hereafter referred to as "the provider"), requested the following OT service hours for the certification period at issue: 4 units (1 hour), three times per week – a total of 3 hours weekly.

2. eQHealth Solutions, Inc. is the Quality Improvement Organization (QIO) contracted by the respondent to perform prior authorization reviews for therapy services. The provider submitted the service request through an internet based system. The submission included, in part, information about the petitioner's medical conditions; her functional limitations; and other pertinent information related to the household.

3. eQHealth Solutions' personnel had no direct contact with the petitioner, her family, or her physicians. All pertinent information was submitted by the provider directly to eQ.

4. The medical information submitted by the provider contained, in part, the following information in regard to the petitioner:

- 7 years old
- Diagnosis includes developmental delay and scoliosis
- Deficits in the areas of cognition, coordination, attention, fine motor skills, visual motor skills, motor planning, and self-regulation skills

5. The petitioner is also currently receiving speech therapy services through the Medicaid program.

6. The petitioner has been receiving occupational therapy services for three hours weekly for approximately the past 2.5 years.

7. A Plan of Care was also submitted by the provider. The document was signed by a physician and outlined the type of assistance to be provided by the OT provider. The duties include, in part, instruction/therapy in the following areas:

- Neurodevelopment Treatment
- Toy Manipulation
- Fine Motor Coordination
- Strengthening
- Visual/Perceptual Motor skills
- Passive Muscle Stretching
- Sensory Processing/Integration
- Activities of Daily Living
- Home Exercise Program

8. A physician at eQHealth Solutions, who is board-certified in pediatrics, reviewed the submitted information and partially denied the requested OT services (approving 2 hour weekly rather than 3 hours weekly). The rationale for the decision was: "Based on the patient's deficits and needs, 4 units 2 times a week are approved. The additional requested units are not approved as they have been deemed excessive." A notice of this determination was sent to all parties on December 23, 2013.

9. The above notice stated that a reconsideration review of this determination by eQHealth could be requested, and additional information could be provided with the request for reconsideration. A reconsideration review was not requested in this case.

10. The petitioner thereafter requested a fair hearing and this proceeding followed.

11. The respondent did not administratively approve the requested therapy hours pending the outcome of this fair hearing since the hearing was not requested within the applicable time limit.

12. The petitioner's mother testified that the petitioner should continue receiving occupational therapy at the same level of 3 hours weekly because she needs to develop her fine motor skills since she cannot write at the same pace as other children in her class.

13. The respondent's witness, Dr. Mittal, testified that the partial denial of the petitioner's request for OT services was appropriate because the testing scores submitted by the provider do not support a finding of deficits in the areas of fine motor, visual motor, or cognition. Dr. Mittal also stated that the testing does show deficits for the petitioner in the areas of coordination and attention.

14. OT service for children is a covered service under the Medicaid State Plan in Florida. These services are provided in accordance with the respondent's Therapy Services Coverage and Limitations Handbook ("Therapy Handbook"), effective August, 2013.

CONCLUSIONS OF LAW

15. 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 Chapter 120.80 Fla. Stat.

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

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

18. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the respondent since the petitioner had been previously approved for 3 hours weekly of OT service and the respondent is seeking a reduction of these hours. 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.).

19. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat. and Chapter 59G, Fla. Admin. Code. The Medicaid Program is administered by the respondent.

20. The petitioner has requested OT services. As the petitioner is under 21 years of age, the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements apply to the evaluation of the petitioner's eligibility for or amount of this service.

21. The Centers for Medicare and Medicaid Services, State Medicaid Manual makes available to all State Medicaid agencies informational and procedural material needed by the States to administer the Medicaid program. It is the method by which the Health Care Financing Administration (HCFA) issues mandatory, advisory, and optional Medicaid policies and procedures to the Medicaid State agencies.

22. 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[1] 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.

23. The service the petitioner has requested (OT services) is one of the services provided by the state to treat or ameliorate an individual's conditions under the State plan. Chapter 409.905, Fla. Stat., states, in part:

Any service under this section shall be provided only when medically necessary ...

24. The issue to be decided is the medical necessity of the service or amount of service. The State Medicaid Manual provides for limitations on services as follows:

5110. Basic Requirements...
...Services under EPSDT must be sufficient in amount, duration, or scope to reasonably achieve their purpose. The amount, duration, or scope of EPSDT services to recipients may not be denied arbitrarily or reduced solely because of the diagnosis, type of illness, or condition. Appropriate limits may be placed on EPSDT services based on medical necessity.

5122. EPSDT Service Requirements
F. Limitation of Services.--The services available in subsection E are not limited to those included in your State plan.

[1] "You" in this manual context refers to the state Medicaid agency.

Under subsection E, the services must be "necessary . . . to correct or ameliorate defects and physical or mental illnesses or conditions . . ." and the defects, illnesses and conditions must have been discovered or shown to have increased in severity by the screening services. You make the determination as to whether the service is necessary. You are not required to provide any items or services which you determine are not safe and effective or which are considered experimental.

5124. Diagnosis and Treatment
B. Treatment.--
1. General. - You must make available health care, treatment or other measures to correct or ameliorate defects and physical and mental illnesses or conditions discovered by the screening services. Treatment services may be limited as described in §5122 F.

25. Once a service has been identified as requested under EPSDT, the Medicaid program determines the amount or necessity for that service based on the State of Florida's published definition of medical necessity. The Fla. Admin. Code R. 59G-1.010 defines medical necessity:

(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 do not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

26. Based upon the information submitted by the petitioner's provider, eQHealth Solutions completed a prior authorization review to determine medical necessity for the requested OT services.

27. In the petitioner's case, the respondent has determined that some occupational therapy service is medically necessary, but has determined that 2 hours weekly are medically necessary rather than the 3 hours weekly requested by the petitioner's provider.

28. Section 409.913, Fla. Stat., governs the oversight of the integrity of the Florida Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows:

> *"Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice….*
>
> Section (1)(d) goes on to further state:
>
> *…For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.*

29. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary. As stated above, this proceeding is a de novo proceeding for the purpose of the Agency reaching its final decision. The final decision making authority for this proceeding has been delegated to the hearing officer in Fla. Admin. Code R. 65-2.066.

30. OT services are described on page 1-3 of the Therapy Handbook as follows:

> *Occupational therapy is the provision of services that address the developmental or functional needs of a child related to the performance of self-help skills; adaptive behavior; and sensory, motor and postural development.*
>
> *Occupational therapy services include evaluation and treatment to prevent or correct physical and emotional deficits, minimize the disabling effect of these deficits, maintain a level of function, acquire a skill set or restore a skill set. Examples are perceptual motor activities, exercises to enhance functional performance, kinetic movement activities, guidance in the use of adaptive equipment and other techniques related to improving motor development*

31. The Therapy Handbook on page 2-2 sets forth the requirements for OT services, as follows:

> *Medicaid reimburses for services that are determined medically necessary and do not duplicate another provider's service.*

32. The petitioner's physician ordered an OT service frequency greater than that approved by eQHealth Solutions. Rule 59G-1.010(166) (c), however, specifically states a prescription does not automatically mean the requirements of medical necessity have been satisfied.

33. The respondent's witness, Dr. Mittal, stated he believed that 2 hours weekly of occupational therapy service were medically necessary for the petitioner at this time since the submitted testing scores showed deficits in the areas of coordination and attention, but not in the areas of visual motor, fine motor, or cognition.

34. The petitioner's mother stated the petitioner still needs to develop her fine motor skills since she cannot write at the same pace as other children in her class.

35. After considering all the documentary evidence and witness testimony presented, the undersigned concludes the respondent has met its burden of proof in demonstrating

it was correct in partially denying the requested occupational therapy services for the certification period at issue. The evidence presented establishes that the occupational therapy service should be reduced to 2 hours weekly at this time. Since the Plan of Care includes a Home Exercise Program, the petitioner's caregiver is encouraged to make full use of the home program to continue developing the petitioner's skills.

DECISION

Based upon the foregoing Findings of Fact and 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 agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 19th day of June, 2014,

in Tallahassee, Florida.

Rafael Centurion

Rafael Centurion
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
Office: 850-488-1429
Fax: 850-487-0662

Copies Furnished To: [redacted] Petitioner
Rhea Gray, AHCA Area 11, Field Office Manager