FILED
JUN 19 2014
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

STATE OF FLORIDA
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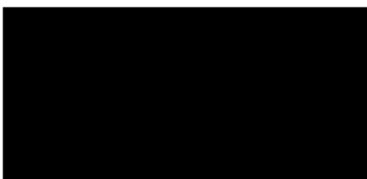


APPEAL NO. 14F-02300

PETITIONER,

Vs.

CASE NO. 29939868

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 May 13, 2014 at 9:01 a.m. in Doral, Florida.

APPEARANCES

For the Petitioner: mother

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

STATEMENT OF ISSUE

At issue is the Agency's denial of occupational therapy services requested by My Therapy Center, Inc. for the petitioner for the certification period 3/4/2014-8/30/2014.

PRELIMINARY STATEMENT

Dr. Dean Theophilopoulos, physician reviewer for eQHealth Solutions, appeared as witness for the respondent. Respondent entered an 83 page composite exhibit for the agency's action into evidence marked as Respondent's Exhibit 1. The exhibit

contains documentation of eQHealth Solutions' initial and reconsideration decisions 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 was represented by his mother, [redacted]. Petitioner's classroom teacher, [redacted] from [redacted] Academy for exceptional students appeared as a witness for the petitioner.

During the hearing the mother submitted four letters from [redacted] Academy, Open Time Support, [redacted] M.D. and Occupational Therapy Center. These were entered as Petitioner's Exhibit 1.

The matter under appeal is a continuation request for occupational therapy services, which was denied by the respondent. Burden of proof was assigned to the respondent due the reduction in services. Petitioner is administratively approved to continue receiving 4 units (1 hour) of occupational therapy a week from My Therapy Center Inc., pending the outcome of this appeal.

FINDINGS OF FACT

1. The petitioner is a 12 years old and is a recipient of the Medicaid program. His deficits include fine motor skills, visual perceptual skills, gross motor coordination skills, strength, social skills, activities of daily living (ADL's), cognitive skills, attention problems and following commands.

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 4 units of occupational therapy once a week was requested by his provider, My Therapy Center, Inc., on March 5, 2014. An eQHealth physician consultant completed a review of the request on March 8, 2014 and sent a "Notice of Outcome-Physical, Occupational, Or Speech Therapy Services" 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-Physical, Occupational, Or Speech Therapy Services" was also sent to the petitioner's provider. The notice provided the clinical rationale for the decision as...

> This is a 12 year old with a diagnosis of ASD [autism spectrum disorder]. The patient has already been approved for occupational therapy services through another provider. Duplication of services is not permitted. The requested units are not approved.

4. The provider submitted a request for a reconsideration of 3/11/2014.

5. The reconsideration was completed on 3/11/2014 and notice sent to the petitioner and provider. In the notice to the provider, eQHealth also noted...

> The information submitted for reconsideration provided no evidence to support the reversal of the previous decision. The original decision is upheld.

6. The petitioner submitted a timely hearing request on 3/20/2014 and, therefore, continues to receive 4 units of occupational therapy once a week from My Therapy Center, Inc.

7. The physician reviewer witness for the respondent listed the petitioner's deficits, as cited in paragraph 1 above, and noted that the prescription for occupational therapy (see page 38 of respondent's exhibit 1) was for 180 minutes (3 hours) per week for 6 months. He further noted that the Occupational Therapy (OT) Plan of Care and the OT Evaluation provided for the request from My Therapy Center, Inc. were done by another provider, Therapy Alliance. He stated My Therapy Center, Inc. needed to submit it's only Plan of Care and Evaluation for the petitioner and needed to also provide documentation on how OT services for the petitioner were being coordinated with Therapy Alliance.

8. The physician reviewer then referenced the initial and reconsideration decisions made by two different board certified pediatricians at eQHealth. Both denials were based on the duplication of services, with which the testifying physician reviewer agreed.

9. The mother testified that her son needed 3 hours of occupational therapy and she did not care which provider or providers provided the service. She submitted letters from [redacted] Academy, One Time Support, Dr. [redacted] and Occupational Therapy Center to support her argument.

10. The petitioner's classroom teacher noted that she was never aware of the requirements for a provider to submit their own plan of care or evaluation. The physician reviewer explained that the providers know what the documentation requirements are when submitting requests for services.

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 Fla. Stat § 409.285. 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 § 65-2.056.

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

14. 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]

15. The Therapy Services Coverage and Limitations Handbook, dated August 2013, page 1-9, provides the following when multiple therapy providers are needed:

> When services from more than one therapy provider are required to provide medically necessary care to a recipient, Medicaid applies the following criteria for reimbursement:
>
> • Medicaid will not reimburse the same service provided by different therapy providers from the same discipline on the same day if the total service units exceed four units of service per day;
> • Each therapy provider is responsible for coordinating the plan of care with other involved therapy providers;
> • Each therapy provider is responsible for noting on the plan of care the services being provided by another therapy provider;
> • Each therapy provider is accountable for the provided services and billing pursuant to the authorized plan of care;
> • When requesting prior authorization, each therapy provider is responsible for informing the Medicaid contracted Quality Improvement Organization (QIO) of other therapy providers also providing services to the recipient

Note: eQHealth is the Quality Improvement Organization (QIO) that needs to be informed.

16. 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.

17. In reviewing the appeal for compliance with EPSDT requirements, occupational 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 (under a companion case and different provider), 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.

18. The respondent presented evidence and testimony that the provider failed to provide its own plan of care and evaluation, but rather used those from another provider. The respondent explained that different providers could provide the OT services but the plan of cares needed to reflect how such services were being coordinate to avoid duplication of effort.

19. The mother stated she understood the explanation offered by the respondent's witness and explained she did not care which provider gave her son the OT services, she just wanted him to get the 3 hours a week.

20. 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 respondent has met its burden of proof. While the petitioner may obtain OT services from different providers, the respondent's argument that the providers must coordinate their services to avoid duplication of effort is compelling. The undersigned notes that the decision was not based on a determination of whether the requested services were

medically necessary. A new request, with proper supporting documentation, would be need to be submitted in order for a review of medical necessity to be done.

DECISION

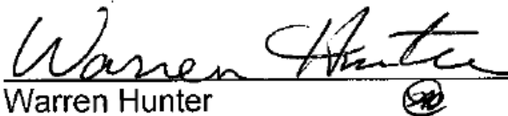
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency action of denying petitioner's 4 units of occupational therapy once a week by My Therapy Center, Inc. is AFFIRMED.

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 petitioners responsibility.

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

in Tallahassee, Florida.



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