

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

**FILED**

**JUN 19 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02301

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 21, 2014 at 8:54 a.m. in Doral, Florida. The hearing was continued to June 10, 2014 and was reconvened at 8:50 a.m. in Doral, Florida.

**APPEARANCES**

For the Petitioner:  mother

For the Respondent: Luis Davila (May 21<sup>st</sup> proceedings) and Monica Otolara (June 10<sup>th</sup> proceedings), senior human services program specialist, Agency For Health Care Administration (AHCA).

**STATEMENT OF ISSUE**

At issue is the Agency's reduction of occupational therapy services from 4 units (1 hour) 3 times a week to 4 units 2 times a week 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 a 94 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] z. Appearing as witness for the petitioner at both proceedings was [REDACTED] petitioner's pediatrician and the petitioner's classroom teacher, [REDACTED] from Aktiv Learning Academy for exceptional students appeared. At the May 21, 2014 proceeding the petitioner's occupational therapist, [REDACTED] appeared as a witness but was unable to testify because time ran out and hearing was continued. She was unable to appear at the June 10, 2014 proceedings, but the petitioner's behavior analyst, [REDACTED] appeared as a witness.

At the hearing the mother submitted four letters from Aktiv Learning Academy; Open Time Support; [REDACTED] M.D.; and Occupational Therapy Center. These were entered as Petitioner's Exhibit 1. Additionally, an 11 page document from the behavior analyst of One Time Support was submitted on behalf of the petitioner and marked as Petitioner's Exhibit 2.

The matter under appeal is a request for occupational therapy services, which was reduced by the respondent. Petitioner is administratively approved to continue receiving 4 units (1 hour) of occupational therapy 3 times a week, pending the outcome of this appeal.

Burden of proof was assigned to the respondent due to the reduction in services.

### **FINDINGS OF FACT**

1. The petitioner is a 12 year 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 3 times a week was requested by his provider, Therapy Alliance, Inc., on March 3, 2014. An eQHealth physician consultant completed a review of the request on March 5, 2014 and sent a "Notice of Outcome-Physical, Occupational, Or Speech Therapy Services" to the petitioner on March 7, 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...

The patient is a 12 year old with autism. The patient has demonstrated limited progress towards goals. 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.

4. The provider submitted a request for a reconsideration of 3/14/2014.

5. The reconsideration was completed on 3/18/2014 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 3 times a week from Therapy Alliance, Inc. pending the outcome of this appeal.

7. The physician reviewer witness for the respondent listed the petitioner's deficits, as cited in paragraph 1 above, and noted that the petitioner made significant progress regarding these deficits. For the current certification period he referenced the prescription for occupational therapy (see page 40 of respondent's exhibit 1) which is for 180 minutes (3 hours) per week for 6 months. He cited the Florida Medicaid's Therapy Services Coverage and Limitations Handbook (promulgated August 2013) which states in paragraph (2) on page 2-2 of the handbook:

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.

8. The physician reviewer then referenced the initial "PR Approval Rationale" on page 15 of Respondent's Exhibit 1 and notes that the reason for the 4 units 2 times a week is due to limited progress of the petitioner. The "PR RECON DETERMINATION" wrote that the "provider states that patient has made significant progress in the last 6 months but then states that pt met only 1/10 goals. Pt has been receiving OT for over 2.5 years and has made only modest progress."

9. The physician reviewer read into the record the definition for occupational therapy (see page 1-3):

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.

He then asserted that the approved 4 units 2 times a week complies with this definition and meets the petitioner's needs.

10. The physician reviewer explained that a letter was submitted by the petitioner's physician, [REDACTED] and the petitioner's occupational therapist, [REDACTED] that provided clarification of the petitioner's progress. He noted the petitioner had met over 71% of his goals. He stated that because the petitioner had made such progress, his need for OT was less and, therefore, reduced from 4 units 3 times a week to 4 units 2 times a week.

11. The petitioner's physician took strong exception to his prescription for 4 units of OT 3 times a week was being overridden. He stated he knows this child and the progress he has made and the petitioner needs the 3 hours of OT therapy per week.

12. The mother questioned a perceived contradiction in the agency's decision, because the hours were initially reduced because he failed to make progress, and with the new documentation that he made significant progress, that is now the reason for the reduction.

13. The physician reviewer explained that therapy services are meant to be reduced over time and that the child has been receiving OT services for almost 3 years. The progress the child has made and the period of time the child has received the OT services, he explained, is the reason for the reduction. He added that if the reduction adversely affects the child's progress, a modification request can be submitted, with supporting documentation, to request additional OT services.

14. The mother noted that while her son has made progress, he still has significant deficiencies and behavior issues that need to be addressed. She cited the last evaluation completed on her son on 2/4/14 in which is clinical impressions.

15. The progress he has made, based on the results of the Beery-Buktenic Developmental Test of Visual Motor Integration (see page 41 of Respondent's Exhibit 1):

	<u>From</u>	<u>To</u>
• Motor Coordination	5.11 years	7.4 years
• Visual Motor Integration	8.1 years	8.7 years
with his performance continuing to fall with 1 standard deviation and		

2 standard deviations, respectively, when compared to other children of his chronological age.

- Visual Perception                      12.8 years                      12.8 years

16. The behavior therapist for the petitioner, Mailyn Albuerne, has been providing services to the petitioner since April 2013. She explained that the tools the petitioner learns in the OT controlled sessions are essential to her efforts in helping him interact and cope in his natural environment – at home, in school, in public. She stated that this is the petitioner's best time to learn the skills/tools in OT and then apply them at home, in school and in public. She explained that the behavior therapy services are expected to be time limited as the patient develops the coping skills and tools that the mother also learns to support and reinforce. She stated that the next 6 months are the best period for the petitioner to make progress and he needs consistency and no change in routine. She stated that it is critical that the petitioner continue receiving the 3 hours of OT per week. The therapist offered into evidence a report she had prepared on the petitioner, dated March 10, 2014 and marked as Petitioner's Exhibit 2.

17. The physician reviewer had no questions for the behavior therapist and offered no rebuttal testimony. He did provide the following response to the behavior analyst report:

This additional information regarding [REDACTED] Behavior Therapy does not impact eQHealth Solutions' decision regarding his Occupational Therapy. Because Daniel has been receiving Occupational Therapy for one hour three times a week for 3-4 years and has made significant progress, a reduction of Occupational Therapy to one hour twice a week is now appropriate.

CONCLUSIONS OF LAW

18. 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.

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

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

21. 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]**

22. 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.

23. 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.

24. 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, 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.

25. The respondent initially presented evidence and testimony that the petitioner has "demonstrated limited progress towards goals" (see paragraph 3 above) and that is the basis for the reduced services. Then the respondent presented that the petitioner has made significant progress by meeting over 71% of his short term goals (see paragraph 10 above) and this becomes the basis for the reduction in OT services. In both instances, the length of time the petitioner has received OT services was a factor in the agency's decision.

26. The mother questioned this switching basis for the reduction and the respondent explained that the OT services are not to be provided indefinitely, but are to be weaned as the petitioner improves his skills and the parents learn the therapy exercises.

27. The behavior analyst stated that she has been providing services to the petitioner since April 2013 and that the skills the petitioner learns in the controlled (also called 'contrived') setting of the OT therapy sessions are essential to improving the petitioner's

interaction in his “natural environment” –school, home and public. She argued that the petitioner needed to continue receiving 3 hours of OT a week so the petitioner could meet his behavior therapy goals. She provided a report to which the respondent commented that the petitioner has received services for 3-4 years and has made significant progress. The respondent argues that the reduction of OT services from 3 hours to 2 hours meets the petitioner’s needs and that if the petitioner is adversely affected a modification can be submitted.

28. The behavior analyst testified that the next 6 months are the best opportunity for the petitioner to improve and that consistency is critical to her efforts to address his behavior issues.

29. The respondent provided no testimony that the medical necessity decision included consideration of the EPSDT requirements. Respondent’s Exhibit 1 does include a memo, dated August 2, 2013 regarding EPSDT and “medical necessity” as a limitation on services.

30. 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 not met its burden of proof. The respondent provided the basis for the reduction initially because the petitioner made limited progress, and then because the petitioner made significant progress with his short term occupational therapy goals. The respondent documents on page 14 of the exhibit that the petitioner has received intensive OT services for 2.5 years and the respondents witness stated the petitioner received OT services from 3-4 years. However, in considering the agency’s action the

requirements of EPSDT must be considered. In this instant case, a behavior analyst has provided important testimony that the 3 hours of OT services need to be continued for the current certification period in order for her to facilitate the petitioner's integration into his "natural environment" and meet his behavior therapy goals. The respondent did not offer any rebuttal testimony. The undersigned concludes that the EPSDT requirements necessitate that all of the petitioner's medical needs be met, if medically necessary. The behavior therapist offered testimony, not rebutted, that it was medically necessary for the petitioner to continue his 3 hours of OT therapy because the tools he learns in the controlled OT setting for the next 6 months will be critical in him meeting his behavior therapy goals in his "natural environment."

#### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is GRANTED and the Agency action of reducing the petitioner's services from 4 units 3 times a week to 4 units 2 times a week, for the certification period 3/4/2014-8/30/2014 is not 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 19<sup>th</sup> day of June, 2014,

in Tallahassee, Florida.

Warren Hunter

Warren Hunter  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal\_Hearings@dcf.state.fl.us

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