

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

FILED

JUN 12 2014

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-02519

PETITIONER,

Vs.

CASE NO. 30110384

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 28, 2014 at 10:44 a.m. in Doral, Florida.

APPEARANCES

For the Petitioner: [REDACTED] mother

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

STATEMENT OF ISSUE

At issue is the Agency's partial denial of Occupational Therapy for the certification period 2/28/2014-8/26/2014.

PRELIMINARY STATEMENT

Dr. Rakesh Mittal, physician consultant for eQHealth Solutions, appeared as witness for the respondent. Respondent entered an 80 page composite exhibit for the agency's occupational therapy 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 therapy services requested. Chapter 2 of the "Therapy Services Coverage and Limitations Handbook", dated August 2013, and an agency memo dated August 2, 2013 with the subject matter "Summary Memorandum: Medical Necessity as a Limitation on Medical Services, Including EPSDT", was also included in the exhibit.

Petitioner was represented by his mother, [REDACTED]. The petitioner's occupational therapist, [REDACTED], appeared as a witness on her behalf.

Because the matter under appeal is a reduction in services, the burden of proof was assigned to the respondent. The petitioner is administratively approved to continue receiving 4 units of occupational therapy services three (3) times a week, pending the outcome of this appeal.

FINDINGS OF FACT

1. The petitioner is a 19 year old recipient of the Medicaid program. She has been diagnosed with cerebral palsy.
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 request for occupational therapy services was for 4 units¹ of service three (3) times per week, and represents a continuation of the amount and frequency of services received previously. EQHealth Solutions determined

¹ A unit is equal to 15 minutes; 4 units equals 1 hour of service.

that 4 units two(2) a week was sufficient and that the other unit of service (1 hour) was not medically necessary. Burden of proof was assigned to the agency for the reduction in services. The petitioner continues to receive 4 units of occupational therapy 3 times a week, pending the outcome of this appeal.

3. The "Notice of Outcome..." to the petitioner was sent 3/19/2014 and stated the reason for the denial was that "...the services are not medically necessary as defined in 59G-1.010 (166) of the Florida Administrative Code..."

4. Notice of the partial denial was also sent to the petitioner's provider, SLB Therapy, Inc. on 3/19/2014 and provided the principle reason for the decision as:

Submitted information does not support the medical necessity for requested frequency and/or duration. Therapy services are approved for partial length of service requested, based on the documentation provided.

It also provided the clinical rationale for the decision as:

The patient is a 18 year old with cerebral palsy. 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.

5. A "Notice of Reconsideration Determination..." was then sent to the petitioner on 3/31/2014 which upheld the initial decision.

6. The "Notice of Reconsideration Determination..." sent to petitioner's provider on 3/31/2014 provided the same clinical rationale as the initial decision, but also noted:

The principal reason for this determination: The information submitted for reconsideration provided no evidence to support the reversal of the previous decision. The original decision is upheld.

7. The petitioner submitted a timely hearing request on 4/2/2014 and continues to receive 4 units of occupational therapy 3 times a week (3 hours), pending the outcome of her appeal.

8. The physician consultant for the respondent, Dr. Mittal, noted that the petitioner is diagnosed with cerebral palsy and is 19 years old. He stated that child must have received occupational therapy from early childhood and has received intensive occupational therapy from eQHealth for over 2 ½ years. However, the petitioner has only made mild to moderate progress. The physician consultant referenced specific statements made by the petitioner's occupational therapist in her 2/27/2014 (pages 39-43 of respondent's exhibit 1).

9. On page 41, he notes the therapist wrote the petitioner, "...continues to show poor trunk control..." and in the next paragraph, "...continues to demonstrate slow progress in occupational therapy. On page 40, he further noted that the petitioner "...continues to require moderate to maximal encouragement and assistance to color..."

10. The physician consultant concluded that all the years the petitioner has received occupational therapy, she had made minimal to moderate progress. As a result, he concurs with the agency's decision to reduce the weekly occupational therapy by one hour, to 4 units twice a week (or 2 hours a week).

11. The mother stated her daughter needed 3 hours of occupational therapy in order to ensure a better quality of life. She stated she was not an expert, has not been trained in occupational therapy and that a professional should be providing 3 hours a

week. She further stated that her daughter needed the 3 hours to prepare her to operate an electric wheelchair.

12. The occupational therapist (OT) stated it was important that the petitioner continue receiving the "extra hour" of service because during their therapy services, they provide the petitioner with continuous stretching and positioning 2-3 times a day. She said she didn't know if the mother could provide stretching and positioning 2-3 times day and that we would need to ask her. The OT also explained that the petitioner requires splinting and has braces on her hands, elbows and knees to prevent further contractures. She pointed out that the petitioner prefers to use her left side, so efforts are made to encourage her to use her right side.

CONCLUSIONS OF LAW

13. 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.

14. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

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

16. 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.

17. 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.[emphasis added]

(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]

18. 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.

19. 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.

20. The Therapy Services Coverage and Limitations Handbook (Handbook), promulgated August 2013, page 2-14, provides the following...

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.

21. The Handbook, on page 2-12 sets forth the initial Plan of Care components and states in part:

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.

22. In response to the requirement for "patient/family education", the occupational therapist (OT) advised that they encouraged the mother to attend their therapy sessions, which she has attended, where they explain to her about stretching and positioning the petitioner. How to stretch her arms and how to stretch her legs. While the OT stated the mother does a great job with stretching and positioning, she was unable to explain how the mother's treatment was assessed when determining the number of therapy hours needed. The OT has been providing therapy services to the petitioner for approximately 4 years.

23. The mother stated that she was not trained to provide therapy to her daughter and felt it should be left to the professionals. The physician consultant stated that the petitioner needs to be stretched and re-positioned 7 days a week, not just for the hours she is with the therapist.

24. The physician consultant explained that the agency's decision to reduce the OT services by 1 hour a week is based on the petitioner being 19 years of age and that during that time, the mother should have been taught by the therapist how to provide some of the stretching and positioning exercises. It was also based on the petitioner's minimal to moderate progress while she received intensive occupational therapy services for at least the 2 ½ years that eQHealth approved the services.

25. 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. Additionally, the agency's decision complies with the EPSDT requirements as outlined above. The mother's preference for the professionals to provide the occupational therapy is not a basis for determining medical necessity. Therapy services need to "Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider" (as noted above). The therapist's acknowledgement that she doesn't know if the mother can provide stretching and repositioning 2-3 times a day to her daughter further undermines the requested "extra hour" since the therapist is to train and work with the parent/caregiver in providing the needed care/services to the petitioner in the home.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency action is affirmed.

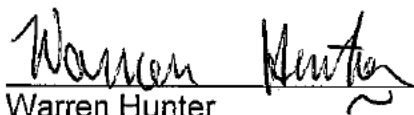
NOTICE OF RIGHT TO APPEAL

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 12th day of June, 2014,

in Tallahassee, Florida.



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