

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

FILED

JUN 11 2014

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-02904

PETITIONER,

Vs.

CASE NO. 29390205

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 8, 2014 at 11:59 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner:  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 reduction of Occupational Therapy services for the certification period 2/15/2014-8/13/2014 from 4 units 3 times a week (3 hours) to 4 units 2 times a week (2 hours).

PRELIMINARY STATEMENT

Dr. Rakesh Mittal, physician consultant for eQHealth Solutions, appeared as witness for the respondent. Respondent entered a 57 page composite exhibit for the agency's occupational therapy action into evidence and was 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 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 not administratively approved to continue receiving 4 units of occupational therapy services three (3) times a week, because her appeal was filed after the deadline to continue benefits.

The record was held open to May 23, 2014 for the petitioner to submit additional information to be considered in finalizing the agency's decision. The one page letter was received May 8, 2014, and marked as petitioner's exhibit 1. The respondent's response to the new information was received on May 28, 2014 and marked as respondent's exhibit 2.

FINDINGS OF FACT

1. The petitioner is a 16 year old recipient of the Medicaid program. She has been diagnosed with autism spectrum disorder. She has deficits of sensory processing, endurance, coordination, and also behavioral issues.

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

3. The "Notice of Outcome..." to the petitioner was sent 2/6/2014 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 2/6/2014 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.

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

It also provided the clinical rationale for the decision as:

The patient is a 16 year old with ASD [autism spectrum disorder], has deficits of sensory processing, endurance, coordination, and also behavioral issues. The patient has been receiving same occupational therapy for more than 2.5 years and has made only modest progress and has met only 1 out of 5 goals. The patient's needs can now be met by maintenance occupational therapy. 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 request for a reconsideration was not received from the provider by eQHealth.
6. The petitioner submitted a hearing request on 3/20/2014. To continue receiving 4 units of occupational therapy 3 times a week (3 hours), the hearing request needed to be filed on or before 2/16/3014.
7. The physician consultant for the respondent, Dr. Mittal, noted that the petitioner is diagnosed with autism and does not receive occupational services from any other source. He noted that the petitioner met 1 out of 5 of her short term goals and is making minimal to modest progress. He also noted that the provider did not submit any results from standardized testing. Petitioner's deficits include obsessive compulsive behaviors, sensory processing (self-injurious behaviors), lack of endurance and coordination deficits.
8. The physician consultant explained that since the petitioner is almost 17 years old, she has probably received occupational therapy services in her early childhood. He stated that the child has received 4 units of OT 3 times a week for at least 2 ½ years, since eQHealth began prior authorization reviews for therapy services. He reviewed the OT evaluation completed 2/15/2014. He read the therapist's "observations" into the record, that the petitioner:

Exhibits a high level of distractibility from visual and auditory stimuli, accompanied by impulsive type behaviors, requiring consistent redirection to presented and non-preferred activities. Continues to engage in obsessive-compulsive type behaviours...

9. He summarized that the petitioner has had intense OT services for a long time; continues to have these deficits; and met only 1 out of 5 goals-indicating a lack of progress. Based on these considerations, the petitioner's OT services were reduced to 4 units 2 times a week.

10. The mother began by stating a letter had been sent to request a reconsideration. The respondent indicated they had not received any such letter. The record was held open to May 23, 2014 to allow the petitioner to submit the letter and for the respondent to consider it in finalizing the agency's decision.

11. The mother stated her daughter has made the progress she has because of the intensive therapy. As the petitioner matures, the mother stated her daughter continues to need the same level of intensity – 4 units 3 times a week (3 hours) – in order to function independently. She feels that reducing the number of hours will be hindering her daughter's progress. She stated that physical therapy was cancelled and the occupational therapy was addressing those needs. If OT is reduced, I will need to officially request physical therapy services again because the OT therapist will not be able to address.

12. The petitioner's OT therapist explained that because the petitioner was maturing, she needed the 3 hours of OT to begin focusing on tasks that would help the petitioner be more independent. She is developing goals to address IADL skills, such as

housekeeping tasks, as well as ADL skills such as self-feeding and oral hygiene. We also need to address her continuing deficits as well.

13. The mother disagreed with reducing the hours because her daughter will develop skills over time and we (the therapist, school, and the mother) need to make the petitioner a functional member of society. She argued she needed the opportunity. The therapist stated that with more focus on ADL's and IADL's as well as the petitioner's deficits, the hours should not be reduced. The petitioner has and will make modest progress but she noted this is to be expected for a child with autism.

14. The mother stated her daughter has been taught at home how to fold clothes, how to make her bed; how to bath and dry herself. She does have problems with her personal hygiene and brushes her teeth, but the mother brushes her teeth afterwards. The mother stated the family tries to follow up at home what the therapist has taught her daughter at school. The petitioner has always had sensory issues but she calms down when performing her ADL's.

15. The petitioner submitted a letter dated 2/13/2014 which stated that the petitioner "continues" to exhibit:

- A high level of distractibility from auditory and visual stimuli requiring consistent to tasks;
- Decreased functionality with ADL skills as they pertain to the manipulation of utensils for self-feeding tasks, and oral hygiene, for example;
- Decreased functional independence with IADL skills as they pertain to household tasks and the ability to live independently;
- Decreased self-regulatory and task coping skills with non-preferred activities;
- Sensory seeking behaviours which continue to significantly impact the recipient's ability to function within all environments;

- Decreased FM [fine motor] writing, colouring and cutting skills as they pertain to are mid-range control/grading of movement essential for school-based activities.

While this letter is dated 2/13/14 and the OT evaluation is dated 2/15/14, two days later, testimony was offered that the letter was submitted for reconsideration and that the OT evaluation was actually completed the end of January.

16. The physician reviewer considered the new information and provided an email response in which he wrote that based on the information submitted originally, the discussion held at the fair hearing and the additional information submitted, he continued to agree with the original decision of 4 units of occupational therapy twice a week.

CONCLUSIONS OF LAW

17. 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.

18. 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.

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

20. 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.

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.[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]

22. 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.

23. 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.

24. 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.

25. 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.

26. The respondent's decision to reduce the occupational therapy services by 1 hour per week is because the petitioner has made modest progress over the long period of time she has received OT services. The additional information provided by the petitioner's therapist underscores the continued deficits the petitioner has.

27. The mother stated that physical therapy services were stopped and that the OT services were addressing those needs. She explained that with the reduction in OT service hours, physical therapy services would need to be requested again.

28. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer concludes that the respondent has met its burden of proof. Additionally, the agency's decision complies with the EPSDT requirements as outlined above. If the petitioner's needs or circumstances change the provider can submit, with appropriate supporting documentation, a modification request for additional OT service hours and/or can request physical therapy services.

DECISION

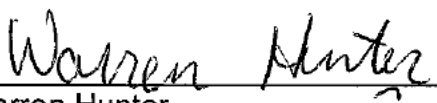
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency action is affirmed.

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 1st day of June, 2014,

in Tallahassee, Florida.


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:  Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager