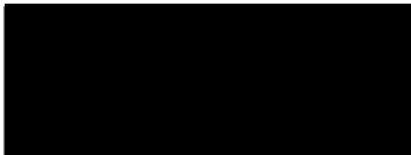


FILED

JUL 16 2014

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

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



PETITIONER,

vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 05 HERNANDO
UNIT: AHCA

APPEAL NO. 14F-03146

CASE NO.

RESPONDENT.

FINAL ORDER

Pursuant to notice, a hearing convened before Hearing Officer Patricia C. Antonucci on May 28, 2014 at approximately 10:00 a.m. All parties and witnesses appeared via teleconference.

APPEARANCES

For the Petitioner: [REDACTED] Petitioner's mother

For the Respondent: Cecilia Young, RN Specialist,
Agency for Healthcare Administration

STATEMENT OF THE ISSUE

At issue is whether Respondent was correct to deny Petitioner's request for continued Speech Therapy (or 'ST') services of four units, two times per week (a total of 2 hours each week).

PRELIMINARY STATEMENT

The minor Petitioner was not present, but was represented by her mother, [REDACTED]. Additional testimony on Petitioner's behalf was provided by [REDACTED] ("Debbie"), [REDACTED] Petitioner's speech therapist. The Respondent was represented by Cecilia Young, Registered Nurse Specialist with the Agency for Healthcare Administration (AHCA). Respondent also presented one additional witnesses: Darlene Calhoun, M.D., Physician Reviewer with eQHealth Solutions.

Respondent's Exhibits 1 through 8, inclusive, were accepted into evidence. Said exhibits included a Memorandum of Law regarding Medicaid's interpretation of Early and Periodic Screening, Diagnosis, and Treatment (EPSDT). Administrative Notice was taken of: Fla. Stat. § 409.905, Fla. Admin. Code R. 59G-4.320, and pertinent portions of the Florida Medicaid Therapy Services Coverage and Limitations Handbook (February 2014).

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. The Petitioner is a 13-year old female, born April 4, 2001. At all times relevant to this proceeding, Petitioner has been eligible for and receiving Medicaid.
2. Petitioner is diagnosed with a mixed receptive and expressive language disorder. She also has Pervasive Developmental Disorder. In November of 2013, she was diagnosed with Asperger's/ Autism Spectrum Disorder (ASD). Petitioner has a history of hearing loss, including ear tube placement, but has since tested as 'within normal limits' for both hearing and vision. She has trouble expressing herself in both speech

and writing, and also has trouble understanding information presented to her.

3. The Petitioner tests well, but functional application of her language skills is lacking. She does not understand or distinguish figurative speech, such as "I'll be back in one second," or "bare feet" (she will count seconds when told the former, and thinks the latter refers to the feet of a bear). She also has processing trouble, including difficulty following routines, a lack of reasoning and problem-solving, and trouble with directions. The Petitioner becomes frustrated by her inability to understand when conversing with others. While her cognition is good, she is unable to find the words she needs to express herself. To compensate for trouble identifying proper words or ideas, she uses multiple, roundabout descriptors to arrive at her intended meaning. This difficulty in language processing also extends to reading, where Petitioner struggles with comprehension.

4. The Petitioner used to attend public school, switched to a private, charter school for increased student-teacher interaction, and is now home-schooled for one-on-one attention.

5. Petitioner is compliant with all ST activities while attending therapy. She also works on a ST home plan with her mother.

6. On April 2, 2013, Petitioner's provider agency, Superior Therapy Services, Inc., submitted a request on behalf of the Petitioner, to continue her previously authorized ST services of four units, twice per week. Included with the request for services was Petitioner's ST Plan of Care, dated February 20, 2014. Per the plan, "[w]hile [Petitioner] has made considerable progress over the past year, continued therapy services are warranted."

7. To receive therapy services via Medicaid, a prior service authorization request must be submitted by a provider along with information and documentation required to make a determination of medical necessity. The request is reviewed by a peer review organization (PRO), in this case, eQHealth Solutions, Inc., who is contracted by AHCA.

8. Petitioner's service request was submitted to the PRO for continuation of ST (four units, two times a week) during the certification period of February 28, 2014 to August 26, 2014.

9. Once the PRO receives a service request, it conducts a first-level, clinical review to determine if additional information is needed. If the first-level reviewer cannot approve the service request, the request is forwarded to a licensed physician, who makes a determination approve, partially approve, or deny the service. These second-level reviewers also conduct reconsideration reviews, upholding, modifying, or reversing the PRO's initial determination.

10. On or about April 3, 2014, a first-level reviewer examined Petitioner's ST request, noting that Petitioner's formal testing indicates language skills within normal limits. Based upon review of Petitioner's file, test scores, and the National Guidelines, the reviewer recommended denial, noting "ST services are not warranted at this time."

11. After review on referral, the physician reviewer noted: "The patient is a 12 year old with Asperger's and normal receptive/expressive language and literacy test scores who does not require speech therapy. The request has to be denied."

12. Via letter dated April 7, 2014, the PRO notified Petitioner's physician and provider of its intent to deny the request for ST services. Said letter stated, in pertinent part:

PR Principal Reason – Denial: Submitted information does not support the medical necessity for requested services.

Clinical Rationale for Decision: The patient is a 12 year old with Aspergers. The patient has normal receptive language, expressive language and literacy test scores. The requested units are not approved as the patient does not require speech therapy at this time.

13. On April 7th, a notice was also sent to the Petitioner. Petitioner's notice did not include information regarding the principal denial reason or the clinical rationale, stating only:

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.

14. On April 14, 2014, Petitioner's service provider and Petitioner's mother submitted a reconsideration request, noting that although the PRO reviewer had focused on test scores, alone, the provider (speech language pathologist) had diagnosed/classified Petitioner's deficits based upon clinical observation, test scores, and petitioner's responses during testing. The reconsideration request further indicated: "Nothing within the Speech/Language definitions or relevant legal authority limits Speech/Language Therapy to ONLY provide therapy services if standardized test scores are below normal, when functional limitations resulting from the child's medical diagnosis are identified."

15. Upon review of the reconsideration request, a physician reviewer noted:

PR RECON DETERMINATION: 12 yo with Asperger's. Speech therapy has been requested although, per standardized testing, both receptive and expressive language skills are well within the normal range for age.

Uphold previous denial. All submitted documentation was reviewed and the patient lacks sufficient language deficits to warrant skilled therapy. Based upon the information provided, tutoring is a viable option.

16. By letter dated April 22, 2014, the PRO notified Petitioner's physician and provider of its decision upon reconsideration. Said letter stated, in relevant part:

The medical basis for the reconsideration decision is as follows: 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.

17. Again, a notice was also sent to the Petitioner on April 22nd, however, the only rationale provided was identical to that contained in the letter of April 7, 2014.

18. On or about April 16, 2014, Petitioner's representative requested a hearing to challenge AHCA's proposed service denial.

19. At hearing, Dr. Calhoun testified that the PRO conducted a paper review of Petitioner's file, examining only documents submitted by her provider. The PRO did not speak to Petitioner's caregivers or examine the petitioner, in person.

20. Petitioner's Plan of Care (POC) from February 2014 reflects Petitioner's scores on two standardized tests. The Test of Language Development (TOLD) and the Word Identification Test (WIST) were administered to Petitioner in February of 2013 and again in February of 2014. Her scores were as follows:

TOLD				
Component	Percentile 2013	Standard Score 2013	Percentile 2014	Standard Score 2014

Core Subtests				
Sentence Combining	9	6	37	9
Picture Vocabulary	25	8	75	12
Word Ordering	16	7	37	9
Generals	2	4	75	12
Grammatical Comprehension	37	9	91	14
Malapropisms	50	10	XX	XX
Multiple Meaning Words	XX	XX	63	11
TOLD-I: 4 Composites				
Spoken Language	12	82	68	107
Listening Language	35	94	86	116
Speaking	3	72	50	100
Semantics	13	83	75	110
Grammar	13	83	61	104
Organizing	XX	XX	55	102

WIST						
Area Assessed	Percentile 2013	Standard Score 2013	Grade 2013	Percentile 2014	Standard Score 2014	Grade 2014
Word Identification	30	92	<5.0	35	94	6.3
Spelling	18	89	<5.0	21	88	<5.0
Fundamental Literacy	19	87	<5.0	23	89	<5.0

21. Per the POC, Petitioner's TOLD scores demonstrate statistically significant gains from administration in 2013 to administration in 2014, after receiving ST services.

However, during testing, Petitioner requested assistance via repetition of questions to offset her working memory deficits and she used trial and error (verbally running through her options) to arrive at appropriate responses. Petitioner continues to have difficulty differentiating between verb suffixes ('-ed') and words that end with a 'T' or 'D' sound, struggles with audio processing, visual memory, and production of multi-syllable and age-appropriate words.

22. Petitioner's POC and assessment summarize clinical findings, noting that although Petitioner made progress during the prior certification period, she requires services to maintain learned skills, develop increased functional language skills, and prevent regression. The POC sets forth specific goals and exercises towards accomplishing continued success, including but not limited to: increasing working memory, visual and auditory processing skills, discrimination, sequencing, synthesis, word identification, sentence formation, and written/contextual language via syntax drills, morphology drills, auditory drills, semantic exercises, and training in following directions. The POC recommends that Petitioner also receive occupational therapy services, though the goals addressed within the plan are unique to her ST needs.

23. At hearing, Dr. Calhoun noted that her medical opinion is based upon Board Certification in Pediatrics since 1994, additional Board Certification in Neonatal and Perinatal care, experience working with at-risk newborns, and her work as a prior authorization reviewing physician for seven managed care companies. Dr. Calhoun testified that she reviewed the results of Petitioner's standardized tests, which include

TOLD scores within the average/normal range of 85-115. She indicated that the PROs decision was made in part via consultation with experienced speech therapists at eQHealth; however, none of the individuals consulted were present to testify at hearing. Dr. Calhoun echoed the prior reviewing physicians' opinion that Petitioner's needs did not justify provision of ST service and might be appropriately addressed through other services, such as tutoring.

24. Petitioner's mother is familiar with petitioner's everyday interpersonal interactions, and teaches Petitioner at home through a home-school program. She is

very concerned that Petitioner will regress if her ST is discontinued and that this will affect Petitioner's ability to function academically as well as in her daily life.

25. [REDACTED] Petitioner's speech therapist/ speech language pathologist, is a licensed and certified Speech Language, who has practiced ST for approximately 20 years. [REDACTED] has experience working with Autistic/Asperger's children, can recognize the difference between normal and impaired language skills, and is able to diagnose language disorders. She noted that it is not uncharacteristic for children with Petitioner's particular disabilities to test within normal limits. Additionally, [REDACTED] noted that although Petitioner's scores improved from 2013 to 2014, the discrepancy between her expressive and receptive skills remains, confirming that a global/mixed language disorder is present. As such, [REDACTED] opined that viewing scores in solidarity does not present a true impression of the Petitioner's needs.

26. To support her request for services of 2 hours per week, [REDACTED] reviewed Petitioner's test scores in conjunction with clinical observations and explained that the scores do not accurately reflect Petitioner's needs or skills in a "real life" setting. Ms.

██████████ explained that in the testing environment, Petitioner is permitted multiple chances to arrive at the correct answer, and prodded for more information when she comes close to being correct. The Petitioner has participated in memory training exercises in ST, and is repeatedly told that when testing, she is permitted to ask if she does not remember instructions or needs assistance. Even then, she often forgets to do this and needs to be redirected toward the task. When asked questions without prompting, Petitioner is unable to arrive at the proper answer. In functional, real-world conversation, the Petitioner noticeably struggles to find and produce the words she wants to say, defaulting to generic descriptors such as "stuff" and "that thing." When reading, she is unable to conclude the main idea of a passage. She continues to demonstrate deficits in literacy, executive functioning, problem solving, and reasoning.

27. Based upon observations, assessments, and evaluations of Petitioner, it is clear to ██████████ that the Petitioner is still unable to follow routines or multi-step directions (even when visual guides are implemented). The Petitioner answers questions with non-sequiturs, constructs sentences that do not make sense, and gets frustrated in conversation because she does not realize she is misinterpreting what is said. It is ██████████ opinion that terminating Petitioner's ST will cause regression in her language skills.

28. It was ██████████ position, based upon her observations of the Petitioner, her provision of ST to Petitioner, her direct assessments of Petitioner, and her training, that Petitioner's problems are directly related to an underlying, mixed language disorder. The Petitioner requires two sessions of ST per week in order to address her needs at an intensity through which she can maintain what she has gained so far, and improve upon

her remaining deficits. Tutoring will not suffice to meet Petitioner's needs. The Petitioner already works on academics one-on-one through homeschooling, and where tutors are trained to employ rote memorization in reinforcing curriculum, speech therapists are trained to address foundational language issues.

29. Following testimony from Petitioner's witnesses, Dr. Calhoun stated that a patient's diagnoses do not determine what services will be approved. As such, the PRO relies upon standardized testing as a means of comparing one patient to another, in order to determine whether state-funded services are warranted. Dr. Calhoun inquired

as to whether Petitioner had recently been tested by an audiologist, as she felt the results might help to explain why Petitioner would score within the average range on standardized assessments, but still demonstrate functional deficits. It was Dr. Calhoun's position that absent documented results of audiological or other testing which underscored Petitioner's needs, approval of state-funded ST was improper. Dr. Calhoun emphasized that Petitioner was free to seek private-funded/out-of-pocket ST.

30. [REDACTED] stated that her background includes 30 years as a pediatric nurse, and that while she recognizes the need for standardized testing, she is concerned that Petitioner would not have scored as well as she did on these tests, had they been administered by a therapist who was unfamiliar with Petitioner's particular skill set and could not assist her during the evaluation. [REDACTED] indicated that she was concerned about discontinuing ST, and worried that it might indeed cause Petitioner's language development to regress.

CONCLUSIONS OF LAW

31. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to Florida Statutes Chapter 120.

32. Legal authority governing the Florida Medicaid Program is found in Fla. Stat., Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, administers the Medicaid Program.

33. The Florida Medicaid Therapy Services Coverage and Limitations Handbook, February 2014 (The Handbook) has been incorporated, by reference, into Fla. Admin. Code 59G-4.320(2).

34. This is a Final Order, pursuant to § 120.569 and § 120.57, Fla. Stat.

35. This hearing was held as a *de novo* proceeding, in accordance with Fla. Admin. Code R. 65-2.056.

36. The burden of proof in the instant case is assigned to the Respondent. The standard of proof in an administrative hearing is preponderance of the evidence. (See Fla. Admin. Code R. 65-2.060(1).)

37. Fla. Stat. § 409.905 addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law....

(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 all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

38. The Handbook describes the services covered under the Florida Medicaid Home Health Services Program, including speech therapy.

39. Page 1-4 of The Handbook defines Speech-Language Pathology as follows:

Speech-language pathology services involve the evaluation and treatment of speech-language disorders.

Services include the evaluation and treatment of disorders of verbal and written language, articulation, voice, fluency, phonology, mastication, deglutition, cognition, communication (including the pragmatics of verbal communication), auditory processing, visual processing, memory, comprehension and interactive communication as well as the use of instrumentation, techniques, and strategies to remediate, maintain communication functioning, acquire a skill set, restore a skill set, and enhance the recipient's communication needs, when appropriate....

40. Similarly, Fla. Admin. Code R. 59G-1.010(270) states:

(270) "Speech therapy" means the identification and treatment of neurological deficiencies related to feeding problems, congenital or trauma-related maxillofacial anomalies, or neurological conditions that affect oral motor functions and includes the evaluation and treatment of problems related to oral motor dysfunction.

41. Consistent with the law, AHCA's agent, eQHealth, performs service authorization reviews under the Prior Authorization Program for Medicaid recipients in the state of Florida. Once eQHealth receives a ST service request, its medical personnel conduct file reviews to determine the medical necessity of requested services, pursuant to the authorization requirements and limitations of the Florida Medicaid Program, and the review process described, above. As noted in the Handbook, the PRO may call a

recipient's primary care physician or conduct phone or in-person interviews with the recipient to obtain more information.

42. Florida Administrative Code Rule 59G-1.010(166) defines medical necessity, as follows:

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

43. As the Petitioner is under 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements. The undersigned must, therefore, consider both EPSDT and standard Medical Necessity requirements (both cited, above) when developing a decision.

44. EPSDT augments the Medical Necessity definition contained in the Florida Administrative Code via the additional requirement that all services determined by the

agency to be medically necessary for the *treatment, correction, or amelioration* of problems be addressed by the appropriate services.

45. United States Court of Appeals for the Eleventh Circuit clarified the states' obligation for the provision of EPSDT services to Medicaid-eligible children in Moore v. Reese, 637 F.3d 1220, 1255 (11th Cir. 2011). The Court provided the following guiding principles in its opinion, (which involved a dispute over private duty nursing):

(1) [A state] is required to provide private duty nursing services to [a child Medicaid recipient] who meets the EPSDT eligibility requirements, when such services are medically necessary to correct or ameliorate [his or her] illness and condition.

(2) A state Medicaid plan must include "reasonable standards ... for determining eligibility for and the extent of medical assistance" ... and such standards must be "consistent with the objectives of" the Medicaid Act, specifically its EPSDT program.

(3) A state may adopt a definition of medical necessity that places limits on a physician's discretion. A state may also limit required Medicaid services based upon its judgment of degree of medical necessity so long as such limitations do not discriminate on the basis of the kind of medical condition. Furthermore, "a state may establish standards for individual physicians to use in determining what services are appropriate in a particular case" and a treating physician is "required to operate within such reasonable limitations as the state may impose."

(4) The treating physician assumes "the primary responsibility of determining what treatment should be made available to his patients." Both the treating physician and the state have roles to play, however, and "[a] private physician's word on medical necessity is not dispositive."

(5) A state may establish the amount, duration, and scope of private duty nursing services provided under the required EPSDT benefit. The state is not required to provide medically unnecessary, albeit desirable, EPSDT services. However, a state's provision of a required EPSDT benefit, such as private duty nursing services, "must be sufficient in amount, duration, and scope to reasonably achieve its purpose."

(6) A state "may place appropriate limits on a service based on such criteria as medical necessity." In so doing, a state "can review the medical necessity of treatment prescribed by a doctor on a case-by-case basis" and may present its own evidence of medical necessity in disputes between the state and Medicaid patients (citations omitted).

46. In terms of being specific and individualized, in keeping with Fla. Admin. Code R. 59G-1.010(166)(2), Petitioner's POC is based upon her therapist's evaluation, via standardized tests *and* professional observation of the petitioner, such that said POC is "an individualized and specific written program...designed to meet the medical, health and rehabilitative needs of the recipient." (See page 2-11 of the Handbook). Her POC address her individualized needs by setting specific goals and incorporating exercises to accomplish said goals.

47. Fla. Admin. Code R. 59G-1.010(166)(2) also bears the requirement that any provided service not be in excess of the patient's needs. Although the Respondent suggests that provision of ST is excessive, nothing within the ST definitions or relevant legal authority excludes any of the activities Petitioner's ST provider recommends. ST's treatment is designed to address verbal and written language deficits, and includes fluency, phonology, cognition, the pragmatics of verbal communication, auditory and visual processing, memory, comprehension, and interactive communication, all of which are specifically included in the relevant statutory and Florida Administrative Code definitions of speech therapy.

48. Similarly, with regard to Fla. Admin. Code R. 59G-1.010(166)(3)'s requirement that a service be consistent with generally accepted professional medical standards as determined by the Medicaid program, no evidence was presented to indicate that it is medically inappropriate to provide ST in the manner indicated within petitioner's POC. Again, the Handbook definition for ST services specifically *includes*: "verbal and written language ...[and] the use of instrumentation, techniques, and strategies to remediate and enhance the recipient's communication needs..." (page 1-4).

49. With regard to Fla. Admin. Code R. 59G-1.010(166)(1), ST services were initially approved to treat and ameliorate the language disorder and resultant deficits which Petitioner's speech/language disorder present. Respondent contends that Petitioner no longer requires the service, while Petitioner argues that continued skill acquisition and maintenance of her progress, thus far, are necessary to prevent regression and to overcome a significant language disability/impairment.

50. The undersigned finds that continuation of ST is supported by page 1-4 of the Handbook, which notes ST may be provided to "maintain communication functioning, acquire a skill set, restore a skill set, and enhance the recipient's communication needs, when appropriate." As such, while ST cannot be authorized indefinitely, it is appropriate to provide ST until deficits are ameliorated and prolonged progress is maintained, so as to ameliorate the underlying disability (Fla. Admin. Code R. 59G-1.010(166)(1)).

51. There is little to no evidence to indicate that speech therapy is furnished primarily for the convenience of the Petitioner, her family, or her provider (Fla. Admin. Code R. 59G-1.010(166)(5)).

52. While certain components of Petitioner's testing scores show Petitioner within the average range, [REDACTED] clearly explained why these scores are not an accurate measure of Petitioner's real-life abilities, and why the discrepancy between expressive and receptive language scores, along with [REDACTED] clinical judgment, represent a closer reflection of Petitioner's actual abilities. A global approach toward assessing petitioner's needs is in keeping with the Therapy Handbook's description of evaluations. Indeed, page 2-9 of the Handbook notes:

Evaluations determine the recipient's level of function and competencies through therapeutic observation and standardized testing measures appropriate to the language, speech, or physical limitations and specific to the therapeutic services required.

Evaluation results should be used to develop baseline data to identify the need for early intervention for therapeutic services and to address the recipient's functional abilities, capabilities, and activity level deficits and limitations.
(emphasis added)

As such, no single test, standard, or evaluation criterion should be considered dispositive of the need for ST services, or lack thereof. Similarly, while the PRO may prefer to have documented testing, such as a report from an audiologist, there is no such requirement to establish a need for Medicaid-funded ST. The clinical observations of a professional in the field sufficiently contribute to a global review of the consumer's needs.

53. While it is noted that the PRO suggests Petitioner has the option to seek therapies from a non-Medicaid source, it is also noted that the ability of a consumer to obtain privately-funded services is not, itself, a factor in determining whether Medicaid-funded services are medically necessary.

54. After examining all testimony and evidence, it is determined that Petitioner requires ST to address the effects of her language disorder on speech, reading, writing, and comprehension, and well as the underlying disorder, itself. These needs and the therapeutic plan for addressing same substantiate continuation of ST at four units of service, two times per week, at this time. Though Petitioner has shown significant progress during the prior certification period, she is still not performing at a functional

level. Terminating Petitioner's ST, now, would seem counterproductive to remediating her disorder.

55. When jointly considering the requirements of both ESPDT and Medical Necessity, along with a review of the totality of the evidence and legal authority, the undersigned concludes that Respondent has not met its burden of proof to show that termination of speech therapy services is appropriate in the instant case.

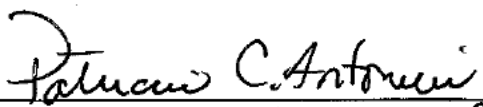
DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, Petitioner's appeal is hereby GRANTED. The Respondent is directed to continue providing petitioner with four units of speech therapy, two times a week, through the remainder of the certification period.

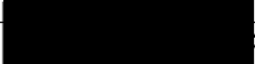
NOTICE OF RIGHT TO APPEAL

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 16 day of July, 2014,
in Tallahassee, Florida.


Patricia C. Antonucci
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