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

[redacted]

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.
_____/

APPEAL NO. 14F-03148

CASE NO. 30352607

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter on June 3, 2014 at 1:36 p.m. in Doral, Florida. Proceedings were continued telephonically on June 10, 2014 at 11:51 a.m.

APPEARANCES

For Petitioner: [redacted] mother

For Respondent: Yadira Carrasquillo, Registered Nurse Specialist
Agency for Health Care Administration

ISSUE

The issue is whether respondent's action is appropriate in denying petitioner's request for 5 hours of skilled nursing services Monday through Friday for the certification period of March 12, 2014 through May 10, 2014.

PRELIMINARY STATEMENT

At both proceedings, respondent was represented by Yadira Carasquillo, registered nurse (RN) specialist with the Agency for Health Care Administration

(AHCA). Ellen Theophilopoulus, MD and physician consultant for eQHealth Solutions, presented testimony on AHCA's behalf as a representative from the Agency's Quality Improvement Organization (QIO).

Respondent entered a document of 56 pages into evidence which was marked as respondent's composite exhibit 1. The exhibit contained clinical information as well as eQHealth's documentation of their initial decision on the provider's request for nursing services on behalf of the petitioner. The respondent also entered pages A1 through A66 which contained excepts of FS 409.905 and FS 409.913, a copy of FAC 59G-4.130, pages 1 through 2-36 from the Home Health Services Coverage and Limitations Handbook, dated March 2013, along with an 8/2/2013 memo regarding medical necessity and EPSDT. This document was marked as Respondent's Exhibit 2.

The petitioner was represented by her mother and primary caregiver, [redacted] who submitted a 126 page document of the petitioner's medical information for the past year. This document was marked as Petitioner's Exhibit 1. The petitioner appeared at the in person proceedings on June 3, 2014. "Boris",#699, provided Spanish interpretation services for the petitioner for both proceedings.

Because the matter under appeal is an initial request for services no administrative services are applicable and burden of proof was assigned to the petitioner.

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 7 year old female Medicaid recipient. She is diagnosed with type 1 diabetes, attention deficit hyperactivity disorder (ADHD), autism spectrum disorder, and seizures. She also has some behavior issues for which she is receiving behavioral therapy (see page 1 of Petitioner's Exhibit 1) c. She receives Novolog injections through a pump and has other oral medications. She is not on a complex medication regimen.

2. Petitioner lives with her mother who is the petitioner's sole caregiver. The mother works, taking care of elders. She had to reduce her patient work load in order to care for her daughter.

3. The Agency contracts with a Quality Improvement Organization (QIO) to perform medical utilization reviews for private duty nursing and personal care services through a prior authorization process for Medicaid State Plan beneficiaries. The prior authorization review determines the medical necessity of the hours requested pursuant to the requirements and limitations of the Medicaid State Plan. The Agency's QIO is eQHealth Solutions.

4. A request for service is submitted by a provider along with all information and documentation required for the QIO to make a determination of medical necessity for the level of service requested. A review is conducted for every new certification period and a request for modification may be submitted by a beneficiary during a certification period.

5. The petitioner is not receiving any skilled nursing services, pending the outcome of this appeal.

6. On March 28, 2014, a request for skilled nursing services to be provided by an LPN at a rate of 5 hours a day Monday, Tuesday, Wednesday, Thursday, and Friday. It was submitted by the provider for the petitioner for the certification period 3/12/2014 to 5/10/204. The request represents an initial request (also call a new admission) for skilled nursing services.

7. On April 2, 2014, an eQHealth Solutions physician consultant reviewed the request and denied all the requested skilled nursing hours. A "Notice of Outcome-Denial Private Duty Nursing/Personal Care Services" was issued to petitioner on April 4, 2014, which notified petitioner that no LPN hours were approved. The rationale for the denial of the requested LPN hours referenced the requirements of medical necessity and the corresponding exclusions from coverage required by the Florida Administrative Code.

8. On April 4, 2014, a "Notice of Outcome" was issued to petitioner's primary care physician and provided the clinical rationale as:

> The patient is a 7 year old with type I diabetes, ADHD, mild autism, seizures and behavior issues. The patient receives Novolog injections through a pump as well as some oral medications. The patient is not on a complex medication regimen. The patient has a history of poorly controlled blood sugars requiring frequent checks. The patient does not have a gastrostomy tube or tracheostomy. The patient lives with her mother who is the sole caregiver. The mother works outside the home. The request is for 5 hours per day of skilled nursing Monday through Friday. This is a new admission. I had an opportunity to speak with [redacted] endocrinologist who agreed that continuous skilled nursing was not warranted and recommended skilled nursing visits to monitor her sugars when the mother is not available. The clinical information provided does not support continuous skilled nursing. There is a nurse at school who can provide glucose monitoring and if needed, skilled nursing visits can provide the remainder of services, if the school nurse needs assistance (documentation would be required) or the other cannot provide

the care due to work. The requested services are deemed not medically necessary.

9. A reconsideration was requested on April 10, 2014. A second eQHealth Solutions completed the reconsideration review on April 10, 2014 and sent a notice April 14, 2014. The notice upheld the initial denial.

10. A "Notice of Reconsideration Determination" was sent to the petitioner's provider and explained that the "principal reason" for the determination: "There was no new information provided for this reconsideration that would reverse the previous decision."

11. On April 18, 2014, petitioner's mother timely requested a hearing because she disagreed with respondent's denial of the requested LPN hours.

12. The mother stated that her daughter was diagnosed with diabetes at the age of 2. Her daughter is not able to know when her sugar level is too high or too low because the symptoms are the same but only knows that she does not feel well. Her diabetes is not well controlled and can be as high as 400 and be as low as 50. She experiences seizures when her sugar level drops to low levels. Her daughter not only needs an adult to help monitor her sugar levels but also administer the Novolog by pump. She explained she had not requested nursing services in the past because while she was working her daughter was receiving nursing services at school. She also stated she did not renew her application for Prescribed Pediatric Extended Care (PPEC) in anticipation of starting nursing services.

13. As witness for the respondent, the physician consultant reviewed the petitioner's medical conditions (as reflected in paragraph 1 above), the documentation submitted in support of the service request, as well as the initial reviewer's decision (as reflected in

paragraph 8 above). She explained that continuous skilled nursing services were inappropriate but skilled nursing visits would be appropriate for checking the petitioner's glucose levels and administering the injection of Novolog by pump. The physician consultant also advised that she had approved PPEC for the petitioner from June 30, 2014 to December 5, 2014. She explained that the services can also be used after school as well.

CONCLUSIONS OF LAW

14. 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. This is a final order pursuant to Fla. Stat. § 120.569 and § 120.57.

15. This hearing was held as a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

16. Because the issue under appeal is based on an initial request for services, burden of proof was assigned to the petitioner, pursuant to Fla. Admin. Code R. 65-2.060(1).

17. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Fla. Admin. Code R. 65-2.060(1).

18. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration.

19. The petitioner has requested LPN nursing services. As the petitioner is under 21 years of age Early Periodic Screening, Diagnosis, and Treatment (EPSDT)

requirements apply to the evaluation of the petitioner's eligibility for or amount of this service.

20. Centers for Medicare and Medicaid Services, State Medicaid Manual makes available to all State Medicaid agencies informational and procedural material needed by the States to administer the Medicaid program. It is the method by which the Health Care Financing Administration (HCFA) issues mandatory, advisory, and optional Medicaid policies and procedures to the Medicaid State agencies.

21. The State Medicaid Manual in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services section states in part:

> 5010. Overview
> A. Early and Periodic Screening, Diagnostic and Treatment Benefit.-- Early and periodic screening, diagnostic and treatment services (EPSDT) is a required service under the Medicaid program for categorically needy individuals under age 21...
>
> 5110. Basic Requirements
>
> OBRA 89 amended §§1902(a)(43) and 1905(a)(4)(B) and created §1905(r) of the Social Security Act (the Act) which set forth the basic requirements for the program. Under the EPSDT benefit, you[1] must provide for screening, vision, hearing and dental services at intervals which meet reasonable standards of medical and dental practice established after consultation with recognized medical and dental organizations involved in child health care. You must also provide for medically necessary screening, vision, hearing and dental services regardless of whether such services coincide with your established periodicity schedules for these services. Additionally, the Act requires that any service which you are permitted to cover under Medicaid that is necessary to treat or ameliorate a defect, physical and mental illness, or a condition identified by a screen, must be provided to EPSDT participants regardless of whether the service or item is otherwise included in your Medicaid plan.

[1] "You" in this manual context refers to the state Medicaid agency. In Florida, it's the Agency for Health Care Administration (AHCA).

It also notes that...

...Services under EPSDT must be sufficient in amount, duration, or scope to reasonably achieve their purpose. The amount, duration, or scope of EPSDT services to recipients may not be denied arbitrarily or reduced solely because of the diagnosis, type of illness, or condition. Appropriate limits may be placed on EPSDT services based on medical necessity.

5122. EPSDT Service Requirements
F. Limitation of Services.--The services available in subsection E are not limited to those included in your State plan.
Under subsection E, the services must be "necessary . . . to correct or ameliorate defects and physical or mental illnesses or conditions . . ." and the defects, illnesses and conditions must have been discovered or shown to have increased in severity by the screening services. You make the determination as to whether the service is necessary. You are not required to provide any items or services which you determine are not safe and effective or which are considered experimental.

5124. Diagnosis and Treatment
B. Treatment.--
1. General. - You must make available health care, treatment or other measures to correct or ameliorate defects and physical and mental illnesses or conditions discovered by the screening services. Treatment services may be limited as described in §5122 F.

Once service has been identified as requested under EPSDT, Medicaid determines the amount or necessity for that service based on the Florida's published definition of medical necessary.

22. In the Home Health Services Coverage and Limitations Handbook, page 2-2, it provides the following...

Rule 59G-1.010 (166), Florida Administrative Code (F.A.C.) defines "medically necessary" or "medical necessity" as follows:

(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.

(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."

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, as noted in paragraph 20 above. 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, LPN services are part of Florida's Medicaid state plan of services. The agency has not approved and is not providing LPN services to the petitioner for the certification period under appeal, and therefore, not being medically necessary must be the basis for the denial of LPN services in order to be in compliance with EPSDT requirements.

25. The Florida Medicaid Home Health Services Coverage and Limitations Handbook (Medicaid Handbook) has been promulgated by reference in the Florida Administrative Code at 59G-4.130 (2).

26. The Medicaid Handbook, updated March 2013, pages 2-18 states in relevant part for recipients under age 21 years old:

> . . .
> Who Can Receive Private Duty Nursing
>
> Medicaid reimburses private duty nursing services for recipients under the age of 21 who meet all the following requirements:
>
> - Have complex medical problems;
> - Require more extensive and continual care than can be provided through a home health nurse visit;
>
> Private Duty Nursing Services Must Be all of the following:
>
> - Ordered by the attending physician;
> - Documented as medically necessary;
> - Provided by a registered nurse or a licensed practical nurse;
> - Consistent with the physician approved POC [plan of care]; and
> - Prior authorized before services are provided.

26. The Florida Medicaid Home Health Services Coverage and Limitation Handbook also notes on page 2-21 regarding the Prior Authorization Process:

> Private duty nursing services will be prior authorized by the QIO if the services are determined to be medically necessary. The request for the authorization must be submitted prior to the delivery of services.
>
> Initial requests for private duty nursing will be authorized for up to 60 days to allow for reassessment of the recipient's condition. Services can be decreased over time if there is documented change in the recipient's medical condition or there is a documented change in circumstances.

27. The mother argued that her daughter was unable to monitor her glucose level nor could she inject the Novolog into herself. The mother stated her daughter needed someone to monitor her glucose level.

28. The respondent agreed that the petitioner needed assistance with injection of the Novolog and could have up to 4 skilled nursing visits a day if the mother is not available and the need is documented. The skilled nursing visits would be in addition to the nursing services provided by PPEC. The respondent explained that Medicaid does not cover monitoring, but the nurse could check the petitioner's sugar levels during the nursing visits when providing Novolog injections.

29. The undersign concludes that the petitioner has not met her burden of proof and that the need for continuous skilled nursing has not been established as medically necessary. The respondent has indicated, without rebuttal, that PPEC and skilled nursing visits would be sufficient and appropriate in meeting the petitioner's needs.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby DENIED and the respondent's action denying continuous skilled nursing services 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 30th day of June, 2014,

in Tallahassee, Florida.

Warren Hunter

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