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

[redacted]

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 10 Polk
UNIT: AHCA

RESPONDENT.
_____/

APPEAL NO. 14F-04031

CASE NO.

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 18, 2014 at 1:02 p.m.

APPEARANCES

For the Petitioner: [redacted] Mother

For the Respondent: David Beaven, Fair Hearings Coordinator

STATEMENT OF ISSUE

At issue is the Respondent's action in reducing prescribed pediatric extended care services ("PPEC") for the current certification period of May 7, 2014 through November 2, 2014.

PRELIMINARY STATEMENT

The Agency contracts with a Quality Improvement Organization ("QIO"), eQHealth Solutions, to perform medical utilization reviews for prescribed pediatric

extended care services through a prior authorization process for medicaid beneficiaries. Through this contractual agreement, eQHealth Solutions is authorized to make determinations of medical necessity on behalf of the Agency and act as a witness in all related fair hearing proceedings.

A prior service authorization request is submitted by a provider along with information and documentation required to make a determination of medical necessity. Initial requests for prescribed pediatric extended care services will be authorized for up to 60 days (two-month period) to allow for reassessment of the recipient's condition. Thereafter, a medical necessity review is conducted every 180 days (six-month period). If necessary, a request for modification may be submitted by the provider.

Witness for the Respondent was Ellyn Theophilopoulos, M.D., Physician Consultant with eQHealth Solutions.

Respondent's composite exhibit 1 was admitted into evidence. Petitioner submitted no exhibits into evidence.

The undersigned took administrative notice of the Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook ("Medicaid Handbook"), and the cases contained in the Agency's EPSDT memorandum.

FINDINGS OF FACT

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

1. Petitioner is an approximately 8 year old male with a medical history remarkable for microcephaly, developmental delay, severe intellectual disability, asthma, and attention deficit disorder with hyperactivity.

2. Petitioner attends a school for special needs children. He receives speech therapy at school, and receives speech therapy during summer at PPEC. He attends PPEC after school and on school holidays.

3. Petitioner's request for PPEC services for the certification period spanning from May 7, 2014 to November 2, 2014 was denied by notice dated May 1, 2014. The principal reason for this decision is the services are not medically necessary.

4. The original decision was upheld after reconsideration by notice dated May 10, 2014, noting that the service was not medically necessary.

5. Petitioner does not have any scheduled medications, feeding tubes, or other medical needs requiring skilled nursing intervention. He does receive nebulizer treatments roughly 2 to 3 times per week but can be more if he is ill.

6. Petitioner gets sick often, and the nurses at PPEC check him regularly and monitor him for developing ailments. They ensure he does not play too hard to trigger his asthma and they listen for unusual cough or lung sounds. The nurses also provide medications if Petitioner's mother informs there is a need.

7. Petitioner's mother does not want to place him in a regular daycare because she believes she will not be watched adequately for his condition.

8. The Agency concluded that Petitioner's request did not meet medical necessity. The Agency concluded that monitoring and supervision is not a nursing service and suggested that personal care services may be appropriate.

9. Petitioner's mother does not believe that Petitioner needs assistance with activities of daily living because he can feed and groom himself. However, she argues that he requires daily nursing care. The nursing care is used for occasional medication

administration, monitoring his respiration due to asthma, and monitoring his lungs for any other changes that require physician consultation.

CONCLUSIONS OF LAW

10. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Florida Statutes § 120.80. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

11. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency for Health Care Administration.

12. This hearing was held as a de novo proceeding pursuant to Rule 65-2.056, Florida Administrative Code.

13. As this is considered a reduction in services, the burden of proof was assigned to the Respondent in accordance with Rule 65-2.060(1), Florida Administrative Code.

14. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Rule 65-2.060(1), Florida Administrative Code.

15. 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.

16. Since the Petitioner is under twenty-one years-old, a broader definition of medical necessity applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPDST) requirements. Fla. Stat. § 409.905, Mandatory Medicaid services, provides that Medicaid services for children 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.

17. The 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 my present its own evidence of medical necessity in disputes between the state and Medicaid patients. (see (citations omitted)).

18. Consistent with these requirements, the state is obligated to provide services to recipients under twenty-one years of age, but only to the extent such services are medically necessary. The definition of medical necessity for services provided under the EPSDT benefit is established by the state and the state is authorized to establish the amount, duration, and scope of such services.

19. The first prong of the medical necessity rule is that any service is necessary to protect life, to prevent significant illness or significant disability, or to

alleviate severe pain. Petitioner's attendance at PPEC is not necessary to protect his life or prevent illness. The mother can check Petitioner's lungs and cough when she is with him to determine whether he needs to see a physician for developing illness.

20. Under the broader definition of medical necessity under EPSDT, PPEC is not a service that will correct or ameliorate Petitioner's condition.

21. The Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook (September 2013) ("Medicaid Handbook") has been incorporated by reference into Florida Administrative Code Rule 59G-4.260(2).

22. Page 2-1 of the Medicaid Handbook states that to receive PPEC services, the recipient must, among other criteria, "[r]equire short, long-term, or intermittent continuous therapeutic interventions or skilled nursing care due to a medically complex condition."

23. Petitioner does not require any skilled nursing care. Monitoring a child for changes that indicate illness or medication side effects can be done by any trained adult. Supervision can be done by any competent adult. The medication administration is infrequent and on an "as needed basis" which is not consistent with the "continuous intervention" necessary to meet PPEC criteria.

24. Petitioner currently receives speech therapy at PPEC. However, the Medicaid Handbook on page 2-5 specifically states that the PPEC rate does not include "[s]upportive or contracted services which include speech therapy...." As a result, even though he is receiving therapeutic interventions at PPEC, that alone does not qualify him for PPEC services.

25. Petitioner's medical condition is not one that requires a skilled nurse because he does not require the nurse to administer his medication nor is he dependent on a nurse for daily care or survival. He does require supervision, but such supervision does not have to be provided by a skilled nurse.

26. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned concludes the Agency's action was proper.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is hereby denied and the Agency's 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 petitioner is responsible for any financial obligations incurred as the agency has no funds to assist in this review.

DONE and ORDERED this 31st day of July, 2014, in Tallahassee, Florida.

Danielle Murray

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Copies Furnished To: [redacted] Petitioner
Sue McPhee, Area 6, AHCA Field Office Manager