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

[redacted]

APPEAL NO. 14F-04036

PETITIONER,

Vs.

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 June 23, 2014 at 10:00 a.m. in Doral, Florida.

APPEARANCES

For the Petitioner: [redacted] petitioner's mother

For the Respondent: Dianna Chirino, Senior Program Specialist
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether the respondent's action to partially deny the petitioner's request for personal care service (PCS) hours for the certification period May 5, 2014 through July 3, 2014, was correct.

PRELIMINARY STATEMENT

The petitioner was present for the hearing was represented by his mother, [redacted] Appearing as a witness for the petitioner was his support

coordinator, [redacted]. The petitioner submitted documents as evidence for the hearing, which were marked as petitioner's composite Exhibit 1.

Appearing as a witness for the respondent was Rakesh Mittal, M.D., physician-consultant with eQHealth Solutions, Inc. Respondent's composite Exhibit 1 was entered into evidence, consisting of the documentation considered by eQHealth Solutions' physicians in making their decision.

FINDINGS OF FACT

1. The petitioner's home health agency, [redacted] (hereafter referred to as "Provider"), requested the following PCA hours for the certification period at issue: 5 hours daily, Monday to Friday.

2. eQHealth Solutions, Inc. is the Quality Improvement Organization (QIO) contracted by the respondent to perform prior authorization reviews for home health services. The petitioner's provider submitted the service request through an internet based system. The submission included, in part, information about the petitioner's medical conditions; his functional limitations; and other pertinent information related to the household.

3. eQHealth Solutions personnel had no direct contact with the petitioner, his family, or his physicians other than a telephone call to the parent to complete a survey. All other exchange of information was through eQHealth Solutions' internet based system. The decision made by each physician at eQHealth was solely based on the information submitted by the provider and the caregiver.

4. The medical information submitted by the provider contained, in part, the following information in regard to the petitioner:

- [redacted] years of age and resides with his mother
- Diagnosis includes autism disorder, dementia, dysphagia, and urge and stress incontinence
- Ambulatory and consumes a regular diet

5. The petitioner's mother works from 8:00 a.m. to 7:00 p.m. on Monday to Friday.

6. The petitioner has received a diploma from Miami-Dade County Public Schools and is not attending any summer school programs. He plans to attend a school offering an autism program in the fall.

7. The petitioner currently receives behavioral therapy (ABA) services through the Medicaid Waiver Program. He has applied for adult day training services through the Medicaid Waiver program, but has not yet been approved for those services.

8. A Plan of Care was also submitted by the provider. The document was signed by a physician and outlined the type of assistance to be provided by the home health aide/personal care aide. The duties include, in part:

- Provide assistance with personal care and ADLs (activities of daily living) such as bathing and grooming, oral hygiene, feedings, toileting, and range of motion/positioning

9. A physician at eQHealth Solutions, who is board certified in pediatrics, reviewed the submitted information and partially denied the requested PCS hours, approving only 2 hours daily instead of the requested 5 hours daily. This physician-reviewer wrote, in part: "*The clinical information provided supports the medical necessity of PCS for 2 hours per day 5 days per week to assist the patient with ADLs. The additional hours appear to be for supervision which is not a covered service. The additional hours are deemed excessive.*" A notice of this determination was sent to all parties on April 30, 2014.

10. The above notice stated should the parent, provider, or petitioner's physician disagree with the decision, a reconsideration review could be requested. Additional information could be provided with the request. A reconsideration review was requested by the provider on May 1, 2014.

11. A second physician-reviewer at eQHealth conducted a reconsideration review of the submitted information and upheld the initial decision to partially deny the requested services. A notice of this reconsideration decision was sent to all parties on May 2, 2014. A request for a fair hearing was made by the petitioner and this proceeding followed.

12. The respondent's witness, Dr. Mittal, testified that 2 hours daily of personal care services were sufficient to provide medically necessary assistance to the petitioner with his ADL needs and the additional services requested seemed to be for supervision, which is not a covered service. Dr. Mittal also stated that additional help for the petitioner with his swallowing problem and instruction with taking out the trash should be provided by a speech therapist and an occupational therapist, respectively.

13. The petitioner's mother testified that her son's service request should be approved because he cannot shower by himself or clean himself after toileting and he presents a choking hazard when eating. In addition, she stated her son's aide shows him how to function independently in his daily living needs.

14. The petitioner's support coordinator, [redacted] testified that the petitioner does not understand safety issues and the aide provides instruction and training, not supervision.

CONCLUSIONS OF LAW

15. 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.

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

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

18. In accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof was assigned to the petitioner since this was a request for an increase in PCS services. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

19. 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.

20. The petitioner has requested personal care aide services. As the petitioner is under 21 years of age, the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) requirements apply to the evaluation of the petitioner's eligibility for or amount of this service.

21. The 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.

22. 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.*

23. The service the petitioner has requested (personal care services) is one of the services provided by the state to treat or ameliorate an individual's conditions under the State plan. Chapter 409, Fla. Stat., states, in part:

> *Any service under this section shall be provided only when medically necessary …*
>
> *(4) (a) In providing home health care services, the agency may require prior authorization of care based on diagnosis*

[1] "You" in this manual context refers to the state Medicaid agency.

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services ... The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for any other family dependents.

24. The issue to be decided is the medical necessity of the service or amount of service. The State Medicaid Manual provides for limitations on services as follows:

5110. Basic Requirements...
...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.

25. Once a service has been identified as requested under EPSDT, the Medicaid program determines the amount or necessity for that service based on the State of

Florida's published definition of medical necessity. The Fla. Admin. Code R. 59G-1.010 defines medical necessity:

> *(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; 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 do not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.*

26. Based upon the information submitted by the petitioner's provider, eQHealth Solutions completed a prior authorization review to determine medical necessity for the requested personal care aide services.

27. In the petitioner's case, the respondent has determined that some personal care services are medically necessary, but has approved 2 hours daily rather than the 5 hours daily requested by the petitioner.

28. Section 409.913, Fla. Stat. governs the oversight of the integrity of the Florida Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows:

> *"Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent,*

diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice....

Section (1)(d) goes on to further state:

...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.

29. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary. As stated above, this proceeding is a de novo proceeding for the purpose of the Agency reaching its final decision. The final decision making authority for this proceeding has been delegated to the hearing officer in Fla. Admin. Code R. 65-2.066.

30. The petitioner's request for service is governed by the respondent's Home Health Services Coverage and Limitations Handbook (March 2013). The Handbook, on page 1-2, addresses Personal Care Services as follows:

Personal care services provide medically necessary assistance with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) that enable the recipient to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability.
ADLs include:
- *Eating (oral feedings and fluid intake);*
- *Bathing;*
- *Dressing;*
- *Toileting;*
- *Transferring; and*
- *Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control his bowel or bladder functions).*

IADLs (when necessary for the recipient to function independently) include:
- *Personal hygiene;*

- *Light housework;*
- *Laundry;*
- *Meal preparation;*
- *Transportation;*
- *Grocery shopping;*
- *Using the telephone to take care of essential tasks (examples include paying bills and setting up medical appointments);*
- *Medication management; and*
- *Money management.*

31. Page 2-23 of the Handbook addresses who can receive personal care services, as follows:

> *Medicaid reimburses personal care services for recipients under the age of 21 who meet all of the following criteria:*
> - *Have a medical condition or disability that substantially limits their ability to perform their ADLs or IADLs.*
> - *Have a physician's order for personal care services.*
> - *Require more individual and continuous care than can be provided through a home health aide visit.*
> - *Do not have a parent or legal guardian capable of safely providing these services.*

32. Page 2-24 of the Handbook imposes a parental responsibility requirement with respect to personal care services, which is described as follows:

> *Personal care services can be authorized to supplement care provided by parents and legal guardians. Parents and legal guardians must participate in providing care to the fullest extent possible. Where needed, the home health service provider must offer training to enable parents and legal guardians to provide care they can safely render without jeopardizing the health or safety of the recipient. The home health services provider must document the methods used to train a parent or legal guardian in the medical record.*
>
> *Medicaid can reimburse personal care services rendered to a recipient whose parent or legal guardian is not able to provide such care. Supporting documentation must accompany the prior authorization request in order to substantiate a parent or legal guardian's inability to participate in the care of the recipient.*

33. Page 2-11 of the Handbook also addresses which services Medicaid does not provide reimbursement for under the home health services program. This list includes:

> • *Housekeeping (except light housekeeping), homemaker, and chore services, including any shopping except grocery shopping when provided as an IADL*
> • *Meals-on-wheels*
> • *Mental health and psychiatric services*
> • *Normal newborn and postpartum services, except in the event of complications*
> • *Respite care*
> • *Services which can be effectively and efficiently obtained outside the recipient's place of residence without any medical contraindications*
> • *Baby-sitting*
> • *Services to a recipient residing in a community residential facility when those services duplicate services the facility or institution is required to provide*
> • *Social services*
> • *Transportation services (except when necessary to protect the health and safety of the recipient and no other transportation service is available or when provided as an IADL)*

34. The petitioner's physician ordered a service frequency greater than that approved by eQHealth Solutions. Rule 59G-1.010(166) (c), however, specifically states a prescription does not automatically mean the requirements of medical necessity have been satisfied.

35. The respondent's witness, Dr. Mittal, stated that 2 hours of personal care services daily were medically necessary and the additional requested hours appeared to be for non-covered services.

36. The petitioner's mother and support coordinator stated the petitioner needs the requested services in order to learn to function independently and because the aide gives him instruction and training in addition to assistance with ADLs.

37. Although the undersigned acknowledges the petitioner may benefit from additional supervision, instruction, and training, the scope of services to be performed

by a personal care aide is limited as set forth in the Handbook provisions cited above. In addition, the Plan of Care submitted states the aide will assist with ADLs and does not specify any instruction or training in other areas. The evidence presented establishes that 2 hours daily is medically necessary to provide assistance with ADLs.

38. The undersigned concludes that the petitioner has not met the burden of proof in demonstrating the respondent was incorrect in partially denying the requested personal care services.

DECISION

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

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 22nd day of July, 2014,

in Tallahassee, Florida.

Rafael Centurion

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