

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

**FILED**

AUG 05 2014

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 14F-04280

CASE NO. 30769755

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 10, 2014 at 3:04 p.m. in Doral, Florida.

**APPEARANCES**

For the Petitioner: [REDACTED] mother

For the Respondent: Monica Otalora, senior human services program specialist, Agency For Health Care Administration (AHCA).

**STATEMENT OF ISSUE**

At issue is the Agency's partial denial of speech therapy services requested for the certification period 1/14/2014-7/12/2014.

**PRELIMINARY STATEMENT**

Dr. Ellyn Theophilopoulos, physician reviewer for eQHealth Solutions, appeared as witness for the respondent. Respondent entered an 83 page composite exhibit for the agency's action into evidence 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 speech therapy services requested. Chapter 2 of the "Therapy Services Coverage and Limitations Handbook, dated August 2013, is also included in the exhibit.

Petitioner was represented by his mother, [REDACTED]. Petitioner submitted a 6/27/2013 Speech/Language Therapy Re-Evaluation and Plan of Care by [REDACTED] [REDACTED] which was marked as Petitioner's Exhibit 1. The respondent's witness did not receive this information prior to the hearing, so the record was left open for her to review this information.

The matter under appeal is a reduction in speech therapy services, therefore the burden of proof was assigned to the respondent. The petitioner continues to receive 4 units of speech therapy 3 times a week, pending the outcome of this appeal.

The record was held open to July 1<sup>st</sup>. Petitioner was to provide statements from the pediatrician and/or neurologist why he/she thinks the speech therapy services are medically necessary 3 hours a week. Petitioner's deadline was one week or June 24<sup>th</sup>. The respondent was given to July 1<sup>st</sup> to provide a response on the impact, if any, the 6/27/2013 re-evaluation and the new information submitted by the petitioner has on the agency's decision.

#### **FINDINGS OF FACT**

1. The petitioner is a 6 year old and is a recipient of the Medicaid program. He is diagnosed with expressive language delay, autism, encephalopathy and attention deficit and hyperactivity disorder (ADHD).

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 petitioner's initial request for 4 units of speech therapy three times a week was submitted by his provider, [REDACTED] on April 22, 2014. An eQHealth physician consultant completed a review of the request on April 22, 2014 and sent a "Notice of Outcome-Partial Denial...." to the petitioner on April 24, 2014. The notice states:

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:

Furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caregiver, or the provider.  
Individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness under treatment, and not in excess of the patient's needs.

3. On April 24, 2014 a "Notice of Outcome-Partial Denial...." was also sent to the petitioner's provider. The notice provided the clinical rationale for the decision as...

The patient is a 6 year old with Autism and Encephalopathy. The patient has pragmatic language deficits. The standardized testing reveals within normal limit language and auditory processing skills. The patient has met 7 short term goals. Based on the patient's deficits and needs, 4 units 1 time a week are approved. The additional requested units are not approved as they have been deemed excessive.

4. A reconsideration was requested on May 2, 2014 and completed on May 3, 2014. A "Notice of Reconsideration Determination..." was sent to the petitioner on May 3, 2014 which supported the initial decision. Notice to the provider noted the principal reason for the determination:

The information submitted for reconsideration provided no evidence to support the reversal of the previous decision. The original decision is upheld.

5. The petitioner submitted a timely hearing request on 5/13/2014.

6. The respondent's witness noted that the petitioner met 7 short term goals and that the OWL II and TAPs evaluations within normal limits. Some weaknesses were noted but she stated this would be expected since his primary language is Spanish and the tests were done in English. She also noted the petitioner has co-morbid conditions and that he also receives occupational and speech therapy at school.

7. The mother stated that her son starts 1<sup>st</sup> grade next year and has problems in behavior and reasoning that need to be addressed. Because he is out of school for the summer he does not receive the therapies the school was providing. The mother disagrees with reducing his speech therapy hours. She stated the petitioner's pediatrician agreed that he should continue with 3 hours of speech therapy and would provide a statement from him. The mother referenced an evaluation dated June 2013, which was admitted into evidence as Petitioner's Exhibit 1. This evaluation was not submitted prior to the hearing, so the record was held open to 7/1/2014 to allow the petitioner time to provide statements from the petitioner's pediatrician and/or neurologist which provide the reason why they feel the 3 hours of speech therapy was necessary. The respondent would review these statements as well as the June 2013 evaluation and provide feedback on the impact of this new information on the agency's decision.

8. The petitioner provided on June 19, 2014 a 15 page document that contained medical information from a visit dated 5/19/2014 from a [REDACTED] a letter dated 6/16/2014 from [REDACTED] which states in relevant part:

Both conditions of autism and developmental delay require [REDACTED] to engage in medically necessary required individual therapy every week, 3 x week for 60 minutes per session, in order to ensure continuous improvement of his conditions and health.

Another letter, dated 6/12/2014 from [REDACTED]

which in part states:

It is medically necessary to maintain speech therapy. He requires therapy at least 3 times per week for 60 mins/each. This therapy plays an important role for his improvement. He will improve his receptive, expressive and pragmatic language.

Finally, a physician's statement from Miami-Dade County Public Schools, dated 5/15/2013 completed by [REDACTED] This composite document was marked as Petitioner's Exhibit 2.

9. The respondent's witness responded 6/26/2014 as follows: "The additional information does not change the position of eqhealth."

#### **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 Fla. Stat § 409.285. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

11. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code § 65-2.056.

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

13. 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.

(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]

14. The Therapy Services Coverage and Limitations Handbook, dated August 2013, page 2-12 (page 63 of Respondent's Exhibit 1), provides the Initial Plan of Care components which are applicable for this initial request for speech therapy services. It states:

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.

15. 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.

16. In reviewing the appeal for compliance with EPSDT requirements, speech 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.

17. The respondent presented evidence and testimony that the petitioner had mastered his goals and that his deficits were normal to mildly normal.

18. The mother stated she felt her son needed the 3 hours of therapy to help prepare him for 1<sup>st</sup> grade and that his doctors agreed the 3 hours of speech therapy should continue. The mother provided statements from the petitioner's doctors to support her statement.

19. The agency did not feel the new information was sufficient to change their decision.

20. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer finds that the respondent has met its burden of proof. While the petitioner provided statements from doctors that 3 hours of speech therapy were medically necessary, the respondent referenced the documentation submitted by the petitioner's speech therapist that his deficits are normal to mildly normal. In addition the petitioner has mastered his short term goals from the last certification period.



**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 petitioners responsibility.

DONE and ORDERED this 5<sup>th</sup> day of August, 2014,

in Tallahassee, Florida.

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