

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

FILED

AUG 15 2014

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-04542

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 17 Broward

UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing telephonically in the above-referenced matter on July 16, 2014, at 1:40 p.m.

APPEARANCES

For the Petitioner:



Petitioner's Mother

For the Respondent:

Ken Hamblin

Field Office 10 Medicaid Fair Hearing Coordinator

STATEMENT OF ISSUE

The issue is the partial denial by the Agency for Health Care Administration (sometimes hereinafter referred to as "respondent", "AHCA" or the "Agency") of the petitioner's request for occupational therapy services.

PRELIMINARY STATEMENT

[REDACTED] the petitioner's mother, appeared on behalf of the petitioner, [REDACTED] ("petitioner"), who was not present. [REDACTED] OT, with [REDACTED] [REDACTED] the petitioner's occupational therapist, appeared as a witness on behalf of the petitioner.

Ken Hamblin, the Area 10 Fair Hearing Coordinator for the Agency for Health Care Administration, appeared on behalf of the Agency. Appearing as a witness for the Agency was Rakesh Mittal, M.D., Physician Consultant with eQHealth Solutions.

The petitioner introduced Exhibits "1" through "3", inclusive, at the hearing, all of which were accepted into evidence and marked accordingly. The respondent introduced Exhibits "1" through "3", inclusive, at the hearing, which were accepted into evidence and marked accordingly.

At the request of the respondent, the hearing officer took administrative notice of the following: Code of Federal Regulations Part 456 – Utilization Control; FLS 409.912 Cost-effective purchasing of health care; FAC 59G-1.010 Definitions; FAC 59G-4.320 Therapy Services; FAC 65-2.048 Action to Reduce or Discontinue Assistance or Services; and the Florida Medicaid Therapy Services Coverage and Limitations Handbook.

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 nineteen (19) year old male. [REDACTED]
[REDACTED]

2. The petitioner was eligible to receive Medicaid at all times relevant to this proceeding.

3. The petitioner is diagnosed with cerebral palsy. His deficits and functional limitations, as listed on the eQHealth Solutions Outpatient Review History, include the following: visual perception (significant); gross motor skills (mild); fine motor skills (mild); and social skills (mild).

4. The petitioner's short-term goals, as listed on the eQHealth Solutions Outpatient Review History, are to address deficits in the areas of bilateral coordination, fine motor/perceptual skills, postural control, self care, and social skills.

5. The petitioner has been receiving occupational therapy intermittently since he was approximately eight months old.

6. The petitioner underwent a selective dorsal rhizotomy in January 2012 to assist with alleviating his spasticity. Petitioner's fine motor skills have improved since the surgery.

7. The petitioner was previously receiving occupational therapy services through [REDACTED]. He was receiving both occupational therapy and physical therapy from the same provider. Petitioner's mother testified the provider was working with the petitioner for 3.5 hours per week.

8. Petitioner recently transitioned to a new occupational therapy provider,
[REDACTED]

9. [REDACTED] Medicaid only pays for occupational therapy services for recipients under age 21, with the exception of a few very limited situations.

10. The petitioner's mother made multiple references in the hearing to trying to "squeeze" in as much occupational therapy as possible before the petitioner reaches age 21. Petitioner's mother expressed her understanding that the window of opportunity for receiving occupational therapy will close when the petitioner reaches age 21.

11. The respondent's witness testified that individuals of all ages can receive occupational therapy.

12. Petitioner's occupational therapist expressed her desire to assist petitioner with achieving his goals of independence and self care, as well as his vocational goals.

13. The petitioner was approved to receive four units of occupational therapy services, two times per week, during the prior certification period.

14. On May 7, 2014, the petitioner's occupational therapy provider submitted a request to eQHealth Solutions for occupational therapy services to be approved in the amount of four units, three times per week, plus an additional two units, one time per week, for the certification period April 8, 2014 through October 2, 2014.

15. One unit of occupational therapy services is equal to 15 minutes. Stated differently, four units of occupational therapy equal one hour.

16. The petitioner is requesting 3.5 hours per week of occupational therapy for the present certification period. This is the amount he was receiving previously for both occupational therapy and physical therapy.

17. Occupational therapy tends to focus on improving fine motor skills while physical therapy tends to focus on gross motor skills.

18. eQHealth Solutions is the Quality Improvement Organization contracted by the Agency for Health Care Administration to review requests made for occupational therapy services by Medicaid recipients in the State of Florida.

19. eQHealth Solutions is charged with the responsibility of determining whether a requested service is medically necessary under the terms of the Florida Medicaid Program. eQHealth Solutions has the authority to act as a witness for AHCA.

20. A request for occupational therapy services is submitted directly to eQHealth Solutions by a petitioner's provider. Once eQHealth Solutions receives the information, it completes a prior authorization review – it reviews the written request to determine if the services requested are medically necessary.

21. The petitioner's request was reviewed by an eQHealth Solutions Physician Reviewer on May 8, 2014. The Physician Reviewer approved four units of occupational therapy, two times per week, and denied the remainder of the request.

22. The Physician Reviewer provided the following rationale for the decision:

Although recipient has recently had surgery for tone reduction, severity of functional skills documented does not support intensive intervention. There is insufficient documentation of deficits/impairments and goals to support the requested intensity of services. Based on the deficits and goals that have been documented, national Guidelines suggest 4 units 2 time/week for 26 weeks. If the recipient's condition changes such that an increase of services is warranted during the certification period, the provider may submit a modification request.

23. Petitioner did not request eQHealth Solutions to conduct a reconsideration review after learning of the partial denial. No additional information was provided by the petitioner to eQHealth Solutions after learning of the denial.

24. The prescription for occupational therapy services from the petitioner's physician dated March 26, 2014 requests therapy four times per week to address the petitioner's fine motor deficiency resulting from his cerebral palsy.

25. The initial Occupational Therapy Evaluation completed by Amee Cohen and dated April 8, 2014 contains the following comment in the Functional section

Using the VMI coordination criterion referenced it appears that the patient demonstrated 3 year age range for connection oooooof [sic] dots 2 inches apart on streight [sic] ray. However, curves and angles demonstrated decline in motor control for standard test reports

This comment is contrary to the mother's testimony during the hearing that the petitioner has made significant progress since his surgery in January 2012.

26. The respondent's witness has been a physician for 25 years. He is Board Certified in general pediatrics and pediatric emergency medicine. The witness explained during the hearing that eQHealth Solutions conducted a paper review of the petitioner's file, examining only documents submitted by his provider. eQHealth Solutions did not examine the petitioner or speak with the petitioner's caregiver; it reviewed petitioner's request for the purpose of determining whether the requested services are medically necessary. The respondent's witness explained that, should the petitioner's parent or provider ever feel that he does not have all pertinent information to make an informed decision about the petitioner's services, the parent or caregiver can communicate with him in writing and he will assuredly review the information provided.

27. The respondent's witness proffered his professional opinion that since the petitioner has been receiving occupational therapy for such a long period, over 18

years, and has shown only minimal to moderate improvement, occupational therapy at the intensive level requested by the petitioner at this point is not medically justified.

28. The respondent's witness testified, when eQHealth Solutions is reviewing a case to determine whether services should be approved, it makes a decision purely on medical grounds and social grounds, and does not consider the time period before Medicaid will stop paying for a service.

CONCLUSIONS OF LAW

29. By agreement between the Agency for Health Care Administration and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Fla. Stat. § 120.80.

30. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat., and Chapter 59G, Florida Administrative Code. The Program is administered by AHCA.

31. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

32. The petitioner is requesting an increase in his occupational therapy services. Therefore, in accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof is assigned to the petitioner.

33. 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.).

34. The Florida Medicaid Therapy Services Coverage and Limitations Handbook is incorporated by reference in the Medicaid Services Rules by Fla. Admin. Code R. 59G-4.320.

35. Fla. Admin. Code R. 59G-4.320 implements certain limitations for therapy services covered by Medicaid. These limitations are defined in the Florida Medicaid Therapy Services Coverage and Limitations Handbook – August 2013.

36. Page 2-2 of the Therapy Services Coverage and Limitations Handbook states services are to be provided only when medically necessary.

37. Fla. Admin. Code R. 59G-1.010(166), defines medical necessity as:

(166) "Medically necessary" or "medical necessity" means that 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 defined by the Medicaid program and not be experimental or investigational;
4. Be reflective of the level of service that can safely be furnished, 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.

38. Since petitioner is under 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPDST) requirements. Section 409.905, Fla. Stat., Mandatory Medicaid Services defines Medicaid services for children to 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.

39. 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 the 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.

40. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary; however, the hearing officer is the final decision making authority for the Agency. See § 120.80, Fla. Stat.

41. "Occupational therapy" is defined on Page 1-3 of the Therapy Services Coverage and Limitations Handbook as follows

Occupational therapy is the provision of services that address the developmental or functional needs of a child related to the performance of self-help skills; adaptive behavior; and sensory, motor and postural development.

Occupational therapy services include evaluation and treatment to prevent or correct physical and emotional deficits, minimize the disabling effect of these deficits, maintain a level of function, acquire a skill set or restore a skill set. Examples are perceptual motor activities, exercises to enhance functional performance, kinetic movement activities, guidance in the use of adaptive equipment and other techniques related to improving motor development.

42. In the present case, the petitioner has been receiving occupational therapy intermittently for over 18 years. He is requesting nearly a fifty percent (50%) increase in these services from two hours per week to 3.5 hours per week. Petitioner's mother explained the petitioner has made progress since his tone reduction surgery in January 2012. However, that procedure was performed nearly 2.5 years ago and the petitioner is just now requesting an increase in his occupational therapy services. In addition, the initial evaluation completed by the petitioner's occupational therapist shows that, at least in some areas, the petitioner is still functioning at the three year age range. The physician testifying on behalf of respondent explained that if a child has not made much progress in 18 years, he is not likely to experience substantial improvement with intensive therapy at this point. Although petitioner's mother made multiple references in the hearing to a two year window of opportunity for the petitioner to receive occupational therapy before he turns age 21, individuals of all ages can receive occupational therapy, and the petitioner may become eligible to receive these services through the Agency for Persons with Disabilities. Reviewed in their entirety, the testimony and evidence in this matter do not support an increase in the petitioner's occupational therapy at this time.

43. Pursuant to the testimony and evidence in this case, the petitioner has not met his burden of proof that such a significant increase in occupational therapy services is warranted at this time.

44. As discussed during the hearing, occupational therapy services may be available to the petitioner through different State Programs after he turns age 21. If the petitioner's mother continues to feel that these services are medically necessary for the petitioner at that point, she is encouraged to apply for these programs at that time.

DECISION

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

FINAL ORDER (Cont.)

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DONE and ORDERED this 15th day of August, 2014,

in Tallahassee, Florida.

Peter J. Tsamis

Peter J. Tsamis

Hearing Officer

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