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

[redacted]

PETITIONER,

APPEAL NO. 14F-04684

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION (AHCA)
CIRCUIT: 02 Leon
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing telephonically in the above-referenced matter on July 11, 2014 at 3:15 p.m.

APPEARANCES

For the petitioner: [redacted] mother

For the respondent: Cindy Henline, program analyst

STATEMENT OF ISSUE

At issue is the Respondent's action denying Petitioner's request for a speech generating/communication device, along with accessories for the device.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (AHCA or respondent) administers the Florida Medicaid Program. AHCA contracts with eQ Health Solutions (eQ) to

conduct prior service authorizations for, among other services, durable medical equipment.

By notice dated April 8, 2014, the respondent informed the petitioner that her prior authorization request for a speech generating/communication device, Proslate 10 and a related accessory, Proslate keyguard, was denied. The notice explains that the "reason for the denial is that the [devices] are not medically necessary..."

On May 28, 2014, the petitioner timely requested a hearing to challenge the denial.

Present as a witness for the petitioner was [redacted], speech language pathologist. The petitioner did not submit exhibits.

Present as a witness for the respondent was Dr. Rakeesh Mittal, physician reviewer with eQ. Respondent's Composite Exhibit 1 was admitted into evidence.

FINDINGS OF FACT

1. The petitioner (age 16) is a Florida Medicaid recipient. The petitioner lives in the family home with her parents and attends [redacted] a public school. The petitioner is described in an Alternative Communication Systems (AAC) Evaluation, completed by her speech therapist, [redacted] on January 20, 2014:

> [redacted]s a 16 year old female diagnosed with Cerebral Palsy with associated hypotonia. [redacted]presents with severe receptive/expressive language disorder with reduced speech intelligibility to familiar and unfamiliar listeners. She is functionally nonspeaking and in limited circumstances uses gestures with production of open vowels and single consonant-vowel combinations...given repeated visual and verbal cueing methods. [redacted]ecomes emotional and flustered when she is unable to

> communicate her wants and/or needs. She continues to rely on a 2-D laminated communication sheet to request and respond to parents/teachers/therapists within very limited parameters (e.g. pointing to yes or no to answer yes/no questions). The required amount of vocabulary and pages as a forum to communicate is cumbersome, impractical, and ineffective. Most importantly, the communication sheet does not contain voice output or rapid change load of vocabulary for [redacted] to use to communicate.. [redacted] has been receiving language/speech therapy for most of her life without significant progress in functional communication skills...

2. In early 2014, the petitioner submitted a prior authorization request to eQ for a speech generating/communication device, the Proslate 10 and a keyguard accessory (which allows communication device to be operated with one finger).

3. In a letter dated March 24, 2014, eQ requested additional information from the petitioner. The letter reads:

> We received a request for authorization of services...Please submit the following information for review: 1) Please submit samples of messages this recipient has formulated using the recommended device. Please include the context, environment, communication partners, and assistance/cueing required to formulate the message. 2) Please submit documentation showing minimum of 4 weeks trial with the Proslate 10 device. The documentation must include sufficient information to demonstrate that the speech generating device meets the needs of the individual, that the individual is capable of using the device, and that less costly alternatives do not meet the needs of the recipient. We are unable to process this request until all of this information is received.

4. The petitioner did not submit the trial results or the other information requested by eQ. eQ denied the petitioner's request on April 9, 2014.

5. Dr. Mittal, physician reviewer with eQ, explained that communication devices are intended, by program rule, to allow users to communicate independently in their environment, in the instant case at home and in school. Trials are required to prove that

users can operate the devices as intended. No substantive trials were conducted in the instant case. The device requested by the petitioner is an advanced communication device designed for users with a higher level of cognitive and physical functioning. The petitioner's request form shows that she requires hand over hand assistance (by the speech therapist) to operate the Proslate 10. She is not able to operate the device independently. There is no evidence that the petitioner would be able to use the device outside of the presence of the speech therapist (i.e., in school or at home).

6. Dr. Mittal acknowledges that the petitioner has a severe communication disorder and could benefit from a speech assistance/communication device. However, all Medicaid goods and services must be medically necessary. Goods and services cannot be in excess of the recipient's needs and must be the most effective, least costly option available. Dr. Mittal concluded that the Proslate 10 is beyond the petitioner's cognitive and physical abilities to use as Medicaid rule intended and therefore is not medically necessary.

7. Dr. Mittal encouraged the petitioner's mother and physical therapist to complete trials using communication devices more compatible to the petitioner's level of cognitive and physical functioning.

8. The petitioner's mother explained that it is very hard to understand her needs; when she is hungry or wet or tired. After years of speech therapy, the petitioner can only utter a few unintelligible sounds. The mother asserts that "a communication device is imperative." She relied on the petitioner's speech therapist to determine which device

would best meet her needs. The mother does not deny that the Proslate 10 is beyond the petitioner's level of functioning and is willing to explore other devices.

9. [redacted] the petitioner's speech therapist, explained that the petitioner only had access to three loaner communication devices provided by a charitable organization. One of the devices was not suitable to the petitioner's needs. The second device is no longer in production. The third device, the Proslate 10, was the best, of the three loaner devices tested.

10. The physical therapist was personally responsible for the loaner communication devices; the devices had to remain with her and therefore could only be used by the petitioner during her speech therapy sessions, one to two hours weekly, over approximately six weeks. The petitioner could not take the devices home or to school in order to gather the trial data requested by eQ.

11. [redacted] does not dispute that the Proslate 10 is an advanced communication device. However, she asserts that the device can be programmed according to the functioning level of the user, it is versatile. [redacted] noted an increase in the petitioner's spontaneous oral expression during the limited time she had access to the Proslate 10. [redacted] believes significant progress can be made in the petitioner's ability to communicate if she is provided with this device.

CONCLUSIONS OF LAW

12. 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. 120.80. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

13. 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.

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

15. The burden of proof was assigned to the petitioner pursuant to Fla. Admin. Code R. 65-2060(1).

16. 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).

17. All Medicaid services must be medically necessary. Florida Administrative Code R. 59G-1.010(166), defines medical necessity, as follows:

> 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 patent'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.

18. The petitioner (age 16) 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. § 409.905 Fla. Stat., 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.

19. The cited authorities explain 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.

20. The Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (DME Handbook) has been incorporated by reference into Florida Administrative Code Rule 59G-4.070.

21. The DME Handbook explains on page 1-1 that the purpose of DME and Medical Supply Services program is to "promote, maintain, or restore health and minimize the effects of illness, disability, or a disabling condition."

22. The DME Handbook defines Durable Medical Equipment on page 1-2 as "medically necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA)."

23. The DME Handbook addresses AAC systems devices on pages 2-37 thru 2-39 reading in pertinent part:

> AAC devices are designed to allow individuals to communicate.
>
> ...
>
> For Medicaid to reimburse for an AAC device, the recipient must meet the following criteria.
>
> * Demonstrate a severe, expressive communicate disorder; and
>
> * Have the physical, cognitive, and language abilities necessary to use the specific type of AAC device requested...
>
> For recipients under 21 years of age and enrolled in public school, an interdisciplinary team (ID team) must evaluate the recipient, recommend an AAC device, and write an individualized action plan or plan of care.
> The ID team must consist of at least two members of different professional disciplines and must include a speech-language pathologist who will lead the team. The speech-language pathologist may request the assistance of an occupational therapist or a physical therapist. It is expected that most cases will require the need for an occupational therapist to be a part of the ID team. The

recipient who will use the AAC device should be encouraged to participate on the ID team, as well as the recipient's caregivers, teachers, social workers, case managers, and any other members deemed necessary.
It is the responsibility of the team leader to provide the team members and other appropriate individuals with the necessary documentation to review and make a determination of concurrence. Documentation must include an evaluation and individual action plan or plan of care.

24. The respondent denied the petitioner's request for a Proslate 10 AAC device and key guard accessory. The respondent acknowledges that the petitioner would benefits from an AAC device, but asserts, absent any substantive trial results, there is no evidence that the petitioner can independently operate the device as intended.

25. The petitioner asserts that an AAC device is imperative and the requested device, while advanced, can be programmed according to her abilities.

26. After carefully reviewing the evidence and controlling legal authorities the undersigned concludes that the petitioner did not meet her burden of proof. The petitioner suffers from a severe expressive communication disorder, this is not at issue. However, the petitioner did not prove that she has the physical, cognitive, and language abilities necessary to use the Proslate 10 device. In addition, there is no evidence that the petitioner (age 16 and enrolled in public school) was evaluated by an interdisciplinary team consisting of at least two members of different professional disciplines, as required in program rule.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's 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.

DONE and ORDERED this 26th day of August, 2014,

in Tallahassee, Florida.

Leslie Green
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Copies Furnished To: [redacted] Petitioner
Marshall Wallace, Area 2, AHCA Field Office Manager