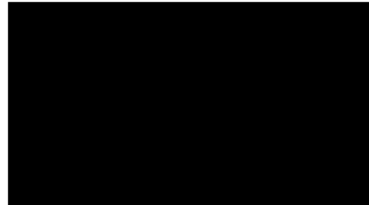


STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

**AUG 27 2014**

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



PETITIONER,

Vs.

APPEAL NO. 14F-04812

CASE NO. 30972781


AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 11 Dade  
UNIT: AHCA

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 24, 2014 at 10:20 a.m. All parties appeared telephonically from different locations.

**APPEARANCES**

For Petitioner:  mother

For Respondent: Yadira Carrasquillo, Registered Nurse Specialist  
Agency for Health Care Administration

**ISSUE**

The issue is whether respondent's denial of petitioner's request for PPEC services for full and partial days, Monday through Friday for the certification period of May 21, 2014 through November 16, 2014 was appropriate.

**PRELIMINARY STATEMENT**

At the hearing, respondent was represented by Yadira Carasquillo, registered nurse (RN) specialist with the Agency for Health Care Administration (AHCA).

Dr. Darlene Calhoun, board certified pediatrician and physician consultant for eQHealth Solutions, presented testimony on AHCA's behalf as a representative from the Agency's Quality Improvement Organization (QIO).

Respondent entered a document of 67 pages into evidence which was marked as respondent's composite exhibit 1. The exhibit contained clinical information as well as eQHealth's documentation of their initial decision on the provider's request for PPEC services on behalf of the petitioner, sections of Chapter 1 and Chapter 2 of the PPEC handbook dated February 2007.

The petitioner was represented by her mother and primary caregiver, [REDACTED]  
[REDACTED]

Because the matter under appeal is a reduction in PPEC services to the petitioner, burden of proof was assigned to the respondent. PPEC services -full and partial days- have been administratively approved pending the outcome of this appeal.

#### **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 6 year old male Medicaid recipient. He is diagnosed with esophageal reflux disease, asthma and developmental delay.
2. Petitioner lives with his mother who and sole caregiver. The mother works full time. During the regular school year, the petitioner attends public school and then the PPEC center. During the summer months, the petitioner attends summer camp.
3. The Agency contracts with a Quality Improvement Organization (QIO) to perform medical utilization reviews for private duty nursing and personal care services through a

prior authorization process for Medicaid State Plan beneficiaries. The prior authorization review determines the medical necessity of the hours requested pursuant to the requirements and limitations of the Medicaid State Plan. The Agency's QIO is eQHealth Solutions.

4. A request for service is submitted by a provider along with all information and documentation necessary for QIO to make a determination of medical necessity for the level of service requested. A review is conducted for every new certification period and a request for modification may be submitted by a beneficiary during a certification period.

5. The petitioner is continuing to receive PPEC full and partial day services, Monday through Friday, pending the outcome of this appeal.

6. On May 20, 2014, a request for skilled PPEC full and partial day services Monday through Friday was submitted by the provider on behalf of the petitioner for the certification period 5/21/2014 to 11/16/14. The request represents a continuation of PPEC services received in the preceding certification period.

7. On May 27, 2014, an eQHealth Solutions physician consultant reviewed the request and denied the PPEC services. A "Notice of Outcome-Denial Private Duty Nursing/Personal Care Services" was issued to petitioner on June 12, 2014, which notified petitioner that PPEC full and partial day services were denied. The rationale for the denial was that the PPEC services were not medical necessity and reference was made to the corresponding exclusions from coverage required by the Florida Administrative Code.

8. On June 12, 2014, a "Notice of Outcome" was issued to petitioner's provider and provided the clinical rationale as:

The patient is a 6 year old with GERD, asthma and developmental delay. The patient attends public school and uses PPEC services daily. The patient has not required any albuterol nebulizer treatments in the past 6 months. The patient is on an age-appropriate diet. The patient is not on a complex medication regimen. The clinical information provided does not support the medical necessity of continued PPEC services. The patient is not on a complex medication and does not require any ongoing skilled interventions. Monitoring alone does not qualify for PPEC services. The requested services are not approved.

9. A reconsideration was not requested.

10. On May 30, 2014, petitioner's mother timely requested a hearing because she disagreed with respondent's denial of the requested PPEC services.

11. The respondent's witness reviewed the petitioner's medical condition (see paragraph 1 above) and his social situation (see paragraph 2 above) and reviewed the decision of the nurse reviewer and the physician reviewer's comments for the initial determination (see paragraph 8 above). In response to the doctor's questions, the mother explained that her son was born prematurely, at 25 weeks, and no longer has chronic lung disease and is not on oxygen. He has been receiving PPEC services since he was 9 months old and the doctor opined that he was likely considered 'medically fragile' due to his premature birth.

12. The mother explained that the primary reason she was continuing to request PPEC services is due to her son receiving physical and speech therapy at PPEC.

13. The respondent's witness explained that PPEC services cannot be approved if there are no skilled nursing services needed. She stated therapy services can be provided separately from PPEC.

### **CONCLUSIONS OF LAW**

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

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

16. Because the issue under appeal is based on a termination of services, burden of proof was assigned to the respondent, pursuant to Fla. Admin. Code R. 65-2.060(1).

17. 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).

18. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration.

19. In the Home Health Services Coverage and Limitations Handbook, page 2-2, it provides the following...

Rule 59G-1.010 (166), Florida Administrative Code (F.A.C.) defines "medically necessary" or "medical necessity" as follows:

(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.

(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."

20. 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.

21. In reviewing the appeal for compliance with EPSDT requirements, PPEC services are part of Florida's Medicaid state plan of services. The agency has not approved ongoing PPEC services and but is providing PPEC services to the petitioner, administratively pending outcome of this appeal. Therefore, not being medically necessary must be the basis for the denial of the PPEC services in order to be in compliance with EPSDT requirements.

22. The Prescribed Pediatrics Extended Care Services (PPEC) Coverage and Limitations Handbook, dated September 2013, provides the following purpose and definition of PPEC on page 1-1:

The purpose of the Florida Medicaid Prescribed Pediatric Extended Care (PPEC) services is to enable recipients under the age of 21 years with medically-complex conditions to receive medical and therapeutic care at a non-residential pediatric center.

23. The PPEC Handbook provides the following requirements for those who can receive PPEC services:

To receive reimbursement for PPEC services, a recipient must meet **all** [emphasis added] of the following criteria:

- Be Medicaid eligible.
- Diagnosed with a medically-complex or medically fragile condition as defined in Rule 59G-1.010, F.A.C.
- Be under the age of 21 years.
- Be medically stable and not present significant risk to other children or personnel at the center.
- Require short, long-term, or intermittent continuous therapeutic interventions or skilled nursing care due to a medically complex condition.

24. The PPEC Handbook also provides, on page 2-5, a list of excluded services...

The Medicaid PPEC rate does not reimburse for the following services:

- Baby food or formulas.
- Total parenteral and enteral nutrition.
- Mental health and psychiatric services.
- Supportive or contracted services which include **speech therapy, occupational therapy, physical therapy** [emphasis added], social work, developmental evaluations, and child life.

25. The mother argued that her son receives physical and speech therapy at the PPEC center. Changing the speech and physical therapist will be difficult for her son because he does not adapt well to change.

26. The respondent's witness explained that PPEC services cannot be approved for the therapy services but the child must need some skilled nursing interventions. The witness stated that the mother's ability to provide therapy exercises in the home should help her son transition to new physical and speech therapists.

27. The undersigned concludes that the respondent has met its burden of proof and that PPEC services are not medically necessary for the petitioner. Therapy services are specifically excluded from coverage under the PPEC program and can be received separately.

### **DECISION**

Based upon the foregoing Findings of Fact and Conclusions of Law, petitioner's appeal is hereby DENIED and the respondent's action denying PPEC services 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 petitioner's responsibility.



DONE and ORDERED this 27<sup>th</sup> day of August, 2014,

in Tallahassee, Florida.

Warren Hunter

Warren Hunter  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
Office: 850-488-1429  
Fax: 850-487-0662  
Email: Appeal\_Hearings@dcf.state.fl.us

Copies Furnished To:

 Petitioner  
Rhea Gray, Area 11, AHCA Field Office Manager