

**FILED**

**JUL 22 2014**

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

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 14F-05184

PETITIONER,

Vs.

CASE NO.

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 July 17, 2014, at 9:05 a.m., with all parties appearing telephonically.

**APPEARANCES**

For the Petitioner:  the petitioner's mother.

For the Respondent: Linda Latson, registered nurse specialist, Agency For Health Care Administration (AHCA).

**STATEMENT OF ISSUE**

At issue is the Agency's action of May 27, 2014 to deny the petitioner's request for personal care services (PCS) for 4 hours a day, for school or camp days, and 8 hours a day for non-school or non-camp days. The petitioner was approved for 2 hours of PCS for school or camp days and approved for 4 hours a day for non-school or non-

camp days for the certification period from May 20, 2014 through November 15, 2014.

The petitioner has the burden of proof.

### **PRELIMINARY STATEMENT**

Present as a witness for the respondent was Dr. Ellen Theosolopolous, physician reviewer, eQHealth Solutions.

### **FINDINGS OF FACT**

1. The petitioner, who is twelve years of age, has been diagnosed with Down's Syndrome and developmental delay which requires the evaluation of services as provided through the Agency for Health Care Administration's (AHCA) Medicaid State Plan. The petitioner's condition(s) is further outlined in Respondent Composite Exhibit 1. AHCA will be further addressed as the "Agency".

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. eQHealth Solutions determined on May 27, 2014 that the petitioner's request for 4 hours a day, for school or camp days of PCS (PCA) services and 8 hours a day for non-school or non-camp days of PCS was denied for the certification period of May 20, 2014 through November 15, 2014. eQHealth Solutions approved 2 hours of PCS service for school or camp days and approved for 4 hours a day for non-school or non-camp days of the service. This request for PCS was a request for increased services.

3. A notice was mailed to the petitioner concerning the above on May 27, 2014, with an explanation for the denial stating: "The service is denied because it is for the convenience of the recipient, recipient's caregiver or the provider. Submitted information does not support the medical necessity for requested frequency and/or duration." This notice also provides a clinical rationale for the decision and states in part:

...The patient is a 12 year old male with Down's syndrome, developmental delay, speech delay and language delay. The patient does not have a G-tube or a tracheotomy. The patient is on a regular diet and can feed himself. The patient is not on any medications. The patient is ambulatory, no-verbal, occasionally incontinent and requires assistance with activities of daily living. The patient attends school Monday through Friday from 8:30 am. to 2:00 pm. The patient will be attending summer camp from June 9, 2014 through July 25, 2014. There have been no significant changes since the last certification period. The clinical information provided supports the medical necessity for 2 hours of personal care services on school days and camp days and 4 hours of personal care services on non-school days and non-camp days to assist with activities of daily living. Caregivers are available to provide additional care. Supervision and monitoring are not covered services.

4. A reconsideration request was made, but eQHealth Solutions upheld the initial decision. A Notice advising the petitioner of this was sent to the petitioner and his provider on June 6, 2014.

5. The petitioner's father is employed and works Monday through Friday from 7:00 am to 4:00 pm. He works one day a month on Saturdays from 7:00 am to 12:00 pm. The petitioner's mother is employed and works Monday through Friday from 9:00 am to 5:00 pm.

6. The respondent witness reiterated the information as noted above in the notice mailed to the petitioner and agreed with the decision made by the consultant

reviewer for this case and the second reviewer for this case. She indicated that the request for the additional service hours for the petitioner; amounts to a request for supervision and monitoring of the petitioner, which are not covered under the rules for the service. She stated that any responsible adult can provide the supervision for the petitioner.

7. The physician reviewer indicated that she has taken into consideration the requirements of the EPSDT Program for the petitioner and has made the correct medically necessary decision.

#### **CONCLUSIONS OF LAW**

8. 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.

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

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

11. 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.

(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...

12. Federal Regulations at 42 C.F.R. § 440.230, Sufficiency of amount, duration, and scope, informs:

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

13. The Home Health Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2). The Home Health Services Coverage and Limitation Handbook under Personal Care Services, on page 2-24 (March 2013) "Parental Responsibility", states:

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.

14. The Home Health Services Coverage and Limitations Handbook page 2-11 (March 2013) states in part:

Listed below are examples of services that are not reimbursable as a Medicaid home health service:

- Audiology services
- 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).

15. 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<sup>1</sup> 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.*

16. Fla. Stat. § 409.913 addresses "Oversight of the integrity of the Medicaid program," with (1)(d) describing "medical necessity or medically necessary" standards and saying in relevant part: "For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity."

17. As shown in the Findings of Fact, the Agency on May 27, 2014 denied the petitioner's request for 4 hours a day, for school or camp days of PCS (PCA) services and 8 hours a day for non-school or non-camp days of PCS for the certification period from May 20, 2014 through November 15, 2014, based on: "The service is denied because it is for the convenience of the recipient, recipient's caregiver or the provider.

---

<sup>1</sup> "You" in this manual context refers to the state Medicaid agency.

Submitted information does not support the medical necessity for requested frequency and/or duration."

18. The petitioner's representative argued that the petitioner requires personal care services for his ADL's and not for supervision. She argued that when questioned by the respondent about the use of a PCA for the petitioner for the 8 hours requested, that a PCA would be utilized for bathing the petitioner; getting him dressed and ready to take STS (special transportation) in the morning; and also for taking him to the park.

19. The respondent representative argued that the petitioner's request for additional the PCS hours amounts to a request for supervision and monitoring for the petitioner, in spite of the petitioner's representative's arguments to the contrary. She argued that the petitioner, though needing help with his activities of daily living; is ambulatory; is able to feed himself, and there has been no significant changes since the last certification period. Therefore, 2 hours of PCS service for school or camp days and 4 hours a day for non-school or non-camp days of the service was appropriately approved. She argued that based on the above arguments, the petitioner does not meet the medical necessity criteria for the PCS-PCA service as requested.

20. For the case at hand, as the evidence presented shows the petitioner needs help with his activities of daily living; it also shows he is ambulatory, is able to feed himself, and there has been no significant changes since the last certification period. Additionally, the evidence presented shows that the additional PCS hours would be for supervision and monitoring of the petitioner. The petitioner has not met his burden of proof.



21. After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer concludes that the petitioner has not met his burden of proof and that the Agency action to deny the petitioner's request for PCS-PCA services for 4 hours a day for school or camp days and 8 hours a day for non-school or non-camp days, but approve petitioner for 2 hours of PCS for school or camp days and approved for 4 hours a day for non-school or non-camp days the certification period from May 20, 2014 through November 15, 2014 based on: "The service is denied because it is for the convenience of the recipient, recipient's caregiver or the provider. Submitted information does not support the medical necessity for requested frequency and/or duration." is correct.

#### **DECISION**

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

DONE and ORDERED this 22<sup>nd</sup> day of July, 2014,

in Tallahassee, Florida.

Robert Akel

Robert Akel  
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: [REDACTED] Petitioner  
Rhea Gray, Area 11, AHCA Field Office Manager