

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

FILED
AUG 20 2014
OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 14F-05713

PETITIONER,

Vs.

CASE NO. 

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 July 17, 2014, at 9:41 a.m. All parties appeared telephonically from different locations.

APPEARANCES

For the Petitioner:  mother

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

STATEMENT OF ISSUE

At issue is the Agency's partial denial of Physical Therapy for the certification 5/28/2014-11/23/2014.

PRELIMINARY STATEMENT

Dr. Rakesh Mittal, physician reviewer for eQHealth Solutions, appeared as witness for the respondent. Respondent entered an 80 page exhibit for the agency's

Physical Therapy action into evidence without objection from the petitioner. The exhibit contained documentation of eQHealth Solutions' initial and reconsideration decisions as well as documentation from the provider in support of the therapy services requested. Chapter 2 of the "Therapy Services Coverage and Limitations Handbook", dated August 2013, was also included in the exhibit along with an August 2, 2013 memo titled "Summary Memorandum: Medical Necessity as a Limitation on Medicaid Services, Including EPSDT". The exhibit was marked as Respondent's Exhibit 1.

The petitioner was represented by his mother, [REDACTED]. The father, [REDACTED] also appeared on his son's behalf.

"Rene", # 723, from Approprio Language Services, provided translation services for the parents.

For the certification period 5/28/2014-11/23/2014, the petitioner submitted a request for 4 units of physical therapy 3 times a week and 2 units 1 time a week, for a total of 14 units or 3 ½ hours. The respondent approved 4 units 2 times a week, for a total of 8 units or 2 hours.

Because the petitioner last received physical therapy services, at 4 units 3 times a week, in August 2013, the action under appeal is a new request for services. No administrative service hours are applicable. Burden of proof was assigned to the petitioner.

FINDINGS OF FACT

1. The petitioner is an 11 year old male recipient of the Medicaid program and is diagnosed with autism.
2. Petitioner lives with his mother and father who are both self-employed.

3. 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 is requesting physical therapy services at 4 units of service 3 times per week and 2 units once a week (14 units or 3 ½ hours). EQHealth Solutions determined that 4 units 2 times (8 units or 2 hours) a week was sufficient and that the additional units of service were not medically necessary.

4. The initial decision was reflected in the "Notice of Outcome..." to the petitioner which was sent 5/31/2014 and stated the reason for the partial denial was that "...the services are not medically necessary as defined in 59G-1.010 (166) of the Florida Administrative Code."

5. Notice of the partial denial was also sent to the petitioner's provider on 5/31/2014 and provided the principle reason for the decision as:

Submitted information does not support the medical necessity for requested frequency and/or duration. Therapy services are approved for partial length of service requested, based on the documentation provided.

It also provided the clinical rationale for the decision as:

The patient is a 10 year old with autism who may benefit from continued physical therapy addressing balance and coordination skills; however, the request is excessive based on the severity of delay, goals submitted and the progress made over 2.5 years of intensive therapy. A home exercise program could have been instituted by now. Based on the patient's deficits and needs, 4 units 2 times a week are approved. The additional requested units are not approved as they have been deemed excessive.

6. A reconsideration by a different physician consultant was completed 6/4/2014 and the "Notice of Reconsideration Determination" was sent to the petitioner on 6/5/2014. It upheld the initial decision.

7. A "Notice of Reconsideration Determination" was sent 6/5/2014 to the petitioner's provider and gave the principal reason for the denial as...

Submitted information does not support the medical necessity for requested frequency and/or duration. Therapy services are approved for partial length of service request4ed, based on the documentation provided.

It also provided the same clinical rationale for the decision as provided in the initial decision.

8. The petitioner submitted a timely hearing request on 6/25/2014. Administrative service hours are not applicable because the action under appeal involves a new request for services. Petitioner is receiving 4 units of physical therapy 2 times a week, as approved for the current certification period, pending the outcome of this appeal.

9. The mother stated that [REDACTED] provider told her they had no personnel to provide her son physical therapy. As a result, her son has not had physical therapy for 9 months. She explained that her son's muscle tone has gotten worse and he falls when he walks. For these reasons she stated her son needs 3 hours of physical therapy a week.

10. The respondent's witness, Dr. Mittal reviewed the information submitted by the provider in support of their request for services. He noted that the petitioner's limitations are balance and coordination. He observed that no information was given on the status of parents being taught how to continue exercises at home as required in the home exercise program. He stated that he had read in detail the physical therapist's evaluation as well as an undated and unsigned letter (see page 48 of respondent's exhibit). He noted the letter stated that the child had behavior issues that "...take away

from valuable therapy time that could have been spent toward established goals". He advised that if the child has significant behavior issues the parents should be seeking professional advice on how to address. He concluded that based on all the documentation and information provided, the agency approved 4 units of physical therapy two times a week.

11. The mother explained that her son has 2 therapists providing service and one of them is new. Her son is learning to adjust to this new therapist. She stated her son gets along with the 'old' therapist and does whatever she asks.

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

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

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

15. 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.

16. 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.

17. In reviewing the appeal for compliance with EPSDT requirements, physical 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.

18. The Therapy Services Coverage and Limitations Handbook (Handbook), promulgated August 2013, on page 1-3, provides the following description for physical therapy ...

Physical therapy is a specifically prescribed program to develop, maintain, improve or restore neuromuscular or sensory-motor function, relieve pain, acquire a skill set, restore a skill set, or control postural deviations to attain maximum performance.

Physical therapy services include evaluation and treatment of range-of-motion, muscle strength, functional abilities and the use of adaptive and therapeutic equipment. Examples are rehabilitation through exercise, massage, the use of equipment and habilitation through therapeutic activities.

19. The Handbook sets forth the general requirements that apply to prior authorization for therapy services including physical therapy, including the prescription requirements. On page 2-14 it also provides the requirements for the **initial** plan of care and states in part:

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; and,
- How the treatment will be coordinated with the other service needs prescribed for the recipient.

20. The mother stated her son has improved since getting the physical therapy re-started. Her son is more focused in following the therapist's instructions. She thinks this is because he is slowly getting back to his old routine. She advised that she is working to get behavior therapy services for her son. She explained that she had never been taught how to do the exercises at home but she tries to do things with him – walking, having him pick up things, kick a ball. She insists her son needs the 3 hours of physical therapy services so he can improve to the level he was before the therapy sessions stopped.

21. After the mother's testimony, the physician reviewer made no changes to the agency's approval of 4 units of physical therapy 2 times a week.

22. After considering the evidence, testimony, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer finds that the petitioner has not met his burden of proof in supporting the requested increase in services. The respondent has provided credible evidence and testimony that 4 units of physical therapy 2 times a week meets the medical needs of the petitioner at this time. It is also noted that the effectiveness of the physical therapy cannot be maximized until the petitioner's behaviors are addressed. The mother is working to address this need for her son.

DECISION

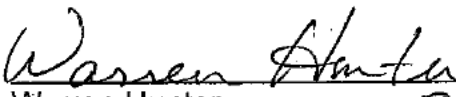
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is DENIED and the Agency action affirmed.

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 agency has no funds to assist in this review, and any financial obligations incurred will be the petitioners responsibility.

DONE and ORDERED this 20th day of August, 2014,

in Tallahassee, Florida.


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