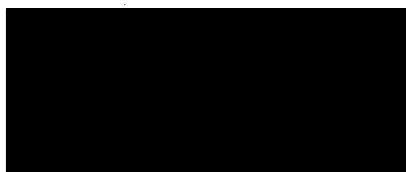


FILED

APR 06 2015

**OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES**

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



APPEAL NO. 15F-00364

PETITIONER,
Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 04 Clay
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on March 16, 2015 at 1:16 p.m.

APPEARANCES

For the Petitioner:  mother

For the Respondent: Sheila Broderick, registered nurse specialist

STATEMENT OF ISSUE

Whether the respondent improperly denied the petitioner's request to increase the number of personal care assistance (PCA) hours he receives through Medicaid.

PRELIMINARY STATEMENT

The Agency for Health Care Administration (AHCA or Agency or respondent) administers the Florida Medicaid program. The respondent contracts with eQ Health Solutions (eQ) to complete prior service authorizations for PCA services, among other services.

By notice dated November 17, 2014, eQ informed the petitioner that his request to increase the hours of PCA he receives through Medicaid from four hours Monday – Friday and six hours on Saturday and Sunday to six hours Monday – Friday and 12 hours on Saturday and Sunday was denied. The notice reads in pertinent part: “the services are not medically necessary...” The petitioner requested reconsideration. By notice dated November 20, 2014, eQ informed the petitioner that the original decision was upheld.

On January 9, 2015, the petitioner timely requested a hearing to challenge the respondent’s decision.

There were no additional witnesses for the petitioner. The petitioner did not submit exhibits. Dr. Rakish Mittal, physician reviewer with eQ was present as a witness for the respondent. Respondent’s Exhibits 1 & 2 were admitted into evidence.

FINDINGS OF FACT

1. The petitioner (age 15) is enrolled in the Florida Medicaid program. He receives PCA services through the Private Duty Nursing (PDN) program. The PDN program provides home health services to children with complex medical conditions. PDN services supplement the care provided by family or caregivers.

2. PDN services must be medically necessary as determined through a prior authorization process completed by the respondent or its contracted agent. eQ is the contracted authorization agent in the instant case.

3. The petitioner's diagnoses include epilepsy, Down's syndrome, developmental delay, and hypertension. The petitioner can walk, but transports with a wheelchair most of the time due to hip pain. The petitioner is nonverbal. He is on a regular diet. He feeds and takes medications by mouth. He needs physical assistance with all the activities of daily living (ADLs).

4. The petitioner attends school Monday – Friday, 8:30 a.m. – 4:30 p.m. The school provides for his PCA needs while he is there.

5. In addition to the need for assistance with ADLs, the petitioner requires supervision and verbal redirection to address behaviors such as reluctance to get out of bed in the morning, to stay on task getting ready for school, and getting on the school bus.

6. The petitioner lives in the family home with his mother. The mother's diagnoses include neuropathy, hip dysplasia, and anxiety. She has difficulty ambulating and uses a computer chair with wheels to get around the house most of the time. The mother does not work outside the home.

7. Prior to the action under appeal, the petitioner was receiving four hours of PCA Monday – Friday and six hours on Saturday and Sunday.

8. The petitioner's mother requested that the PCA hours be increased to six hours Monday – Friday and 12 hours on Saturday and Sunday. The mother asserted

that she requested the service increase because her combined impairments, including anxiety attacks, and the petitioner's behaviors make it difficult for her to properly care for him.

9. Eligibility for PDN services is based on the patient's medical condition and need for home health care services to supplement the care of family or caregivers. The reviewing agent relies on clinical and household information provided by the recipient's physician, caregivers, and home health agency to determine the level of service medically necessary

10. The petitioner's home health agency submitted the service increase request to eQ in October 2014. The request reads in pertinent part:

He has been experiencing an increase in seizure activity... Mom and his MDs are currently working on a medical regimen to keep his seizures under control. Mom is not handling pt's health condition very well due her own medical problems. She has a hard moving around due to her diagnosis and constant pain. She also has a diagnosis of anxiety that brings panic attacks. She is constantly having these attacks wondering when her son's next seizure will be. Her medicine for anxiety can only help so much but it is also making her more tired and thus unable to care for [the petitioner] like she and he needs...

11. The petitioner's last seizure occurred October 2014. His physician prescribed a new medication which has been very successful.

12. Dr. Mittal, reviewing physician with eQ, explained that the service increase was denied because the petitioner's primary need is for behavior modification, not additional PCA services. PCA providers assist with the ADLs; bathing, dressing, grooming, etc. Two hours before school and two hours after school (four hours total) are sufficient time to assist the petitioner with ADLs weekdays. Two hours in the

morning, afternoon, and evening (six hours total) are sufficient for ADLs on the weekends. The time needed coax the petitioner out of bed, out of the house, and onto the bus are to address behaviors, not PCA needs. PCA providers are not behavioral specialists. The petitioner's behavioral service needs should be addressed through the proper channels.

13. Although the petitioner's seizures are now under control and that reason is now moot, Dr. Mittal explained the PCA service providers would not be able assist in this matter. PCA providers cannot administer medication or first aid. These services are performed by medical professionals, registered nurses.

14. Dr. Mittal opined that it is not medically necessary for the petitioner to receive additional PCA hours.

CONCLUSIONS OF LAW

15. 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 § 120.80, Fla. Stat.

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

17. At issue is the request for an increase in Medicaid services. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof was assigned to the petitioner.

18. The standard of proof in an administrative hearing is by a preponderance of the evidence (See Fla. Admin. Code R. 65-2.060(1).) The preponderance of the

evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

19. The Florida Medicaid program is authorized by Fla. Stat. Chapter 409 and Fla. Admin. Code Chapter 59G. The Medicaid program is administered by the respondent. Section 409.905, Fla. Stat. addresses mandatory Medicaid services under the State Medicaid Plan:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

(4) HOME HEALTH CARE SERVICES.--The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home...

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents; and a determination of the medical necessity for private duty nursing instead of other more cost-effective in-home services.

(c) The agency may not pay for home health services unless the services are medically necessary ...

20. The definition of medically necessary is found in the Fla. Admin Code. R. 59G-1.010 which states:

(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; 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.

21. The petitioner is under 21, a broader definition of medically necessary applies to include the EPSDT 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.

22. In accordance with the cited authority, the respondent must provide services to Medicaid recipients under 21 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. The state is authorized to establish the amount, duration, and scope of such services.

23. The Florida Medicaid Home Health Services Coverage and Limitations Handbook (The Handbook) has been incorporated by reference into Florida Administrative Code Rule 59G-4.130(2).

24. The Handbook addresses personal care services on page 1-2 and states in pertinent part:

Personal care services provide medically necessary assistance with activities of daily living (ADL) and age appropriate instrumental activities of daily living (IADL) that enable the recipient to accomplish tasks that they would normally be able to do for themselves if they did not have a medical condition or disability.

ADLs include:

- Eating (oral feedings and fluid intake);
- Bathing;
- Dressing;
- Toileting;
- Transferring; and
- Maintaining continence ...

25. The petitioner requires assistance ADLs, this fact is not disputed. At issue is the amount of assistance that is medically necessary.

26. The Medicaid Handbook on page 2-11 through 2-12 provides examples of services not reimbursable as a home health services. The list includes supervision.

27. The petitioner currently receives four hours of PCA Monday – Friday and six hours on Saturday and Sunday. The petitioner requested that the hours be increased to

six hours Monday – Friday and 12 hours on Saturday and Sunday due to increased seizure activity, behavioral issues, and caregiver anxiety attacks.

28. The respondent determined additional PCA hours were not medically necessary. The petitioner has not had a seizure since October 2014. This issue is moot. Behavior modification is not a PCA covered service. The PDN program does not provide services for the convenience of the caregiver.

29. The controlling legal authorities state that Medicaid goods and service cannot be in excess of a patient's needs. After reviewing ESPDT and medical necessity requirement, the undersigned finds that the respondent's action was correct. The evidence does not prove that it is medically necessary for the petitioner to receive additional PCA services. The petitioner did not meet his burden in this matter.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the appeal is denied. The respondent's action is affirmed.

NOTICE OF RIGHT TO APPEAL

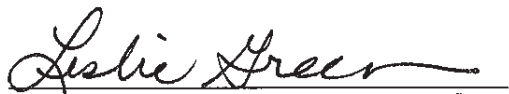
This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 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 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 10th day of April, 2015,
in Tallahassee, Florida.



Leslie Green

Hearing Officer

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Copies Furnished To: [REDACTED] Petitioner

Lisa Broward, Area 4, AHCA Field Office Manager