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

[redacted]

APPEAL NO. 15F-00799

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above referenced matter telephonically on March 17, 2015, at 10:45 a.m.

APPEARANCES

For the Petitioner: [redacted]
Petitioner's Mother

For the Respondent: Carol King, R.N.
Registered Nurse Specialist/Fair Hearing Coordinator

STATEMENT OF ISSUE

Did the petitioner prove by a preponderance of the evidence that the Agency for Health Care Administration incorrectly deny her request for a polysomnography study?

PRELIMINARY STATEMENT

[redacted] the petitioner's mother, appeared on behalf of the petitioner, [redacted] "petitioner"), who was also present. No additional parties appeared on behalf of the petitioner.

Carol King, R.N., Registered Nurse Specialist and Fair Hearing Coordinator for the Agency for Health Care Administration appeared on behalf of the Agency for Health Care Administration. The following individuals appeared as witnesses on behalf of the Agency: Jorge Cabrera, M.D., Medical Director for Better Health; and Lisvette Lopez, Grievance and Appeals Supervisor with Better Health. The Agency for Health Care Administration may sometimes hereinafter be referred to as "AHCA" or the "Agency".

The hearing in this matter was originally convened on March 17, 2015. After the presentation of both party's cases but prior to the petitioner's opportunity to cross examine the respondent's witness, the petitioner left the conference. The remaining participants waited several minutes for the petitioner to return but she did not. In order to provide the petitioner with an opportunity to cross examine the respondent's witness, the hearing was scheduled to be reconvened on April 2, 2015. Although the respondent and the respondent's witnesses appeared at this time, the petitioner did not.

The respondent introduced Exhibits "1" through "5", inclusive, at the hearing, all of which were accepted into evidence and marked accordingly. The petitioner did not introduce any exhibits.

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 15-year-old female.

2. Petitioner was eligible to receive Medicaid services at all times relevant to this proceeding.

3. Petitioner was enrolled in the Better Health Managed Medical Assistance program on July 1, 2014. Better Health is a health maintenance organization ("HMO") that is contracted by the Agency for Health Care Administration to provide services to certain Medicaid eligible recipients in Florida.

4. On or about January 7, 2015, petitioner's health care provider submitted a prior authorization request to Better Health Better for a Polysomnogram to be performed at Memorial Regional Hospital.

5. A Polysomnogram, commonly referred to a sleep study, is administered to determine if an individual has a sleep disorder such as sleep apnea.

6. After reviewing the petitioner's request, Better Health forwarded a letter to the petitioner's representative on or about January 12, 2015 advising that the plan was not approving the Polysomnogram. The letter set forth the reason for the denial as "... according to the information we received it [the procedure] is not medically necessary."

7. The petitioner has a history of headaches, reflux, stomach pain, gastritis, and esophagitis.

8. The diagnostic order submitted to Better Health along with the petitioner's request asks for a sleep study due to sleep disturbances and vomiting.

9. The letter from the petitioner's doctor dated January 6, 2015 submitted to Better Health along with the petitioner's request for a sleep study states, in part:

> The patient also c/o difficulty sleeping at night. She admits to procrasting [*sic*] her homework until late, which is often not completed until midnight. She will use her phone until she falls asleep approximately 30 mins-1 hour later....

10. The Review of Symptoms attached to the petitioner's request for a sleep study indicates the petitioner was negative for the following: decreased activity; irritability; lethargy; weight gain; nasal congestion; rhinorrhea (discharge from the nose); difficulty breathing; behavioral changes; and headaches.

11. All of the conditions listed in the previous paragraph are indicative of a sleep disorder such as sleep apnea.

12. Both nasal congestion and rhinorrhea can potentially cause obstruction of breathing at night.

13. The results of the petitioner's physical examination attached to her request for a sleep study indicate the following: the petitioner was not in acute distress; she was well nourished and well developed at the time of the examination; the petitioner's nose, mouth, and throat were unremarkable; there was no discharge from either the right naris or left naris; and there was no tonsillar hypertrophy or exudates.

14. The Patient Plan attached to the petitioner's request for a sleep study states, in part: "...Proper sleep hygiene, including no cell phone or TV 1 hour before bedtime should be performed...."

15. Watching television or using a cell phone before going to bed can lead to restless sleep because the individual replays the events of the last hour while sleeping.

16. Better Health evaluated the petitioner's request for a sleep study in accordance with InterQual criteria. The InterQual criteria are standardized guidelines

utilized by health care organizations nationally as a tool to help evaluate an individual's request for medical services.

17. The petitioner does not have a reported history of snoring.

18. The petitioner does not have a reported history of gasping or choking while she is sleeping.

19. The petitioner sometimes skips breaths while sleeping at night. However, these skipped breaths do not rise to the level of an irregular breathing pattern.

20. The petitioner does not present with tonsillar/adenoid hypertrophy.

21. The petitioner is not diagnosed with hypersomnolence, which is described as sleeping too much.

22. The petitioner's medical records do not indicate she is irritable or moody.

23. The petitioner does not suffer from morning headaches.

24. The petitioner is not obese. She recently experienced a 17-pound weight loss.

25. The petitioner has no reported craniofacial anomalies.

26. The petitioner was referred for an Attention Deficit Hyperactivity Disorder ("ADHD") evaluation. ADHD is a neurologic disorder. The petitioner has not yet been diagnosed with ADHD.

CONCLUSIONS OF LAW

27. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to § 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

28. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

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

30. § 409.912, Fla. Stat. states, in relevant parts:

> Cost-effective purchasing of health care.—The agency shall purchase goods and services for Medicaid recipients in the most cost-effective manner consistent with the delivery of quality medical care. To ensure that medical services are effectively utilized, the agency may, in any case, require a confirmation or second physician's opinion of the correct diagnosis for purposes of authorizing future services under the Medicaid program.
>
> (3) The agency may contract with health maintenance organizations certified pursuant to part I of chapter 641 for the provision of services to recipients. This subsection expires October 1, 2014.

31. The Florida Medicaid Provider General Handbook, incorporated by reference in the Medicaid Services Rules under Fla. Administrative Code Chapter 59G-4, states on Page 1-22, in part:

> Medicaid contracts with Health Maintenance Organizations (HMOs) to provide prepaid, comprehensive, cost-effective medical services to enrolled Medicaid recipients.
>
> Medicaid pays each HMO a monthly capitation fee for managing and providing care to each enrolled recipient. In accordance with certain contractual agreements with Medicaid, the HMO provides a specified, comprehensive package of medical services for this monthly Medicaid fee.

32. Although the terms medically necessary and medical necessity are often used interchangeably and may be used in a variety of contexts, their definition for Florida Medicaid purposes is contained in the Florida Administrative Code. Fla. Admin. Code R 59G-1.010 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.

(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.

33. The InterQual standards used by the Agency as a guideline appear, in part, as follows:

100 Suspected sleep apnea **[One]**
- 110 Sx/findings during sleep **[One]**
  - 111 Snoring
  - 112 Gasping/choking
  - 113 Irregular breathing patter
- 120 Witnessed sleep pattern consistent with sleep apnea **and** Sx/findings while awake **[One]**
  - 121 Tonsillar/adenoid hypertrophy
  - 122 Hypersomnolence
  - 123 Irritability/moodiness
  - 124 Morning headaches
  - 125 Obesity
  - 126 Craniofacial anomalies
  - 127 Neurologic disorder
  - 128 Documented behavioral problems

129 Failure to thrive

34. Better Health determined the request for a Polysomnogram was not medically necessary based on the information provided.

35. The petitioner's representative argued that the evidence submitted shows the petitioner is in need of a Polysomnogram.

36. The respondent's witness argued that the petitioner's request for a Polysomnogram was properly denied as it did not meet the requirement of medical necessity. He argued that the evidence presented does not meet InterQual criteria.

37. For the case at hand, the evidence presented does not support the need for a Polysomnogram. Petitioner does not have a history of snoring, gasping or choking during sleep, or an irregular breathing pattern while sleeping, one of which is required to support a potential diagnosis of sleep apnea, which is a prerequisite to having a sleep study. The evidence presented also indicates the petitioner is negative for the following conditions, at least one of which is required to meet the InterQual criteria for a pediatric sleep study: tonsillar/adenoid hypertrophy; hypersomnolence; irritability/ moodiness; morning headaches; obesity; craniofacial anomalies; neurologic disorder; documented behavioral problems; and failure to thrive. The controlling authorities make clear that services should be excluded whenever a less costly, equally effective, service can be safely furnished.

38. After considering the evidence and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the Agency's action to deny the petitioner's request for a Polysomnogram for the reasons listed above. The petitioner has not met his burden of proof.

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 4th day of May, 2015, in Tallahassee, Florida.

Peter J. Tsamis
Hearing Officer
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