

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

FILED

MAY 11 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-02014

PETITIONER,

Vs.

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

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on April 8, 2015 at 1:04 p.m.

APPEARANCES

For the Petitioner:



Petitioner's mother

For the Respondent:

Carol King, R.N. Specialist
Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether or not Respondent's action denying Petitioner four (4) hours of personal care services (PCS) per day, Monday through Friday, was correct.

PRELIMINARY STATEMENT

The Petitioner, _____ ("Petitioner") was not present but was represented by his mother, _____ Ms. _____ may sometimes hereinafter be referred to as

the Petitioner's "representative". Ms. [REDACTED] gave oral testimony, but did not move any exhibits into evidence.

Carol King, R.N., appeared both as a witness and representative for the Respondent, the Agency for Health Care Administration (hereinafter "AHCA" or the "Agency"). Dr. Darlene Calhoun, D.O., Physician Reviewer with eQHealth Solutions, appeared as a witness for the Agency. Respondent's Exhibits "1" through "8" were entered into evidence.

Administrative notice was taken of the following:

- AHCA Memorandum dated January 9, 2012 and entitled: Fair Hearings Process – Authorization for Peer Review Organization in Medical Necessity Determinations.
- AHCA Prior Authorization Process for Private Duty Nursing, Personal Care, and Home Health Visits
- Florida Statutes: § 409.905 and § 409.913.
- Florida Administrative Code: R.59G-4.130 and R.59G-1.010.
- The Florida Medicaid Home Health Services Coverage and Limitations Handbook.
- AHCA Memorandum dated August 5, 2014 and entitled: "Summary Memorandum: Medical Necessity as a Limitation on Medicaid Services, Including EPSDT".

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 14-year-old male with a birth date of [REDACTED]
2. At all times relevant to this proceeding, he was eligible to receive Medicaid services.
3. Petitioner resides with his mother and father, who are his primary caregivers.
4. Petitioner attends school from 8:00 a.m. to 3:00 p.m., Monday through Friday.

5. Petitioner's school is located approximately one (1) hour away from his home.

6. Petitioner's parents are self-employed and work outside the home. They both work from 4:00 p.m. to 8:00 p.m., Monday through Friday.

7. Petitioner's diagnoses include:

- Autism
- ADHD
- Sensory Integration Disorder

8. Petitioner's Personal Care Services Plan of Care dated January 21, 2015, indicates he has speech difficulty, needs for personal support, is alert/oriented, combative, and agitated. He cannot be left alone and needs constant supervision.

9. Petitioner is continent, ambulatory, and able to feed himself, but needs assistance bathing and grooming. Petitioner requires one-to-one care with all his personal hygiene and self-care needs.

10. Petitioner's physician, Dr. [REDACTED] wrote a prescription for home health services for four (4) hours per day, Monday through Friday, for 60 days.

11. The reason provided for the prescription was "To assist with activities of daily living, safety and supervision issues." (Respondent's Exhibit 4).

12. Petitioner has no sense of "stranger danger" and is at high risk without supervision.

13. eQHealth Solutions, Inc. ("eQHealth") is the Peer Review Organization (PRO) contracted by the Respondent to perform prior authorization reviews for home health services. PCS is a home health service.

14. A physician at eQHealth reviewed the prescription for home health services.

15. eQHealth issued a "Notice of Outcome" dated February 9, 2015, in which eQHealth denied Petitioner's request for home health services in its entirety.

16. The principal reasons given for the denial were listed as: "(1) The service is denied because the plan of care provided is not individualized or consistent with the symptoms or confirmed diagnosis; (2) The service is denied because the care can be provided by the parent or caregiver; and (3) Submitted information does not support the medical necessity for requested services." (Respondent's Composite Exhibit 5).

17. The clinical rationale given for the decision was:

The patient is a 14 year old with Autism, attention deficit hyperactivity disorder, and sensory integration disorder. The patient is continent, ambulatory, and on a regular diet. The patient attends school from 8am to 3pm. The patient lives with his parents who both work from 4-8pm. The clinical information provided does not support the medical necessity of the requested services. The patient is ambulatory and continent. The parents should be able to provide assistance with activities of daily living (ADLs) before school and after work. The additional services appear to be for supervision which is not a covered service. The requested services are deemed not medically necessary. (Respondent's Composite Exhibit 5).

18. The Notice of Outcome stated a reconsideration of the decision could be requested within five business days of the date of the letter.

19. A reconsideration was requested on February 10, 2015.

20. On February 12, 2015, eQHealth issued a Notice of Reconsideration Determination upholding its original decision, stating "The information submitted for reconsideration provided no evidence to support the reversal of the previous decision. The original decision is upheld." (Respondent's Composite Exhibit 6).

21. On February 20, 2015, Petitioner timely requested a Fair Hearing.

CONCLUSIONS OF LAW

22. 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.

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

24. Respondent's action represents neither a termination nor reduction of existing personal care. In accordance with Fla. Admin. Code R. 65-2.060(a), the burden of proof is assigned to the Petitioner.

25. The standard of proof in an administrative hearing is a preponderance of the evidence. The preponderance of the evidence standard requires proof by "the greater weight of the evidence," (Black's Law Dictionary at 1201, 7th Ed.).

26. 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. ...

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

27. The definition of medically necessary is found in 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.

28. Since the Petitioner is under 21, the requirements associated with Early and Periodic Screening, Diagnosis and Treatment (EPSDT) are applicable. 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....

29. In regard to EPSDT requirements, The State Medicaid Manual, published by the Centers for Medicare and Medicaid Services states, in part:

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, you¹ 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. 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.

30. The State Medicaid Manual continues by stating, in part:

5110. Basic Requirements...

...Services under EPSDT must be sufficient in amount, duration, or scope to reasonably achieve their purpose. The amount, duration, or scope of EPSDT services to recipients may not be denied arbitrarily or reduced solely because of the diagnosis, type of illness, or condition. **Appropriate limits may be placed on EPSDT services based on medical necessity.** (emphasis added).

31. The October 2014 Florida Medicaid Home Health Services Coverage and Limitations Handbook (Handbook) has been promulgated into rule by Fla. Admin.

¹ "You" in this context of the manual refers to the state Medicaid agency.

Code R. 59G-4.130(2). The Handbook describes services covered under the Florida Medicaid Home Health Services Program. PCS is an included service for individuals under the age of 21. The issue before this tribunal, therefore, is whether or not the requested PCS hours are medically necessary.

32. Page 1-2 of the Handbook states "Personal care services provide medically necessary assistance with activities of daily living (ADL)...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."

33. Page 1-2 lists the types of ADLs for which a PCS provider can assist:

- Eating (oral feedings and fluid intake);
- Bathing;
- Dressing;
- Toileting;
- Transferring; and
- Maintaining continence (examples include taking care of a catheter or colostomy bag or changing a disposable incontinence product when the recipient is unable to control his bowel or bladder functions).

34. Pages 2-12 and 2-13 of the Handbook address excluded services which are not reimbursed by Medicaid. This list includes, in part:

- Mental health and psychiatric services;
- Respite care;
- Baby-sitting;
- Escort services;
- Day care or after school care; and
- Companion sitting or leisure activities

35. Page 1-3 of the Handbook defines "babysitting" as: "The act of providing custodial care, daycare, afterschool care, supervision, or similar childcare unrelated to the services that are documented to be medically necessary for the recipient."

36. In the instant case, the requested hours appear to be primarily for supervision, rather than for assistance with ADLs. Supervision does not require the expertise of a PCS provider. Supervision can be provided by any responsible adult.

37. Appendix L of the Handbook discusses "Review Criteria for Personal Care Services" and sets forth each of the allowable personal care tasks and general time allowance for each task.

38. Petitioner's Personal Care Services Plan of Care indicates he needs assistance with bathing and grooming.

39. Page L-4 of the Handbook provides the general time allowance for a full-body bath is up to 30 minutes. It provides for up to 45 minutes for grooming/skin care.

Therefore, Petitioner's PCS needs can be met in approximately one-hour to one-hour and fifteen minutes per day.

40. In regard to parental responsibility, page 2-25 of the Handbook 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.

41. The above paragraph establishes the Home Health Services Program is designed to supplement, but not replace, the care provided by the parents.

42. Petitioner's mother testified she and his father work four (4) hours per day, Monday through Friday, from 4:00 p.m. to 8:00 p.m. Therefore, there is sufficient

time remaining during the day for them to provide their son with one-to-one personal care.

43. The physicians from eQHealth considered the various conditions of medical necessity and all applicable rules and regulations, including those found in Respondent's Handbook.

44. The undersigned has reviewed EPSDT and medical necessity requirements and applied such to the totality of the evidence. The Petitioner has not established, by the greater weight of the evidence, that the requested PCS hours are medically necessary.

45. Petitioner's request for four (4) PCS hours per day, Monday through Friday is in conflict with the following conditions of medical necessity under Fla. Admin. Code R.

59G-1.010:

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;

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

46. The PCS hours Petitioner requested are in excess of his needs because the assistance with his ADLs can be provided by his parents. Services provided by caregivers within the home are a less costly alternative to having the Agency provide the services. The PCS hours are primarily for supervision, which is not a covered service.

47. The undersigned notes the denial of PCS hours presents a challenge to Petitioner's parents to provide his needed care, but they are not a medical necessity

under the law. His parents are encouraged to work with his physician and his case manager to see if other, more appropriate services may be available to him.

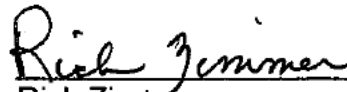

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is DENIED and the Agency'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.

DONE and ORDERED this 11th day of May, 2015,
in Tallahassee, Florida.


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