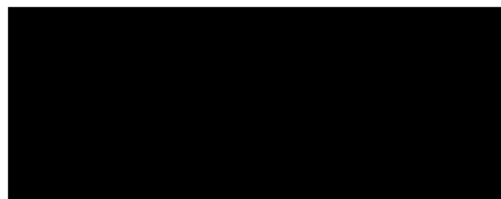


STATE OF FLORIDA  
DEPARTMENT OF CHILDREN AND FAMILIES  
OFFICE OF APPEAL HEARINGS

**FILED**

**MAY 26 2015**

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



APPEAL NO. 15F-02145

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 06 Pasco  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above referenced matter telephonically on April 28, 2015, at 10:25 a.m.

**APPEARANCES**

For the Petitioner:

Petitioner's Mother

For the Respondent:

Stephanie Lang, R.N.  
Registered Nurse Specialist/Fair Hearing Coordinator  
Agency for Health Care Administration

**STATEMENT OF ISSUE**

Did the petitioner prove by a preponderance of the evidence that the Agency for Health Care Administration incorrectly deny his request for services under the Statewide Inpatient Psychiatric Program ("SIPP")?

**PRELIMINARY STATEMENT**

[REDACTED] the petitioner's mother, appeared on behalf of the petitioner, [REDACTED] (petitioner"), who was not present. [REDACTED] the petitioner's other parent, appeared as a witness on behalf of the petitioner. Ms. [REDACTED] may sometimes hereinafter be referred to as the petitioner's "representative".

Stephanie Lang, R.N., Registered Nurse Specialist and Fair Hearing Coordinator with 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 for Health Care Administration: Tracey Smithey, M.D., psychiatrist and Behavioral Health Medical Director of Amerigroup; Susan Bramer, LCSW, Director of Behavioral Health of Amerigroup; and Laura Withrow, Manager of Clinical Quality at Amerigroup. Lou Esposito, Medical Health Care Program Analyst with the Agency for Health Care Administration; Melissa Eddleman, Program Administrator of the Behavioral Health and Facilities Unit at the Agency for Health Care Administration; and Rick Zimmer, a hearing officer with the Office of Appeal Hearings, were present solely for the purpose of observation.

The respondent introduced Exhibits "1" through "19", inclusive, at the hearing, all of which were accepted into evidence and marked accordingly. At the request of the respondent, the hearing officer took administrative notice of the Florida Statutes and Administrative Code Rules relevant to this proceeding.

**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 10-year-old male. His date of birth is [REDACTED]
2. On or about November 20, 2014, petitioner's provider submitted a prior authorization request to Amerigroup for residential treatment services to be provided to the petitioner through the Statewide Inpatient Psychiatric Services Program beginning November 24, 2014. This prior authorization included an assessment by the petitioner's psychiatrist who is licensed to practice in the State of Florida.
3. Amerigroup sent a notice dated November 24, 2014 denying the request for residential treatment services. (Respondent's Exhibit 8) The notice states:

**The service(s) is not approved on 11/21/2014 because:**

We used McKesson InterQual 2012 Child Psychiatry Residential and Community-Based Treatment guidelines to evaluate your adolescent's provider's request for residential treatment. Admissions to residential treatment are very serious and should happen when a child is so ill that she/he can only be helped with such an admission. In other cases of even significant illness, treatment outside of the hospital helps people get better and stay better. Your child's provider told us why he/she thought your child needed to be admitted. The information suggested that your child could have been helped outside the hospital in a setting such as outpatient treatment with medication management. Specifically, the information that your provider gave us did not include a serious danger to self or others or other serious problems that could not be treated as successfully in a lower level of care without getting worse.

4. The petitioner requested a request to Amerigroup on or about December 8, 2014 asking it to reconsider its decision to deny residential treatment services. This internal appeal was denied by Amerigroup's Medical Director on or about December 18, 2014.
5. On or about February 17, 2015, the petitioner's provider submitted a prior authorization request to Amerigroup for residential treatment services to be provided to

the petitioner through the Statewide Inpatient Psychiatric Services Program beginning February 18, 2015.

6. Amerigroup sent a notice dated February 20, 2015 denying the request for residential treatment services. (Respondent's Exhibit 13) The notice states:

**The service(s) is not approved on 2/18/2015 because:**

We cannot approve the request for admission to residential treatment as of 02/18/15. The information your provider gave us does not show that this is medically necessary. You are being referred to this program because your behavior could be harmful to yourself or others. You have been impulsive. This has been going on for some time. You have not caused serious harm to anyone. You have not harmed yourself to such a degree that has caused serious medical problems. You do not require 24 hour supervision while you are treated for this. You can be safely treated with outpatient services. We based this decision on the health plan guidelines. (Psychiatric Disorder Treatment – Residential Treatment Center (RTC) (CG-BEH-03).

7. On or about February 23, 2015, Amerigroup received a high priority State Complaint from the Agency for Health Care Administration asking that Amerigroup reevaluate petitioner's request for services through the Statewide Inpatient Psychiatric Services Program. This complaint was entered as a grievance by Amerigroup.

8. On or about February 24, 2015, Amerigroup's Medical Director upheld the precertification denial due to a lack of medical necessity. This denial was communicated to the petitioner through the use of a grievance resolution letter to the member on or about March 10, 2015.

9. The petitioner made a timely request for a fair hearing and this proceeding ensued.

10. The petitioner is diagnosed with central auditory processing disorder, a learning disability.

11. The petitioner has multiple behavioral disorders including oppositional – defiant disorder and a parent – child relation problem.

12. Petitioner has multiple psychological disorders including mood disorder and post-traumatic stress disorder (“PTSD”). He is also diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”) with impulsivity. Attention Deficit Hyperactivity Disorder is considered both a neurological and a psychological disorder.

13. The petitioner has a history of aggression. The petitioner tried to stab a child with scissors approximately one year ago. The petitioner has knocked a child down and kicked him in the head. He has also pinned his cousin on the ground and proceeded to punch and kick him.

14. The petitioner is in a contained unit in school where he is monitored by an aid at all times. He has threatened multiple classmates, including threatening to hit one in the head with a baseball bat.

15. The petitioner was admitted to Children’s Crisis Stabilization Unit on January 30, 2014 and February 17, 2014.

16. The Baycare Behavioral Health Psychiatric Evaluation (assessment date of November 11, 2014) describes the petitioner as “...a 10-year-old white male with a past psychiatric history significant for oppositional-defiant disorder; attention-deficit hyperactivity disorder, combined type; and mood disorder, not otherwise specified.” (Respondent’s Exhibit 9)

17. Under the History of Present Illness section, the Baycare Behavioral Health Psychiatric Evaluation states the following: “The patient has had increasing symptoms of aggression that have now worsened over the last month. Patient was

recently removed from [REDACTED] Elementary and placed at [REDACTED] Elementary a month ago. Currently, at [REDACTED] Elementary they have an EBD [Emotional Behavioral Disabilities] unit where he is currently placed due to his symptoms of aggression...." (Respondent's Exhibit 9)

18. The respondent's witness testified that mood disorder in a child is the equivalent of bi-polar disorder in an adult. An individual may not be diagnosed with bi-polar disorder until he or she reaches the age of majority.

19. The petitioner is prescribed Depakote – 250 mg in the morning and 375 mg at bedtime. Depakote is a psychotropic medication. The petitioner is prescribed this medication for his mood disorder and epilepsy.

20. The petitioner was previously prescribed and taking the psychotropic medications Risperdal and Strattera.

21. The petitioner presently resides with his adoptive parents. He was removed from his biological mother's care at 14 months due to physical and sexual abuse. The petitioner was in six different foster homes from the time he was 14-months-old until he was three years of age, when he was subsequently adopted.

22. Residential treatment services under the Statewide Inpatient Psychiatric Services Program are generally the last option for children who cannot remain in the community. All treatment opportunities in the community should be exhausted before resorting to a SIPP placement.

23. The respondent's position is that the petitioner's disorders, conditions, and delinquency situation do not require a residential placement, and that petitioner's needs may be effectively met at a lower level of care.

24. The Amerigroup psychiatrist offered a number of alternatives to residential treatment including in-home therapy; maintaining a consistent medication regimen; and adoption-related services.

25. It is the position of the petitioner's representative that Statewide Inpatient Psychiatric Program services are medically necessary for the petitioner.

26. The petitioner has previously tried both out-patient and in-home therapy.

27. Out-patient and in-home therapy have not been effective in alleviating the petitioner's aggression.

### **CONCLUSIONS OF LAW**

28. By agreement between the Agency for Health Care Administration and the Department of Children and Families, AHCA has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Fla. Stat. § 120.80.

29. The Florida Medicaid Program is authorized by Chapter 409, Fla. Stat., and Chapter 59G, Florida Administrative Code.

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

31. In accordance with Fla. Admin. Code § 65-2.060 (1), the burden of proof is assigned to the respondent.

32. 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, 7<sup>th</sup> Ed.).

33. Section 409.905, Florida Statutes, 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....

(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 all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems and conditions, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations.

34. Florida Administrative Code 59G-4.050. Community Behavioral Health

Services sets the guidelines for compliance for providers and states:

(1) This rule applies to all providers of community behavioral health services who are enrolled in the Florida Medicaid program.

(2) All providers of community behavioral health services who are enrolled in the Florida Medicaid program must be in compliance with the provisions of the Florida Medicaid Community Behavioral Health Coverage and Limitations Handbook, March 2014, available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-03749>, incorporated by reference. The handbook is available from the Medicaid fiscal agent agent's Web site at [www.mymedicaid-florida.com](http://www.mymedicaid-florida.com). Select Public Information for Providers, then Provider Support, and then Provider Handbooks. Paper copies of the handbook may be obtained by calling the Provider Services Contact Center at 1(800) 289-7799 and selecting Option 7.

35. Medical services covered under Medicaid are defined as being "medically necessary". The definition of medically necessary is set forth in Florida Administrative Code Rule 59G-1.010(166)(a)(c), which states as follows:

"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.

36. Since the petitioner is under age 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPSDT) requirements.

37. The United States Court of Appeals for the Eleventh Circuit clarified the states' obligation for the provision of EPSDT services to Medicaid-eligible children in Moore v. Reese, 637 F.3d 1220, 1255 (11th Cir. 2011). The Court provided the following guiding principles in its opinion, (which involved a dispute over private duty nursing):

(1) [A state] is required to provide private duty nursing services to [a child Medicaid recipient] who meets the EPSDT eligibility requirements, when

such services are medically necessary to correct or ameliorate [his or her] illness and condition.

(2) A state Medicaid plan must include "reasonable standards ... for determining eligibility for and the extent of medical assistance" ... and such standards must be "consistent with the objectives of" the Medicaid Act, specifically its EPSDT program.

(3) A state may adopt a definition of medical necessity that places limits on a physician's discretion. A state may also limit required Medicaid services based upon its judgment of degree of medical necessity so long as such limitations do not discriminate on the basis of the kind of medical condition. Furthermore, "a state may establish standards for individual physicians to use in determining what services are appropriate in a particular case" and a treating physician is "required to operate within such reasonable limitations as the state may impose."

(4) The treating physician assumes "the primary responsibility of determining what treatment should be made available to his patients." Both the treating physician and the state have roles to play, however, and "[a] private physician's word on medical necessity is not dispositive."

(5) A state may establish the amount, duration, and scope of private duty nursing services provided under the required EPSDT benefit. The state is not required to provide medically unnecessary, albeit desirable, EPSDT services. However, a state's provision of a required EPSDT benefit, such as private duty nursing services, "must be sufficient in amount, duration, and scope to reasonably achieve its purpose."

(6) A state "may place appropriate limits on a service based on such criteria as medical necessity." In so doing, a state "can review the medical necessity of treatment prescribed by a doctor on a case-by-case basis" and may present its own evidence of medical necessity in disputes between the state and Medicaid patients (citations omitted).

38. Fla. Admin. Code Rule 65A-1.702 defines SIPP as:

(16) Statewide Inpatient Psychiatric Program (SIPP) waiver. This program provides inpatient mental health treatment and comprehensive case management planning to enable discharge to less restrictive settings in the community for children under the age of 18 who are placed in an inpatient psychiatric program. Those who are Medically Needy and those who are Medicare recipients are excluded from this program. Services must be received from a designated provider selected by AHCA. This program provides an exception to provisions that residents of an institution for mental disease (IMD) are not eligible for Medicaid.

39. The Code of Federal Regulations at 42 CFR 441.152 Inpatient Psychiatric Services for Individuals Under Age 21 in Psychiatric Facilities or Programs states:

Certification of need for services.

(a) A team specified in Sec. 441.154 must certify that--

(1) Ambulatory care resources available in the community do not meet the treatment needs of the recipient;

(2) Proper treatment of the recipient's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

(3) The services can reasonably be expected to improve the recipient's condition or prevent further regression so that the services will no longer be needed.

(b) The certification specified in this section and in Sec. 441.153 satisfies the utilization control requirement for physician certification in Sec. Sec. 456.60, 456.160, and 456.360 of this subchapter.

40. In addition to the medical necessity requirement, residential placement requires a recipient to meet certain criteria. These criteria are set forth in Florida Administrative Code Rule 65E-10.018, which explains as follows:

(1) To be eligible to be admitted to a program encompassed by these rules, a child must:

(a) Be under the age of 18;

(b) Be currently assessed within 90 days prior to placement by a psychologist or a psychiatrist licensed to practice in the State of Florida, with experience or training in children's disorders; who attests, in writing, that:

1. The child has an emotional disturbance as defined in Section 394.492(5), F.S., or a serious emotional disturbance as defined in Section 394.492(6), F.A.C.;

2. The emotional disturbance or serious emotional disturbance requires treatment in a residential treatment setting;

3. A less restrictive setting than residential treatment is not available or clinically recommended;

4. The treatment provided in the residential treatment setting is reasonably likely to resolve the child's presenting problems as identified by the psychiatrist or psychologist;

5. The nature, purpose, and expected length of treatment have been explained to the child and the child's parent or guardian.

(c) Have been reviewed at a minimum by the child and family specific

team and been presented with all available options for treatment.

(2) General revenue funds designated as children's mental health funding shall not be used to maintain children over the age of 18 in programs encompassed by these rules or to place a child for whom no appropriate services are available in Florida in an out of state residential treatment program which is not an approved Medicaid provider in the state where the child is being placed.

(3) Placement of children and youth in therapeutic out of home settings with general revenue funds is dependent on the availability of funds.

41. The applicable definitions of "emotional disturbance" referenced in the above Rule are found in Section 394.492(5)(6), Florida Statutes (2015): Section 394.492, Florida Statutes states as follows:

(5) "Child or adolescent who has an emotional disturbance" means a person under 18 years of age who is diagnosed with a mental, emotional, or behavioral disorder of sufficient duration to meet one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of the American Psychiatric Association, but who does not exhibit behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community. The emotional disturbance must not be considered to be a temporary response to a stressful situation. The term does not include a child or adolescent who meets the criteria for involuntary placement under s. 394.467(1).

(6) "Child or adolescent who has a serious emotional disturbance or mental illness" means a person under 18 years of age who:

(a) Is diagnosed as having a mental, emotional, or behavioral disorder that meets one of the diagnostic categories specified in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association; and

(b) Exhibits behaviors that substantially interfere with or limit his or her role or ability to function in the family, school, or community, which behaviors are not considered to be a temporary response to a stressful situation.

42. The testimony and evidence presented in this matter establish that the petitioner meets the requirements set forth in the Florida Statutes and Administrative Code for a residential placement under the Statewide Inpatient Psychiatric Program and that such a placement is medically necessary. The petitioner is under the age of 18

years; he was assessed by a psychiatrist licensed to practice in the State of Florida with experience in children's disorders who determined that treatment in a residential facility is appropriate; petitioner has been diagnosed with multiple psychological disturbances including mood disorder and post-traumatic stress disorder; he has received treatment in a less restrictive setting and that treatment was ineffective; treatment in a residential treatment facility is reasonably likely to resolve the petitioner's presenting difficulties; and the nature, length and expected duration of treatment have been explained to the petitioner's parents.

43. After careful consideration of the testimony, evidence, and the above-cited authorities, the hearing officer finds that the petitioner has met his burden of proof to show that the Agency incorrectly denied his request for approval of services through the Statewide Inpatient Psychiatric Program.

#### **DECISION**

The petitioner's appeal is hereby GRANTED.

#### **NOTICE OF RIGHT TO APPEAL**

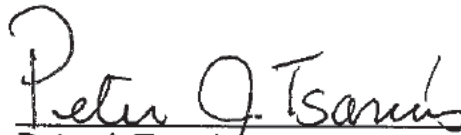
This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 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 26 day of May, 2015,  
in Tallahassee, Florida.



Peter J. Tsamis  
Hearing Officer

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