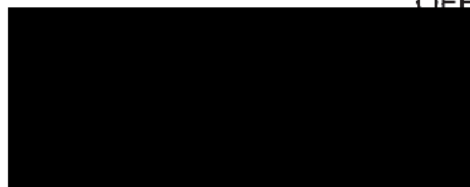


FILED

JUN 09 2015

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

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES



APPEAL NO. 15F-02518

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 on April 22, 2015 at 9:05 a.m. All parties appeared by telephone from separate locations.

APPEARANCES

For the Petitioner:



Petitioner's mother

For the Respondent:

Jackie Allison, Human Services Program Specialist
Agency for Health Care Administration

STATEMENT OF ISSUE

Whether Respondent's action in reducing Petitioner's four units, three times per week of physical therapy (PT) hours to four units, once per week, for the certification period of February 19, 2015 through August 17, 2015 is correct. The Agency had the burden of proof in this case.

PRELIMINARY STATEMENT

The Agency for Healthcare Administration ("AHCA", "Respondent" or "Agency") is responsible for administering Florida's Medicaid Program. The Agency contracts with a Quality Improvement Organization (QIO), eQ Health Solutions, to perform medical utilization reviews for therapy services through a prior authorization process for Medicaid beneficiaries. Through this contractual agreement, eQ Health Solutions is authorized to make determinations of medical necessity on behalf of the Agency and act as a witness in all related fair hearing proceedings.

Petitioner's witnesses included his father, [REDACTED] his physical therapist [REDACTED], and caregiver [REDACTED]. Petitioner was present with his father but did not provide testimony. Witness for the Respondent was Darlene Calhoun, M.D., physician reviewer from eQ Health Solutions. Petitioner submitted no exhibits into evidence. Respondent submitted five exhibits, which were marked and entered as Respondent's Exhibits "1" through "5".

FINDINGS OF FACT

Based upon the oral and documentary evidence presented at the final hearing and on the entire proceeding, the following Findings of Fact are made:

1. Petitioner is a Medicaid recipient under 21 years of age diagnosed with autism and lack of coordination. He is non-verbal. He is approximately 6 feet tall and his parents are unable to provide much physical assistance to him because of his size.
2. Petitioner was receiving physical therapy for one hour, three times per week (three hours per week) during the most recent certification period. Petitioner's therapist wants to continue therapy at the same rate to address hip strength, timing, flexibility,

gross motor skills, endurance, coordination, sensory processing, and postural deviations. See Respondent's Exhibit 5. His improvements are temporary rather than permanent, and his therapist and family believe continued therapy will help his improvements stay permanent.

3. Petitioner is on a home exercise program, but is currently noncompliant with wearing his kinesiotape and posture device. His parents do not have the resources at home to adequately address Petitioner's posture needs and range of motion exercises without ongoing therapy.

4. Petitioner goes to gym class, marital arts class, yoga, golf, and other athletic activities beyond the physical therapy. These activities assist with strengthening. Physical therapy is more targeted to work with Petitioner's various deficits and overall strength and posture as a baseline for future activities. If Petitioner does a physical activity with an improper posture/alignment, he could damage himself. Physical therapy is an attempt to reduce the likelihood of future problems.

5. In the period prior to the last certification period, Petitioner's hours were reduced to one hour, twice a week. The hours were increased to the current amount for the immediate past period. When his services decreased, Petitioner's caregivers noticed his posture became worse. The caregivers notice a distinct difference in Petitioner's abilities on physical therapy days.

6. Respondent contracts with a Peer Review Organization (PRO) to perform medical utilization reviews for physical therapy services through a prior authorization process. The prior authorization review is a paper review that determines the medical

necessity of petitioner's request for physical therapy hours. Respondent's PRO is eQ Health Solutions.

7. On February 17, 2015, eQ Health received a request to recertify physical therapy hours in the amount of four units, three times per week (three hours per week) from Petitioner's provider for the certification period of February 19, 2015 through August 17, 2015. The provider included a physical therapy evaluation and plan of care dated February 10, 2015, and a physician's prescription for physical therapy, in support of this request, which eQ Health reviewed when making its decision.

8. eQ Health partially denied the recertification by notice dated February 20, 2015.

The Notice states, in part:

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.

Clinical Rationale for Decision: The patient is an 16 year old with Autism. Based on the patient's deficits and needs, 4 units 1 time a week are approved. The additional requested units are not approved as they have been deemed excessive.

9. Respondent authorized for Petitioner four units, once per week (one hour per week) of physical therapy hours for the certification period of February 19, 2015 through August 17, 2015.

10. Petitioner requested reconsideration on February 27, 2015. The denial was upheld upon reconsideration via notice dated March 2, 2015.

11. Petitioner's February 10, 2015, physical therapy evaluation shows that he has made improvements in strength, balance, endurance, gross motor skills, and

assimilation to handling. A short and long-term goal for this period and for the next period is to educate the family on a home exercise program.

12. Petitioner's February 10, 2015, plan of care shows that Petitioner met all of his short-term goals. He met three long-term goals. Two long-term goals are in process and the one long-term goal relating to posture has not been met. His long-term goal for posture is to sit upright during breaks 50% of the time. The evaluation noted Petitioner slouches 95% of the time.

13. The two long-term goals, which are in progress, and the long-term goals which were met, are endurance related. His short-term goals were to run on the treadmill for 2 minutes, hop 35 feet, and catch a bounced tennis ball three times with each hand. The long-term goals extend the time on the treadmill to three minutes, extend hopping distance to 45 feet, and to catch the ball five times.

14. The short-term goals for the new certification period are very similar. His short-term goals are to run on the treadmill for 3 minutes, hop 45 feet, hold a bridging position for 10 seconds, have upright posture for 25% of the time. The new long-term goals include the same posture goal, walking on an incline treadmill, basketball dribbling for coordination, and holding a bridging position for five seconds, ten times.

15. Petitioner is concerned that less physical therapy will result in loss of goal progress because he will not maintain his strength and endurance.

PRINCIPLES OF LAW AND ANALYSIS

16. 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 Chapter 120.80, Florida Statutes.

17. This is a final order pursuant to Sections 120.569 and 120.57, Florida Statutes.

18. This hearing was held as a de novo proceeding pursuant to Florida Administrative Code Rule 65-2.056.

19. In accordance with Florida Administrative Code Rule 65-2.060(1), the burden of proof was assigned to the Respondent. The standard of proof needed to be met for an administrative hearing is by a preponderance of the evidence, as provided by Florida Administrative Code Rule 65-2.060(1).

20. Florida Administrative Code Rule 59G-1.010(166), defines medical necessity, 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.

(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. Since the Petitioner is under twenty-one years-old, a broader definition of medical necessity applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPDST) requirements. Fla. Stat. § 409.905, Mandatory Medicaid services, provide that Medicaid services for children 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. Under the above statute, the Agency offers physical therapy as an EPSDT service to Medicaid-eligible recipients less than twenty-one years of age.

23. 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. (see (citations omitted)).

24. Consistent with these requirements, the state is obligated to provide services to recipients under twenty-one 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.

25. The Florida Medicaid Home Therapy Services Coverage and Limitations Handbook - August 2013 ("Therapy Handbook") is incorporated by reference into Florida Administrative Code Rule 59G-4.320(2).

26. Page 1-3 of the Therapy Handbook states in pertinent part:

Physical therapy is a specifically prescribed program to develop, maintain, improve or restore neuro-muscular 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.

27. The updated goals are relatively minor changes for endurance and coordination. The goals do not reflect a need for intensive physical therapy three times per week. His posture has been an ongoing condition that has not shown much improvement despite the length of time (over a year) Petitioner had more frequent physical therapy. A home exercise program is in place. The physical therapist should continue to work with the family to educate them on how to perform the home exercises despite Petitioner's size. Compliance with the home exercise program and one hour of therapy per week will help ensure Petitioner maintains his progress from physical therapy.

28. After reviewing the totality of the evidence and the relevant laws set forth above, the undersigned concludes the Respondent met its burden of proof and the reduction was proper.

DECISION

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

NOTICE OF RIGHT TO APPEAL

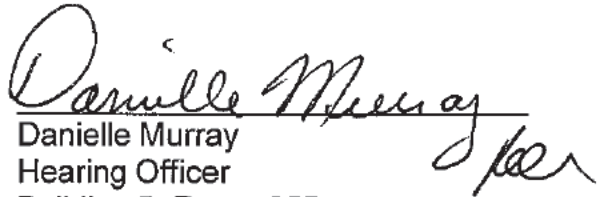
This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration,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

FINAL ORDER (Cont.)

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DONE and ORDERED this 9th day of June, 2015,
in Tallahassee, Florida.


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