

**FILED**

**JUN 18 2015**

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

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DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-02969

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 15 Palm Beach  
UNIT: AHCA

RESPONDENT.

**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on May 19, 2015 at 8:35 a.m.

**APPEARANCES**

For the Petitioner:



Petitioner's mother

For the Respondent:

Stephanie Lang  
Registered Nurse Specialist

**STATEMENT OF ISSUE**

Whether respondent's denial of a continuation of Pediatric Extended Care (PPEC) services for the certification period February 16, 2015 through August 14, 2015 was proper. The burden of proof was assigned to the respondent.

**PRELIMINARY STATEMENT**

The petitioner was not present but represented by her mother. Petitioner entered no exhibits into evidence.

Ms. Lang appeared both as a witness and representative for the respondent. Present as an observer was Lou Esposito, Medicaid Health Care Program Analyst. Present as a witness from eQHealth Solutions (eQHealth) was Ellyn Theophilopoulos, M.D. Respondent's Exhibits "1" and "2" were accepted into evidence.

Administrative Notice was taken of Fla. Stat. §400.905; Fla. Admin. Code Rules 59G-1.001; 59G- 1.010; 59G-4.260 and the Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook (PPEC Handbook).

The record was held open for respondent to secure and review skilled nursing notes from petitioner's PPEC provider. Respondent was to provide a response by May 29, 2015. A response was not received. On June 3, 2015 the undersigned issued an Order for Response. Respondent was allowed 10 calendar days to provide a response. On June 12, 2015 a response was received. The response also included all notes reviewed by the respondent. The information was entered as respondent's exhibit "3".

#### **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. Petitioner's date of birth is [REDACTED]. She was eligible to receive Medicaid services at all times relevant to this proceeding.
2. Petitioner currently attends a PPEC Program.
3. The PPEC Program provides skilled nursing services to children with complex medical conditions.

4. Petitioner was born after a 27 week gestation period. Her birth weight was 2 pounds, 9 ounces. Upon release from the hospital, petitioner was referred for PPEC services. Petitioner is currently transported to a PPEC center each weekday.
5. Petitioner's medical conditions included nasopharyngitis [upper respiratory infection]; esophageal reflux; and choanal atresia [blockage of nasal passages]. She receives regular nebulizer treatments and requires frequent suctioning of mucus.
6. Petitioner's medical conditions are remarkable for the following:
  - Does not have a gastrostomy tube (G-tube). All nutrition is by mouth. No specialized diet is required.
  - Ambulates without the need of mechanical supports.
  - Has no definitive developmental deficits.
  - Does not have a tracheostomy.
  - Has no medical conditions requiring the use of catheters.
  - Has age appropriate use of bowel and bladder. Does not have either a colostomy or ileostomy.
  - Does not require a ventilator for breathing purposes.
7. A Physician Plan of Care for PPEC Service states petitioner requires no infusion therapy. The use of oxygen is called for in emergency situations. The physician completing the form states petitioner's respiratory status is to be monitored.
8. PPEC notes for certain days in April 2015 and May 2015 identify arrival and departure times; diaper changes; and play patterns with peers. There are numerous references to a stable condition. Lunch time food consumption is frequently recorded at 90% to 100% of the meal.
9. eQHealth is the Peer Review Organization (PRO) contracted by the respondent to perform prior authorization reviews for PPEC services.

10. On or about February 16, 2015 petitioner's provider (CSI Pediatric Services, Inc.) submitted a request to eQHealth for a continuation of PPEC services.

11. An eQHealth physician, who is board certified in pediatrics, thereafter reviewed all submitted information.

12. On February 24, 2015, a Notice of Outcome – Denial of Prescribed Pediatric Extended Care Services was issued to the petitioner's mother, her physician, and PPEC provider. The notice sent to petitioner's physician stated, in part:

The clinical information provided does not support the medical necessity of the requested PPEC services. There no longer appears to be any skilled nursing interventions and the patient does not meet the medical complexity requirement of PPEC. Monitoring alone does not support PPEC services. The requested services are deemed not medically necessary.

13. The above notice stated should the parent, provider, or physician disagree with the decision, reconsideration could be requested within 10 business days. Additional information could be provided with the request.

14. Reconsideration was timely requested.

15. Additional information submitted for reconsideration was correspondence from the PPEC provider. The correspondence stated, in part:

Patient presently is monitored and is at risk for many conditions associated with prematurity including breathing difficulties requiring nasal suctioning, altered nutritional status, failure to thrive, feeding aversion, as well as needing respiratory intervention as appropriate.

Nebulizer treatments are ordered, skilled nursing intervention will ensure compliance with this order.

We feel that with this client's history and current needs, PPEC services will allow the client to be closely monitored, prevent hospitalizations associated with the client's current diagnoses, and assess any changes as

the child matures. We will be able to provide early intervention allowing the physician to make changes accordingly.

16. A second physician thereafter reviewed all submitted information. On March 18, 2015 a Notice of Reconsideration Determination was sent to the petitioner's mother, physician, and PPEC provider. The physician reviewer upheld the initial decision.

17. In response to the above denials, petitioner's mother timely requested a fair hearing. PPEC services were administratively continued pending the outcome of this proceeding.

18. Petitioner's mother argues that due to small nasal passages, her daughter must be frequently suctioned throughout the day. At a future date, nasal stents may be required.

19. Respondent argues that, based on the information presented, the petitioner's medical status does not warrant PPEC services.

20. Upon a post hearing review of PPEC notes, respondent's position was unchanged.

#### **Principles of Law and Analysis**

21. 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.

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

23. 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.).

24. The Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the respondent.

25. The PPEC Handbook (September 2013) has been incorporated by reference into Fla. Admin. Code R. 59G-4.260.

26. Page 1-1, the PPEC Handbook states: "The purpose of the Florida Medicaid Prescribed Pediatric Extended Care (PPEC) services is to enable recipients under the age of 21 years with medically-complex conditions to received medial and therapeutic care at a non-residential pediatric center."

27. Page 2-1 of the PPEC Handbook explains that to receive PPEC services, the recipient must, among other criteria be "Diagnosed with a medically-complex or medically fragile condition ..." and "Require short, long-term, or intermittent continuous therapeutic interventions or skilled nursing care due to a medically complex condition."

28. Regarding medically-complex and medically fragile, Fla. Admin. Code R. 59G-1.010 provides the following definitions:

(164) "Medically complex" means that a person has chronic debilitating diseases or conditions of one or more physiological or organ systems that generally make the person dependent upon 24-hour-per day medical, nursing, or health supervision or intervention.

(165) "Medically fragile" means an individual who is medically complex and whose medical condition is or such a nature that he is technologically dependent requiring medical apparatus or procedures to sustain life, e.g. requires total parenteral nutrition (TPN), is ventilator dependent, or is

dependent on a heightened level of medical supervision to sustain life, and without such services is likely to expire without warning.

29. The PPEC Handbook also states on page 2-2 that "Medicaid reimburses services that are determined medically necessary, and do not duplicate another provider's service."

30. Fla. Admin. Code R. 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.

31. Since the petitioner is under 21 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, provides 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.

32. The undersigned notes that PPEC services are available through the Florida Medicaid Program. As such, analysis is further directed to whether, in this instant appeal, PPEC services are medically necessary.

33. Petitioner's need for suctioning is noted. The Findings of Fact, however, do not establish the petitioner is dependent on 24-hour per day medical nursing care; supervision; or intervention. Nothing in the Plan of Care; PPEC notes; or other documentary evidence support this level of care.

34. Petitioner's current medical status, including the need for suctioning, does not rise to the definition of medically complex.

35. The undersigned was unable to make a Finding of Fact that petitioner is technologically dependent on a medical apparatus or procedure to sustain life. Although suctioning is periodically necessary, the greater weight of evidence does not establish this procedure rises to the exacting standards of either medically complex or fragile.

36. It is noted that page 1-2 of the PPEC Handbook states "PPEC services are not emergency services." As such, the purpose of the PPEC Program is to provide skilled medical oversight. Supervision for the purpose to provide a skilled response should a medical emergency arise, is not a PPEC service.



37. When jointly considering the requirements of both EPSDT and Medical Necessity, the undersigned concludes respondent has met its burden of proof in this matter.

38. Petitioner's request for PPEC services has not satisfied the following conditions of medical necessity:

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;

### **DECISION**

Based upon the foregoing Findings of Fact and controlling authorities, petitioner's appeal is denied.

### **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 18<sup>th</sup> day of June, 2015,

in Tallahassee, Florida.



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