

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

**FILED**

JUN 26 2015

OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES



APPEAL NO. 15F-03075

PETITIONER,

Vs.

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

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on June 2, 2015 at 2:02 p.m.

**APPEARANCES**

For the Petitioner:



Petitioner's mother

For the Respondent:

Doretha Rouse, R.N. Specialist  
Fair Hearing Representative  
Agency for Health Care Administration

**STATEMENT OF ISSUE**

At issue is whether or not Respondent's action partially denying Petitioner's request for six (6) hours of personal care services (PCS) per day, Monday through Friday, and four (4) hours of PCS on Saturdays and Sundays was correct. Petitioner is seeking an increase in services, therefore, in accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to Petitioner.

**PRELIMINARY STATEMENT**

Petitioner, [REDACTED] ("Petitioner") was not present but was represented by his mother, [REDACTED] M.D. Dr. [REDACTED] may sometimes hereinafter be referred to as the Petitioner's "representative". Petitioner's representative gave oral testimony, but did not move any exhibits into evidence.

Doretha Rouse, R.N. Specialist, Fair Hearing Representative, appeared both as a witness and representative for Respondent, the Agency for Health Care Administration ("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.

**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 is a 20-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, who is his primary caregiver.
4. Petitioner attends school from approximately 8:20 a.m. to 3:30 p.m., Monday through Friday, including travel time.
5. Petitioner's mother works full-time as a physician. On Monday through Friday, she typically leaves the home around 8:00 a.m. and returns home between 6:30 and 7:30 p.m. She also works alternating weekend days, from 10:00 a.m. to 1:00 p.m. and is sometimes on-call on weekends.

6. Petitioner's primary diagnosis is low-functioning, non-verbal Autism.
7. Petitioner's Personal Care Services Plan of Care dated February 5, 2015, indicates he has speech difficulty (non-verbal), is disoriented, forgetful, sometimes combative, and agitated. He has apraxia, and had one seizure in 2007.
8. Petitioner needs assistance with bathing and grooming, oral hygiene, oral feedings, and toileting and elimination.
9. Petitioner's physician, Dr. [REDACTED] wrote a prescription for PCS for six (6) hours per day, Monday through Friday, for 180 days. The services were to be provided between 6:30 and 8:30 a.m. and again from 3:00 p.m. to 7:00 p.m.
10. The prescription also ordered PCS from 9:00 a.m. to 1:00 p.m. on Saturdays and Sundays.
11. eQHealth Solutions, Inc. ("eQHealth") is the Peer Review Organization (PRO) contracted by Respondent to perform prior authorization reviews for home health services. PCS is a home health service.
12. A physician at eQHealth reviewed the prescription for home health services.
13. eQHealth issued a "Notice of Outcome" dated March 18, 2015, in which eQHealth partially denied Petitioner's request for PCS. eQHealth approved four (4) hours of PCS per day, seven (7) days per week, which is the amount Petitioner was previously receiving. eQHealth did not approve the additional two (2) hours per day, Monday through Friday.
14. The clinical rationale for the decision was:

The patient is a 20 year old male with autism. The patient is ambulatory, continent and on a regular diet. The patient requires assistance with activities of daily living (ADLs). The patient lives with his mother who

works full time (until 6-7pm) and on Saturday and Sunday from 10am-1pm. The clinical information provided does not support the medical necessity of the additional services. There have been no significant changes in the patient's clinical condition. The already approved services should be sufficient to assist the patient with ADLs. The mother should be able to provide the remainder of assistance with ADLs. The additional services appear to be for supervision which is not a covered service. The additional services are deemed excessive. (Respondent's Composite Exhibit 8).

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

16. Petitioner's mother requested a reconsideration on March 20, 2015. In her request for reconsideration, Petitioner's mother stated her adult daughter had been assisting Petitioner with his ADLs before school, but she had recently moved out of the home in order to attend graduate school. The additional two (2) hours of PCS requested were to replace the assistance Petitioner was previously receiving in the morning from his sister.

17. Petitioner's mother cannot get Petitioner ready for school and herself ready for work at the same time because it takes two (2) hours to get him ready for school. She stated she is currently paying for private help to assist him in the morning.

18. On March 25, 2015, eQHealth issued a Notice of Reconsideration Determination upholding its original decision, stating "Based on the parent(s)/guardian variable work schedule that was furnished, the hours approved below may be used on the days of the week that the parent(s)/guardian work during each date span, as long as the total approved hours are not exceeded." (Respondent's Composite Exhibit 8).

19. Dr. Calhoun testified at the hearing that she was the physician who made the reconsideration determination. She stated the four (4) approved hours per day could

be used by splitting them into two (2) hours before school and two (2) hours after school.

20. Petitioner timely requested a Fair Hearing on April 1, 2015.

**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. 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 ...

25. 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.

26. 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., 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....

27. 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, you<sup>1</sup> 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.

28. 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).

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

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<sup>1</sup> "You" in this context of the manual refers to the state Medicaid agency.

under the age of 21. The issue before this tribunal, therefore, is whether or not the requested PCS hours are medically necessary.

30. 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."

31. 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).

32. 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.

33. As stated above, Petitioner's Personal Care Services Plan of Care indicates he needs assistance with bathing and grooming, oral hygiene, oral feedings, and toileting and elimination.

34. 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. Grooming/skin care includes oral hygiene. Therefore, Petitioner's bathing, grooming, and oral hygiene needs can be met in approximately one-hour to one-hour and fifteen minutes per day.



35. Regarding assistance with toileting and elimination, the Handbook provides for up to 45 minutes per day.

36. The Handbook allows for 30 minutes per meal for eating. If Petitioner eats one meal before school and one meal after school, the total time would be one (1) hour per day for assistance with oral feeding.

37. In total, per the Handbook guidelines, assistance with Petitioner's ADLs can be accomplished in approximately three (3) hours per day. Therefore, the four (4) hours which were approved should be sufficient to assist Petitioner with his ADLs.

38. 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.

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

40. Petitioner's mother cannot get him ready for school at the same time as getting herself ready for work. However, she can utilize two (2) of the four (4) hours of approved PCS during this time.

41. The other two (2) hours of PCS can be utilized after Petitioner returns home from school in order to complete his remaining ADLs. Any additional time beyond the two (2) hours, until Petitioner's mother returns home from work, would be for supervision, rather than for assistance with his ADLs.

42. 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

43. 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." (emphasis added).

44. In the instant case, the additional two (2) hours of requested PCS 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.

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

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

47. Petitioner's request for six (6) PCS hours per day, Monday through Friday is in conflict with the following condition 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...

48. The PCS hours Petitioner requested are in excess of his needs because the assistance with his ADLs can be provided within the approved four (4) hours per day. The additional two (2) requested PCS hours are primarily for supervision, which is not a covered service.

### **DECISION**

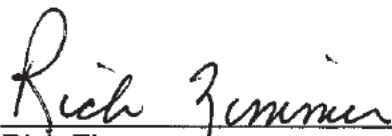
Based upon the foregoing Findings of Fact and Conclusions of Law, the Petitioner's appeal is DENIED and the Agency's action is AFFIRMED.


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

in Tallahassee, Florida.



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