

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

FILED

JUN 30 2015

OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-03423

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 09 ORANGE
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned convened an administrative hearing in the above-styled matter on June 5, 2015 at 2:17 p.m. in Orlando, Florida. All parties appeared in person.

APPEARANCES

For the Petitioner:

Petitioner's mother

For the Respondent:

Doretha Rouse, Registered Nurse Specialist
Fair Hearing Representative
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is whether Respondent's denial of Petitioner's request for Durable Medical Equipment (DME), specifically a Rifton SoloLift R710 ("SoloLift") brand patient lift, was proper. Petitioner is requesting a new DME device, which is an increase in existing services. In accordance with Fla. Admin. Code R. 65-2.060(1), the burden of proof is assigned to Petitioner.

PRELIMINARY STATEMENT

Petitioner was present at the hearing, but was represented by his mother. Doretha Rouse, Registered Nurse Specialist, represented and appeared as a witness for Respondent, the Agency for Health Care Administration ("AHCA" or "Agency"). Respondent presented one witness by telephone, Rakesh Mittal, M.D., Physician Reviewer with eQHealth Solutions ("eQHealth").

Respondent's Exhibits 1 through 6 were entered into evidence. Petitioner's mother gave oral testimony, but did not move any exhibits into evidence.

Administrative notice was taken of the following:

- AHCA Memorandum dated October 22, 2013 and entitled: Fair Hearings Process – Authorization for Quality Improvement Organization in Medical Necessity Determinations.
- Florida Administrative Code: R.59G-4.070.
- The Florida Medicaid Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook (July 2010).
- AHCA Memorandum dated August 5, 2014 and entitled: "Summary Memorandum: Medical Necessity as a Limitation on Medicaid Services, Including EPSDT".

FINDINGS OF FACT

Based upon 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 19-year-old male with a birth date of [REDACTED]
2. At all times relevant to this proceeding, Petitioner was eligible to receive Medicaid services.
3. Petitioner's Diagnoses include:
 - Cerebral Palsy
 - Scoliosis
 - Epilepsy with Seizure Disorder

- Cortical blindness

4. Petitioner resides with his mother and father, who are his primary caregivers.

5. Petitioner's father travels out-of-town for business, usually once or twice a month for two (2) to three (3) days at a time.

6. Petitioner's mother has lumbar disk disease, leg weakness, impaired gait, muscular disorder with chronic pain and weakness in extremities, and is being treated for Lyme disease. She is unable to lift more than 25 pounds. (Respondent's Composite Exhibit 6).

7. On August 6, 2014, Petitioner's occupational therapist drafted a letter of medical necessity regarding Petitioner's need to for a SoloLift. The justification provided was:

This lift system will allow caregiver to safely position and transfer [Petitioner] with appropriate mechanics needed for his size and weight. In addition, this device also functions as a stander which will provide essential lower extremity weight bearing needed for bone growth, prevention of further contracture as well as prevent further scoliosis. (Respondent's Composite Exhibit 6).

8. On September 29, 2014, Petitioner's physician drafted a Letter of Medical Necessity and Treatment Prescription, prescribing a SoloLift.

9. On December 3, 2014, Petitioner obtained a price quote from Custom Mobility, Inc. for the SoloLift. The price quote included the frame, vest, and power cord. The total amount was \$5,640.00.

10. On January 21, 2015, the request for the SoloLift was submitted.

11. eQHealth is the Quality Improvement Organization (QIO) contracted by Respondent to perform prior authorization reviews for DME.

12. On January 21, 2015, eQHealth submitted a Request for Additional Information. The additional documentation requested was "1. A comparison of the requested device to other similar but less costly alternatives that are available. 2. Recipient's home can accommodate lift. 3. Caregiver is able to operate lift." (Respondent's Composite Exhibit 6).

13. On January 23, 2015, Petitioner's occupational therapist submitted to eQHealth a Letter of Medical Necessity Addendum addressing the additional information requested. The letter stated in pertinent part:

1.) Rationale and comparison of Rifton Solo-Lift R710 to more cost effective similar model. At the current time, there are no other lift systems that match all the same specifications as the Rifton Sololift. The close[s]t match to this device is the Reliant 350 StandUp Lift With Power Base, priced at \$5,180.00 on the market. As with other less expensive lift systems (priced from \$3,000 and up), [i]t features a sling network which requires additional effort and positioning of patient into the device. The Rifton Solo-Lift R710 features a unique "vest" that easily attaches to patient and does not require repositioning of the patient. Due to medical limitations of the caregiver (as noted in original request), [Petitioner's] mother requires maximum support for any positioning or lifting of [Petitioner]. In addition, her husband is now frequently travelling out of town and at times, she is the only caregiver present for transfers for [Petitioner]. She has limited additional assistance for [Petitioner's] care. The Rifton Solo-Lift R710 is a Class 1 medical mobile transfer device that requires ZERO lifting and is especially designed for ONE caregiver to complete transfers in the safest manner possible.

2.) According to dimensional specifications of this mobile device, [i]ts maximum width is 46" and is designed to fit within and maneuver within a home setting. Caregiver lives in a large 2500 sq foot house with adaptations already in place for accommodating other medical devices such as wheelchair and stander.

3.) Caregiver is cognitively intact and is able to follow instructional videos available to operate this device.
(Respondent's Composite Exhibit 6).

14. On January 27, 2015, eQHealth submitted a second Request for Additional Information. The letter stated in pertinent part:

1. According to the additional info that was received, the recipient has a gait trainer. Please clarify why the parent lifts the recipient rather than to use a transfer where the recipient is weight bearing.
2. According to a document dated 06AUG14, the mother can no longer complete transfers without additional assistance because of the recipients age, weight, and size. Please clarify how transfers and repositioning are currently accomplished when another caregiver is not available.
3. According to the document dated 06AUG14, the mother has muscle weakness and uses a rolling walker for ambulation. Please submit documentation of actual trials showing that the mother is able to safely operate and use the requested device to accomplish recipient transfers in the home.
(Respondent's Composite Exhibit 6).

15. On March 5, 2015, Petitioner's occupational therapist wrote another Letter of Medical Necessity Addendum addressing the second request for additional information.

The letter stated in pertinent part:

- Gait Trainer – [Petitioner] currently uses a gait trainer at school and does not have a gait trainer for home.
- Caregiver Assistance – When caregiver has assistance, [Petitioner] is put in his stander at home. When no assistance is available, Mom relies on help from neighbors or his therapist. There are days when [Petitioner's] mother has no one to help her, therefore, [Petitioner] stays in his chair until his father gets home. [Petitioner's] father's job requires him to travel and this year he will be travelling more often. In January of 2015 [Petitioner's] therapist stayed with the patient and his mother for two days while dad was on a business trip to ensure [Petitioner] was transferred safely.
- Caregiver's Medical Status – I have attached a letter from her physician stating her condition which requires her to use a rolling walker for assistance. She is unable to transfer him as he weighs 90 lbs. In October of 2014, she was attempting to transfer him alone and fell sustaining an injury to her hip and arm.

On Feb 18th, 2015, John Kristof from Custom Mobility provided a Solo-Lift for caregiver to demonstrate a transfer which was completed with no problems. This particular device is recommended as opposed to a Hoyer lift because [Petitioner] spends most of his time on the floor and a Hoyer will not transfer to the floor. If caregiver cannot receive this device the risk of further injury is very high. Mother is also concerned with the possibility of placing [Petitioner] in a group home if she isn't able to transfer him with safety.

(Respondent's Composite Exhibit 6).

16. On March 17, 2015, eQHealth issued its Notice of Outcome – Denial Durable Medical Equipment and Supplies, denying the SoloLift as not being medically necessary because it is in excess of his needs. The clinical rationale given for the decision was:

The patient is a 19 year old with cerebral palsy requesting a Rifton Solo Patient Lift. The patient is dependent for all activities of daily living and transfers. The mother now has physical limitations and is no longer able to lift the patient. The requested DME is not approved, as the patient's needs could be met with a Hoyer lift. The Rifton Solo Lift has been deemed excessive. It is recommended that a request be submitted for a Hoyer lift.

(Respondent's Composite Exhibit 4)

17. On March 25, 2015, Petitioner's therapy provider requested a reconsideration of the denial. In the letter requesting reconsideration, the provider stated:

A Hoyer lift is not an option for [Petitioner] because it does not transfer to the floor. [Petitioner] spends most of the day on the floor because he is able to move, lie down when needed and play with his toys. The floor is where [Petitioner] is the most calm and with his seizures it is best to keep him calm and happy to avoid a seizure which could essentially hospitalize him. In October of 2014 [Petitioner's] mother attempted to transfer him and they both fell, mother sustained an injury to her arm and hip. Due to mothers limitations the Solo Lift would be the safest option for transfers as she will be the one doing the majority of the transfers and this lift allows for full descent to the floor.

(Respondent's Composite Exhibit 6).

18. On March 27, 2017, Petitioner's parents also wrote a letter to eQHealth requesting reconsideration of the decision. They stated Petitioner's father has been

doing most of the transferring of Petitioner and it is affecting his lower back. They reiterated that Petitioner's father has to travel for work and therefore is sometimes unavailable to help with transferring him. They said the Hoyer lift would confine Petitioner to his wheelchair or his bed and they were concerned his safety would be in jeopardy if someone were to fall while transferring him.

19. A physician with eQHealth reviewed the requests for reconsideration. On March 31, 2015, eQHealth issued a Notice of Reconsideration Determination – Durable Medical Equipment and Supplies upholding the denial. The principal reason given for upholding the decision was “The information submitted for reconsideration provided no new evidence to support the reversal of the previous decision.” (Respondent's Composite Exhibit 5).

20. On April 3, 2015, Petitioner timely requested a Fair Hearing.

PRINCIPLES OF LAW AND ANALYSIS

21. By agreement between AHCA and the Department of Children and Families, the Office of Appeal Hearings has jurisdiction to conduct this hearing pursuant to § 120.80, Fla. Stat.

22. This hearing was held as a *de novo* proceeding, in accordance with Florida Administrative Code Rule 65-2.056.

23. This is a Final Order, pursuant to Sections 120.569 and 120.57, Fla. Stat.

24. 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.).

25. Legal authority governing the Florida Medicaid Program is found in Fla. Stat. Chapter 409, and in Chapter 59G of the Florida Administrative Code. Respondent, AHCA, is the single state agency that administers the Medicaid Program.

26. Fla. Stat. § 409.905 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... (emphasis added).

27. Since 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 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. (emphasis added).

28. In regard to EPSDT requirements, the State Medicaid Manual, published by the Centers for Medicare and Medicaid Services states, in pertinent 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.

29. 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.

30. 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;

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

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. The July 2010 Durable Medical Equipment and Medical Supply Services Coverage and Limitations Handbook ("DME Handbook") has been promulgated into rule by Florida Administrative Code Rule 59G-4.070(2).

32. The DME Handbook defines DME as follows:

Durable medical equipment (DME) is defined as medically-necessary equipment that can withstand repeated use, serves a medical purpose, and is appropriate for use in the recipient's home as determined by the Agency for Health Care Administration (AHCA).

33. Page 2-73 of the DME Handbook addresses patient lifts. "A patient lift is a portable device used to lift and transfer a recipient between a bed, a chair, wheelchair, or toilet **with minimal personal assistance**. (emphasis added).

34. Page 2-73 continues, stating:

Medicaid may reimburse for portable patient lifts for recipients under 21 years of age, for use in the recipient's home, **when the assistance of more than one person is necessary** to move the recipient from bed to chair or chair to toilet, etc.; and

- Recipient's condition is such that periodic movement is necessary for effective treatment or care; or
- Device is used to prevent deterioration of a condition where the alternative is bed confinement... (emphasis added).

35. Petitioner requires more than one person for transfer. Petitioner's mother is unable to lift him on her own and his father is often unavailable to assist. His father is

experiencing lower back problems by attempting to transfer Petitioner alone, when he is available.

36. Patient lifts are designed to allow transfer with minimal personal assistance. The SoloLift would allow Petitioner to be transferred with minimal personal assistance. The Hoyer lift would require significant personal assistance.

37. Periodic movement is necessary for Petitioner's condition because he needs to be able to be transferred to and from the floor. Playing with his toys on the floor keeps him calm and happy, which ameliorates his seizure disorder. The SoloLift also acts as a stander, which will help with bone growth, prevent further contracture, and prevent further scoliosis. Petitioner's mother would have to confine him to his bed or his wheelchair whenever there is no one else available to assist her with transfer.

38. After reviewing the totality of the evidence and relevant legal authority, the undersigned concludes Petitioner has met his burden of proof and the SoloLift is medically necessary. The Agency's action denying the request for the SoloLift was incorrect.

DECISION

Based upon the foregoing, Petitioner's appeal is hereby GRANTED. Respondent is directed to provide Petitioner with the Rifton SoloLift R710, consistent with his prescription.

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

FINAL ORDER (Cont.)

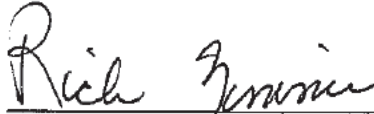
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the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive 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 30th day of June, 2015,

in Tallahassee, Florida.



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