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

[redacted]

PETITIONER,

Vs.

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

RESPONDENT.
_____/

APPEAL NO. 15F-06221

CASE NO.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter telephonically on November 10, 2015, at 3:10 p.m.

APPEARANCES

For the Petitioner: [redacted]
Petitioner's mother

For the Respondent: Linda Latson, 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 denied his request for an increase in his speech therapy services from one hour per week to three hours per week?

PRELIMINARY STATEMENT

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

Linda Latson, R.N., Registered Nurse Specialist and Fair Hearing Coordinator for the Agency for Health Care Administration ("AHCA" or "Agency"), appeared on behalf of the Agency for Health Care Administration. The following individuals from Better Health appeared as witnesses on behalf of the Agency: Jeannette Rios, D.O., Medical Director; Carrie Jordan, C.C.C., M.S., S.L.P., Speech Language Pathologist; and Diana Anda, Grievance and Appeals Supervisor.

The respondent introduced respondent's Exhibits "1" through "8", inclusive, at the hearing, which were accepted into evidence and marked accordingly. At the request of the respondent, the hearing officer took administrative notice of the Florida Medicaid Therapy Services Coverage and Limitations Handbook – August 2013.

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 four year old male diagnosed with [redacted] and [redacted] disorder and [redacted] disorder.

2. The petitioner was eligible to receive Medicaid at all times relevant to this proceeding.

3. The petitioner is an enrolled member of Better Health. Better Health is a health maintenance organization ("HMO") contracted by the State of Florida to provide

services to certain Medicaid-eligible individuals in the State of Florida. The petitioner's effective date of enrollment with Better Health is July 1, 2014. Within Better Health, the petitioner is enrolled in the Managed Medical Assistance ("MMA") Program.

4. The petitioner was previously approved to receive four units of speech therapy services per week.

5. One unit of speech therapy is equivalent to 15 minutes; hence, four units equals one hour.

6. On or about August 12, 2015, KID SPOT, the petitioner's speech therapy provider, submitted a request to Better Health for 228 units of speech therapy. This therapy was to be provided in the amount of 12 units (three 60 minute sessions) weekly.

7. The petitioner's request for speech therapy services was accompanied by a Re-evaluation and a Plan of Care.

8. In a Notice of Action dated August 13, 2015, Better Health informed the petitioner it was approving 76 units of speech therapy and denying the remaining 152 units. The 76 units of speech therapy approved allow for one hour of speech therapy to be provided per week.

9. The Notice of Action states, in part:

> X We determined that your requested services are **not medically necessary** because the services do not meet the reason(s) checked below: *(See Rule 59G-1.040)*
>
> X Must be individualized, specific, consistent with symptoms or diagnosis of illness or injury and not be in excess of the patient's needs.

10. Speech consists of multiple individual components, including receptive language skills, expressive language skills, fluency, and articulation.

11. Receptive language abilities are skills that enable a child to understand the meaning of sound and spoken language.

12. Expressive language skills enable a child to produce spoken language.

13. Fluency refers to the degree of stuttering present during speech, if any.

14. Articulation relates to speech production and the system of individual sounds that are produced to create words.

15. The petitioner's Re-evaluation submitted along with his preauthorization request indicates he was administered the Preschool Language Scale -5 ("PLS-5") (3rd Edition) by his speech language provider, [redacted]

16. The Preschool Language Scale-5 is an assessment used to measure auditory comprehension and expressive communication for children from birth to age 7-11.

17. The Preschool Language Scale-5 has a mean of 100 and a standard deviation +/- 15. This means that standard scores between 85 and 115 are considered to be within the average range.

18. The petitioner received a score of 75 on the portion of the assessment designed to measure his receptive language abilities. This indicates the petitioner's receptive language skills are below average for his age.

19. The petitioner received a score of 80 on the portion of the assessment designed to measure his expressive language abilities. This indicates the petitioner's expressive language skills are below average for his age.

20. The petitioner's mother testified the petitioner's stutters and is difficult to understand.

21. Stuttering relates to fluency and indicates a lack thereof. Being difficult to understand indicates the petitioner has difficulty with articulation.

22. The petitioner's Re-evaluation contains no formal or informal information regarding fluency or articulation. Formal information is generally presented in the form of test results. Informal information may include case notes from an individual's speech language pathologist.

23. There are standardized evaluations designed to measure fluency and articulation.

24. If the petitioner was tested for fluency and articulation, these test results are not included in the Re-evaluation, nor were they provided to Better Health during the review process or the hearing officer during the appeal process.

25. The petitioner's Plan of Care does not list any goals with respect to fluency and articulation.

26. Based on the information provided to it, Better Health determined the petitioner's receptive and expressive language deficits are mild and an increase in his speech therapy services is not medically necessary.

27. The speech language pathologist testifying on behalf of the respondent explained Better Health considers the petitioner's receptive and expressive language deficits as mild because they are less than two standard deviations from the average. The petitioner received scores of 75 and 80 on the relevant portions of the Preschool Language Scale-5. A score of 70 is required for a result to be considered two standard deviations from the mean.

28. The speech language pathologist testifying for the respondent explained to the petitioner's mother that she can request [redacted] to evaluate the petitioner for fluency and articulation. She explained that if difficulties in these areas are documented and forwarded to Better Health along with a request for additional speech therapy, the petitioner may be approved to receive additional speech therapy services.

CONCLUSIONS OF LAW

29. 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.

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

31. This proceeding is a de novo proceeding pursuant to Fla. Admin. Code R. 65-2.056.

32. The petitioner is requesting an increase in his speech therapy services. Therefore, in accordance with Fla. Admin. Code R. 65-2.060 (1), the burden of proof is assigned to the petitioner.

33. 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.).

34. The Florida Medicaid Therapy Services Coverage and Limitations Handbook – August 2013 is incorporated by reference in the Medicaid Services Rules by Fla. Admin. Code R. 59G-4.320.

35. Fla. Admin. Code R. 59G-4.320 implements certain limitations for therapy services covered by Medicaid. These limitations are defined in the Florida Medicaid Therapy Services Coverage and Limitations Handbook.

36. Page 2-2 of the Therapy Services Coverage and Limitations Handbook states services are to be provided only when medically necessary.

37. Fla. Admin. Code R. 59G-1.010(166), defines medical necessity as:

> (166) "Medically necessary" or "medical necessity" means that 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 patent's needs;
> 3. Be consistent with generally accepted professional medical standards as defined by the Medicaid program and not be experimental or investigational;
> 4. Be reflective of the level of service that can safely be furnished, 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.

38. Since petitioner is under 21, a broader definition of medically necessary applies to include the Early and Periodic Screening, Diagnosis, and Treatment Services (EPDST) requirements. Section 409.905, Fla. Stat., Mandatory Medicaid Services 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 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.

39. Section 409.913, Fla. Stat. governs the oversight of the integrity of the Florida Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows

> "Medical necessity" or "medically necessary" means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice....
> Section (1)(d) goes on the further state:
>
> ...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.

40. Section (1)(d) highlights that the Agency makes the final decision regarding whether or not a requested service is medically necessary; however, the hearing officer is the final decision making authority for the Agency. See § 120.80, Fla. Stat.

41. The Therapy Services Coverage and Limitations Handbook defines speech therapy on Page 1-4. It states as follows:

> Speech-language pathology services involve the evaluation and treatment of speech-language disorders.
>
> Services include the evaluation and treatment of disorders of verbal and written language, articulation, voice, fluency, phonology, mastication, deglutition, cognition, communication (including the pragmatics of verbal communication), auditory processing, visual processing, memory comprehension and interactive communication as well as the use of instrumentation, techniques, and strategies to remediate, maintain communication functioning, acquire a skill set, restore a skill set, and enhance the recipient's communication needs, when appropriate. Services also include the evaluation and treatment of oral pharyngeal and laryngeal sensorimotor competencies.

42. The Therapy Services Coverage and Limitations Handbook, on Page 2-2, states: "Medicaid reimburses for services that are determined medically necessary and do not duplicate another provider's service."

43. In the present case, the petitioner did not provide any evidence to support that an increase in his speech therapy services is medically necessary. Therefore, the petitioner has not met his burden of proof that the Agency incorrectly denied his request for additional speech therapy.

44. This Order does not purport to state that the petitioner would not benefit from additional speech therapy services, only that there is no evidence to support an increase at this time. If the petitioner still feels additional speech therapy services are medically necessary, he is encouraged to undergo the additional testing discussed at the hearing and submit the results of those evaluations to Better Health along with a new request for additional services.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the 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 14 day of December, 2015, in Tallahassee, Florida.

Peter J. Tsamis

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Copies Furnished To: [redacted] Petitioner
Rhea Gray, Area 11, AHCA Field Office Manager