

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

FILED

Nov 25, 2015

Office of Appeal Hearings
Dept. of Children and Families



APPEAL NO. 15F-07366

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 10 Polk
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on October 1, 2015, at 1:00 p.m.

APPEARANCES

For the Petitioner: [REDACTED] the petitioner's mother.

For the Respondent: Stephanie Lang, Registered Nurse Specialist, Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is whether the Agency action of August 4, 2015 cancelling the petitioner's request for continued Prescribed Pediatric Extended Care Services (PPEC) is correct. The respondent has the burden of proof.

PRELIMINARY STATEMENT

Present as a witness for the respondent was Dr. Darlene Calhoun, Physician Reviewer, eQHealth Solutions.

The respondent submitted into evidence Respondent's Exhibits 1 through 3.

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. The petitioner, who is one-and-a half years of age, was born prematurely with a history of [REDACTED] and requires an evaluation for services as provided by the Agency for Health Care Administration (AHCA) under Florida's Medicaid State Plan. The petitioner's condition(s) is further outlined in Respondent Exhibit 1. AHCA will be further addressed as the "Agency."

2. eQHealth Solutions has been authorized to make Prior (service) Authorization decisions for the Agency. The Prior Authorization review is completed by board-certified pediatricians with eQHealth Solutions. On August 4, 2015, eQHealth Solutions denied the petitioner's request for continued Prescribed Pediatric Extended Care Services (PPEC) but approved a thirty (30) day extension in order for the petitioner to transition to alternative care. The petitioner timely requested this hearing and the PPEC services were continued.

3. According to the August 4, 2015 notice, the principal reason for the decision was the clinical information provided did not support the medical necessity of the requested services. The notice provided the following clinical rationale for the decision:

The patient is a 1 year old with a history of prematurity (31 weeks), [REDACTED] [REDACTED] The patient is ambulatory and on an age appropriate diet. The patient receives as needed nebulizer treatments but not has required any regular intermittent administration of these treatments. The clinical information provided does not support the medical necessity of the requested services. However, 30 days will be approved to transition the patient out of PPEC. The clinical information provided does not support the medical necessity of the additional services. The patient appears to no longer require skilled nursing services and does not meet the medical complexity requirements of PPEC services. The additional services are deemed excessive.

4. No reconsideration review was requested by the petitioner or the petitioner's provider.

5. The respondent physician witness reiterated the decision for this case is correct and agrees with the issued notice. She emphasized the petitioner's medical conditions do not require the constant nursing care being provided at PPEC.

6. The petitioner's representative argued the petitioner still has developmental issues. She argued the petitioner will benefit from continued PPEC services as he has speech/language problems.

7. The respondent witness countered that the need of speech therapy does not constitute an eligibility criteria for PPEC services. She indicated the petitioner can remain receiving speech therapy outside of PPEC. She also indicated that she reviewed this case under EPSDT guidelines and concluded petitioner does not meet the medical necessity definition to receive PPEC services.

PRINCIPLES OF LAW AND ANALYSIS

8. The Department of Children and Families, Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to

§ 409.285, Fla. Stat. This order is the final administrative decision of the Department of Children and Families under § 409.285, Fla. Stat.

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

10. In accordance with Fla. Admin. Code R. 65-2.060 (1), the party having the burden shall establish his/her position by a preponderance of the evidence, to the satisfaction of the hearing officer.

11. Fla. Admin. Code R. 59G-1.010 states in part:

(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;
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...

12. The State Medicaid Manual in the Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services section states in part:

5010. Overview

A. Early and Periodic Screening, Diagnostic and Treatment Benefit.-- Early and periodic screening, diagnostic and treatment services (EPSDT) is a required service under the Medicaid program for categorically needy individuals under age 21...

5110. Basic Requirements

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.

13. Fla. Stat. § 409.913 addresses "Oversight of the integrity of the Medicaid program," with (1)(d) describing "medical necessity or medically necessary" standards and saying in relevant part: "For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity." As stated above, this proceeding is a de novo proceeding for the purpose of the Agency reaching its final decision. The final decision making authority for this proceeding has been delegated to the hearing officer in Fla. Admin. Code R. 65-2.066.

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

14. The Prescribed Pediatric Extended Care Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.260 (2). The Prescribed Pediatric Extended Care Services Coverage and Limitation Handbook, September 2013, on page 1-1, 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 receive medical and therapeutic care at a non-residential pediatric center.

15. The Prescribed Pediatric Extended Care Services Coverage and Limitation Handbook, September 2013, on page 2-1, provides standards for who can receive services and states recipients must meet all of the following criteria:

- Be Medicaid eligible.
- Diagnosed with a medically-complex or medically fragile condition as defined in Rule 59G-1.010, F.A.C.
- Be under the age of 21 years.
- Be medically stable and not present significant risk to other children or personnel at the center.
- Require short, long-term, or intermittent continuous therapeutic interventions or skilled nursing care due to a medically complex condition.

16. Fla. Admin. Code R. 59G-1.010 defines the terms “medically complex” and “medically fragile” as follows:

“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.

“Medically fragile” means an individual who is medically complex and whose medical condition is of such a nature that he is technologically dependent, requiring medical apparatus or procedures to sustain life, i.e.,

requiring 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.

17. As shown in the Findings of Fact, the Agency, through eQHealth Solutions denied the petitioner's request to receive continued PPEC services because the clinical information provided did not support the medical necessity of the requested services.

18. The petitioner's representative argued that the petitioner is in need of PPEC service mostly based on his speech problems.

19. The respondent's witness argued that the petitioner does not have any diagnoses or medical needs that would indicate the petitioner would meet the definition of either medically complex or medically fragile. Additionally, she argued the need of speech therapy would not be a medically necessary reason or eligibility criteria to be approved for PPEC service. She argued the petitioner does not meet the medical necessity requirements for the PPEC as found in the above noted authorities. The hearing officer agrees with the respondent's arguments.

20. There is no evidence to suggest that petitioner is dependent upon 24-hour per day medical or nursing care, or that he is dependent upon life-sustaining medical equipment, such that he would be deemed "Medically complex" or "Medically Fragile." As such, the petitioner's need for speech therapy would not warrant an authorization for PPEC services. Furthermore, the controlling legal authorities make clear that Medicaid services cannot be in excess of the patient's needs.

21. After considering the evidence and all of the appropriate authorities set forth above, the hearing officer concludes that the respondent has met its burden of proof and the Agency's action denying the petitioner's request for PPEC services is correct.

DECISION

This appeal is denied and the Agency action 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 25 day of November, 2015,

in Tallahassee, Florida.

Robert Akel

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Copies Furnished To: [REDACTED] Petitioner
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