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

[redacted]

PETITIONER,

APPEAL NO. 15F-08624

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 November 18, 2015 at 1:12 p.m.

APPEARANCES

For the Petitioner: [redacted] Petitioner's Mother

For the Respondent: Stephanie Lang, R.N. Specialist, Fair Hearing Coordinator
Agency for Health Care Administration

STATEMENT OF ISSUE

At issue is the Respondent's action in reducing prescribed pediatric extended care services ("PPEC") beginning on September 23, 2015. The Agency held the burden of proof in this case by a preponderance of the evidence.

PRELIMINARY STATEMENT

The Agency contracts with a Quality Improvement Organization ("QIO"), eQHealth Solutions, to perform medical utilization reviews for prescribed pediatric

extended care services through a prior authorization process for medicaid beneficiaries. Through this contractual agreement, eQHealth Solutions is authorized to make determinations of medical necessity on behalf of the Agency and act as a witness in all related fair hearing proceedings.

A prior service authorization request is submitted by a provider along with information and documentation required to make a determination of medical necessity. Initial requests for prescribed pediatric extended care services will be authorized for up to 60 days (two-month period) to allow for reassessment of the recipient's condition. Thereafter, a medical necessity review is conducted every 180 days (six-month period). If necessary, a request for modification may be submitted by the provider.

Witness for the Respondent was Rakesh Mittal, M.D., Physician Consultant with eQHealth Solutions.

Respondent's Exhibits 1 through 6 were admitted into evidence. Petitioner submitted no exhibits into evidence. The hearing officer took administrative notice of Section 409.905, Florida Statutes (2015), Florida Administrative Code Rules 59G-1.001, 59G-1.010, 59G-4.260, and the Prescribed Pediatric Extended Care Coverage and Limitations Handbook (September 2013).

Petitioner's benefits were continued at their prior level pending the outcome of the fair hearing process.

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. Petitioner is an approximately 4-year-old male diagnosed with [redacted], and [redacted].

2. Petitioner was previously approved to attend PPEC, but needed to recertify to continue his attendance. He attends a pre-K program and would attend PPEC after school, on school holidays, or when he is too ill for school.

3. eQ Health Solutions (hereinafter referred to as eQ Health) is the entity which reviews service authorization requests for PPEC services. eQ Health denied Petitioner's request for continued PPEC services by notice dated September 29, 2015. The reason for the denial decision is Petitioner's condition does not meet medical necessity for the PPEC service. The clinical rationale is as follows:

> The patient is a 4 year old with [redacted] and developmental delay. The patient is attending a pre K program and receives speech therapy as an outpatient. The patient is on an age-appropriate diet. The patient has reactive airway disease but has not required [any] nebulizer treatments. The clinical information provided does not support the medical necessity of the requested services. The patient does not appear to require skilled nursing. The remainder of the requested services are denied.

4. eQ Health's decision was based on the information provided to it by the Petitioner's PPEC center and physician.

5. Currently, Petitioner shows no symptoms of congestive heart failure. He is well-managed with medications. He does not require medical interventions. He is not on a special diet and he is not on a ventilator or other medical device.

6. eQ Health concluded Petitioner does not have a need for skilled nursing services such as those offered at PPEC because there have been no recent medical interventions or hospitalizations required. eQ Health concluded Petitioner's request was

not medically necessary. Petitioner has gone to the emergency room only once in the past year for a breathing issue. He was not admitted. His other visits in the past year to the emergency room were due to falls and fever, unrelated to his diagnoses.

7. PPEC nurses monitor Petitioner for signs and symptoms of fluid overloads, medication interactions, and respiratory assessments. The nurses educate the family as well. PPEC notes indicate discharge plans would be considered when the family can assume total care without skilled intervention. Petitioner has not required skilled intervention while at PPEC over the prior six month period.

8. Petitioner's mother is generally able to pick him up after school or have a relative watch him if she is unavailable. However, the relatives are scared of watching him due to the possibility of a medical incident. His mother wants him to attend PPEC so she has peace of mind that he is cared for, especially in case of a medical incident. He did not attend PPEC for three months because his mother was not aware of after school transportation options to PPEC. He did not suffer from any significant medical problems during the time away from PPEC.

9. If Petitioner needs care on non-school days or holidays, Petitioner's mother can submit a request for PPEC care on those days on an as-needed basis.

CONCLUSIONS OF LAW

10. The Department of Children and Families Office of Appeal Hearings has jurisdiction over the subject matter of this proceeding and the parties, pursuant to Section 120.80, Florida Statutes. The Office of Appeal Hearings provided the parties with adequate notice of the administrative hearing.

11. Florida Medicaid State Plan is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The program is administered by the Agency for Health Care Administration.

12. This hearing was held as a de novo proceeding pursuant to Rule 65-2.056, Florida Administrative Code.

13. Florida Administrative Code, Rule 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.

14. Since the Petitioner is under twenty-one 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.

15. The United States Court of Appeals for the Eleventh Circuit clarified the states' obligation for the provision of EPSDT services to Medicaid-eligible children in *Moore v. Reese*, 637 F.3d 1220, 1255 (11th Cir. 2011). The Court provided the following guiding principles in its opinion, which involved a dispute over private duty nursing:

> (1) [A state] is required to provide private duty nursing services to [a child Medicaid recipient] who meets the EPSDT eligibility requirements, when such services are medically necessary to correct or ameliorate [his or her] illness and condition.
> (2) A state Medicaid plan must include "reasonable standards … for determining eligibility for and the extent of medical assistance" … and such standards must be "consistent with the objectives of" the Medicaid Act, specifically its EPSDT program.
> (3) A state may adopt a definition of medical necessity that places limits on a physician's discretion. A state may also limit required Medicaid services based upon its judgment of degree of medical necessity so long as such limitations do not discriminate on the basis of the kind of medical condition. Furthermore, "a state may establish standards for individual physicians to use in determining what services are appropriate in a particular case" and a treating physician is "required to operate within such reasonable limitations as the state may impose."
> (4) The treating physician assumes "the primary responsibility of determining what treatment should be made available to his patients." Both the treating physician and the state have roles to play, however, and "[a] private physician's word on medical necessity is not dispositive."
> (5) A state may establish the amount, duration, and scope of private duty nursing services provided under the required EPSDT benefit. The state is not required to provide medically unnecessary, albeit desirable, EPSDT services. However, a state's provision of a required EPSDT benefit, such

> as private duty nursing services, "must be sufficient in amount, duration, and scope to reasonably achieve its purpose."
> (6) A state "may place appropriate limits on a service based on such criteria as medical necessity." In so doing, a state "can review the medical necessity of treatment prescribed by a doctor on a case-by-case basis" and my present its own evidence of medical necessity in disputes between the state and Medicaid patients. (see (citations omitted)).

16. Consistent with these requirements, the state is obligated to provide services to recipients under twenty-one years of age, but only to the extent such services are medically necessary. The definition of medical necessity for services provided under the EPSDT benefit is established by the state and the state is authorized to establish the amount, duration, and scope of such services.

17. The Prescribed Pediatric Extended Care Services Coverage and Limitations handbook (September 2013) ("Medicaid Handbook") has been incorporated by reference into Florida Administrative Code Rule 59G-4.260(2).

18. Page 2-1 of the Medicaid Handbook states that to receive PPEC services, the recipient must, among other criteria, "[r]equire short, long-term, or intermittent continuous therapeutic interventions or skilled nursing care due to a medically complex condition."

19. Skilled nursing services are defined by Florida Administrative Code Rule 59G-4.290(3)(b). These are services that must be:

> 1. Ordered by and remain under the supervision of a physician;
> 2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.
> 3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effective performance;
> 4. Required on a daily basis;
> 5. Reasonable and necessary to the treatment of a specific documented illness or injury; and

> 6. Consistent with the nature and severity of the individual's condition or the disease state or stage.

Examples of services that qualify as "skilled nursing services" include intravenous medications or fluids, injections, daily medication management, catheter care, wound care, tracheotomy care, colostomy care and ulcer care. Fla. Admin. Code R. 59G-4.290(3)(c). Petitioner does not require any skilled nursing care as defined above.

20. According to Florida Administrative Code Rule 59G-1.010(164):

> "[m]edically 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.

The following section 165 explains that:

> "[m]edically 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, 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.

21. Petitioner does not require any continuous skilled nursing care. 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 properly be deemed 'Medically Complex' or 'Medically Fragile.' His need for supervision and/or medication administration does not support the authorization of PPEC, because there are alternative services that are better designed to meet those needs. As such, provision of PPEC would be convenience-based and excessive.

22. After careful review of the evidence submitted and the relevant laws set forth above, the undersigned concludes the Agency has met its burden of proof. Therefore, the Agency's action to reduce PPEC services was proper.

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 07 day of January, 2016, in Tallahassee, Florida.

Danielle Murray
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Copies Furnished To: [redacted] Petitioner
Don Fuller, Area 6, AHCA Field Office Manager