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

FILED
MAY 06 2015
OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 15F-01746

PETITIONER,

Vs.

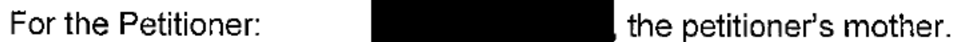
AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 10 Polk
UNIT: AHCA

RESPONDENT.
_______________________________/

FINAL ORDER

Pursuant to notice, the undersigned convened a telephonic administrative hearing in the above-referenced matter on April 9, 2015 at 10:30 a.m.

APPEARANCES



For the Petitioner: , the petitioner's mother.

For the Respondent: David Beaven, Medical Health Care Program Analyst, Agency for Health Care Administration (AHCA).

STATEMENT OF ISSUE

At issue is whether the Agency action of January 26, 2015 denying the petitioner's request for Prescribed Pediatric Extended Care Services (PPEC) is correct.

PRELIMINARY STATEMENT

Present as a witness for the respondent was Dr. Ellyn Theophilopoulos, Physician Reviewer, eQHealth Solutions.

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

FINDINGS OF FACT

1. The petitioner, who is six years of age, has been diagnosed with type 1 diabetes, asthma, ADHD 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 was completed for the petitioner by board-certified pediatricians with eQHealth Solutions. On January 26, 2015, eQHealth Solutions denied the petitioner's request for continued Prescribed Pediatric Extended Care Services (PPEC) for the certification period of January 12, 2015 through July 10, 2015. This was an initial request for the PPEC service.

3. According to the January 26, 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 6 year old with type 1 diabetes, asthma and attention deficit hyperactivity disorder. The patient is on a regular diet but requires snacks every hour due to his hypoglycemia and is supplemented with Pediasure. The patient is on as needed Albuterol treatments but is on no other prescription medications. The patient requires blood sugar checks three times per day. The patient is currently not on Insulin. The patient

> attends school and an after school program but the school does not have blood sugars checked at school. The mother checks the am and pm sugars. The patient requires no outpatient therapies at this point. The clinical information provided does not support the medical necessity of the requested PPEC services. There does not appear to be any skilled nursing interventions and the patient does not meet the medical complexity requirements of PPEC. The afternoon blood sugars can be checked by a trained caregiver or with a skilled nursing visit, if there is no trained caregiver available. Monitoring alone does not support PPEC services. The requested services are deemed not medically necessary.

4. A reconsideration review was completed on February 3, 2015 for the above decision, but eQHealth Solutions upheld the initial decision.

5. Dr. Theophilopoulos 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 that she herself is a single mother who must work in order to provide for her children. She argued that she has recently missed seven days of work due to the petitioner's health problems. She argued that the petitioner's sugar levels are usually more low than high , and the petitioner should be approved for the consistent help he would receive at PPEC. She also argued the petitioner's treating physician believes the petitioner should be receiving PPEC services.

7. Dr. Theophilopoulos countered that few physicians are aware of the governing Statutes and laws pertaining to the eligibility factors for PPEC services. She indicated the petitioner's physician and provider should be requesting a more appropriate skilled nursing visit for the petitioner, based on the petitioner's current medical situation. She indicated that she is willing to assist the petitioner by contacting the petitioner's treating

physician and a CMS care coordinator in the petitioner's local area. 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.

CONCLUSIONS OF LAW

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 Fla. Stat § 409.285. 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 burden of proof was assigned to the petitioner.

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, you[1] 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."

[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:

> 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. Rule 59G-1.010, F.A.C., 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 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 based on his medical conditions.

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 monitoring of the petitioner alone would not be sufficient for the constant nursing care being provided at PPEC. She argued the petitioner does not meet the medical necessity requirements for the PPEC as found in the Prescribed Pediatric Extended Care Services Coverage and Limitation Handbook. 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, his need for general supervision and monitoring of his blood sugar levels 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 petitioner has not met his burden of proof and the Agency's action denying the petitioner's request for PPEC services is correct.

DECISION

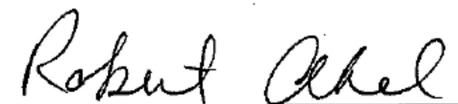
Based upon the foregoing Findings of Fact and Conclusions of Law, this appeal is denied and the Agency action affirmed.

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 6th day of May, 2015,

in Tallahassee, Florida.



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