

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

FILED
OCT 02 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04707

PETITIONER,

Vs.

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

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on September 17, 2009, at 8:45 a.m., in Fort Lauderdale, Florida. The hearing was rescheduled from August 20, 2009, at the respondent's request. The petitioner was not present. She was represented by her mother, _____ The respondent was represented by Ken Hamblin, program operations administrator. Also present from the Agency for Health Care Administration (AHCA) was Angela Cruz, human service analyst, and on the telephone was Hazel Greenberg, program administrator. Present from Children's Medical Services (CMS) was Dr. Joselyn Mateo, medical director; Carol Knall, registered nurse medical operations director; Mary Hooshmand, nursing director; Lidia Nieto, nursing supervisor; Meghan Farley, nursing care coordinator; and Anita Medina, social worker.

ISSUE

At issue is the Agency's June 1, 2009 action of cancelling the petitioner's Prescribed Pediatric Extended Care (PPEC) services, due to not meeting medical necessity. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth [REDACTED], is two years old. She has been receiving PPEC services through the Medicaid Program.
2. Included in the evidence is a copy of a CMS notice dated June 1, 2009, stating that PPEC services were cancelled for the petitioner, due to not being medically necessary.
3. The CMS June 1, 2009 notice states that on May 27, 2009, the CMS Multidisciplinary Committee met, and determined that the petitioner does not need the restrictive environment of PPEC. The committee recommended that the petitioner transition to the developmental preschool at the [REDACTED].
4. Included in the evidence is a copy of a CMS notice from Dr. Joselyn Mateo, medical director, dated June 24, 2009, stating that upon reconsideration it was determined that the cancellation of the PPEC services to the petitioner was upheld.
5. Included in the evidence is a copy of a CMS Child Assessment & Plan form dated May 26, 2009, listing the petitioner's diagnosis of heart disease unspecified, other specified congenital anomalies of the heart, and unspecified acquired hypothyroidism. The assessment and care form lists the petitioner's medications, Synthroid, and Lasix.
6. Included in the evidence is a copy of a statement dated June 24, 2009, from Dr. William Bruno, CMS medical director. The doctor agrees with the CMS

Multidisciplinary Committee that criteria for continued PPEC services were not met for the petitioner.

7. According to Dr. Bruno, in his June 24, 2009 statement, it was fairly obvious after reviewing the petitioner's medical records that she can attend day care, and on May 7, 2009, her pediatric cardiologist cleared her for day care. Dr. Bruno stated that he fully approves the petitioner's move from PPEC to day care.

8. Included in the evidence is a copy of a letter from the petitioner's pediatric cardiologist, Dr. [REDACTED] dated May 7, 2009, stating that the petitioner can attend day care.

9. According to Dr. Mateo at the hearing, she spoke to the petitioner's primary care physician, Dr. [REDACTED], who agreed with her and the CMS Multidisciplinary Committee that the petitioner can attend day care instead of PPEC.

10. At the hearing, the individuals from CMS explained the decision to cancel the PPEC services, asserting that the petitioner's condition is not severe enough to attend such a restrictive environment of a medical day care facility. The petitioner's mother is appealing the action to cancel the PPEC services.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Families and Children, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80 F.S.

Fla. Admin. Code 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.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(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.

Fla. Admin. Code 59G-4.260, addresses **Prescribed Pediatric Extended Care**

Services. Subsection (2) informs as follows:

All Medicaid enrolled prescribed pediatric extended care service providers must be in compliance with the Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook, October 2003, incorporated by reference, and the Florida Medicaid Reimbursement Handbook, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent.

The Florida Medicaid Prescribed Pediatric Extended Care Services Coverage and Limitations Handbook, October 2003, informs as follows:

Purpose

The purpose of the Florida Medicaid Prescribed Pediatric Extended Care (PPEC) Program is to enable children with medically-complex conditions or

the need for acute medical care to receive medical care at a non-residential pediatric center.

Description

A PPEC is a rehabilitative facility that serves three or more children under the age of 21 who require short or long-term continual medical care due to medically-complex conditions or the need for acute medical care. A PPEC offers services that meet the child's physiological, developmental, physical, nutritional, and social needs.

Who Can Receive Services

To receive PPEC services, a recipient must meet the following criteria:

- Be Medicaid eligible;
- Be medically fragile or technologically dependent;
- Be age 20 or under;
- Be medically stable; and
- Must require short or long-term health care supervision due to medically-complex condition or the need for acute care.

Definition of an Acute Medical Condition

An acute medical condition is a debilitating disease or condition of one or more physiological or organ systems that made the person dependent upon short or long-term medical care, nursing, health supervision, or intervention.

Medically Necessary

Medicaid reimburses for services that are determined medically necessary, do not duplicate another provider's service...

Approval of Services

PPEC services must be: ...

- Recommended by the CMAT...
- Authorized by the area Medicaid service authorization (SA) nurse.

CMAT Referrals ...

An individual who is medically able to attend a PPEC, and whose needs can be met by the PPEC, should have PPEC services recommended by the CMAT. ...

Reauthorization of Services

The service authorization nurse must review the recipient's renewed plan of care every one to six months depending on the authorization period for which the services were approved. If the services continue to be medically necessary and appropriate, the service authorization nurse can reauthorize the services.

The petitioner's PPEC services through the Medicaid Program were cancelled. The physician that testified at the hearing agreed that cancellation of PPEC services for the petitioner is correct, due to her not meeting the medical necessity criteria. In addition to the physician that testified at the hearing, Dr. Mateo, another physician from CMS, Dr. Bruno also agrees that the cancellation of the PPEC services were correct.

The findings show that also the petitioner's pediatric cardiologist, Dr. _____, and her primary care physician, Dr. _____ agrees that the petitioner should attend day care instead of PPEC. As explained at the hearing by the physician and the other individuals from CMS, a non medical day care facility should be able to handle the petitioner's needs, and the petitioner's condition is not severe enough to attend such a restrictive environment of a medical day care facility. Based upon the evidence, including the petitioner's diagnosis and medical condition, and appropriate authorities, it is concluded that the Agency's action to cancel the petitioner's PPEC services, is upheld.

DECISION

The appeal is denied, and the Agency's action is affirmed.

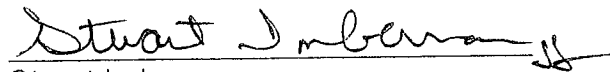
NOTICE OF RIGHT TO APPEAL

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 Agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

FINAL ORDER (Cont.)
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DONE and ORDERED this 2nd day of October, 2009,

in Tallahassee, Florida.



Stuart Imberman
Hearing Officer
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Copies Furnished T