



The Delaware Code (31 Del. C. §520) provides for judicial review of hearing decisions. In order to have a review of this decision in Court, a notice of appeal must be filed with the clerk (Prothonotary) of the Superior Court within 30 days of the date of the decision. An appeal may result in a reversal of the decision. Readers are directed to notify the DSS Hearing Office, P.O. Box 906, New Castle, DE 19720 of any formal errors in the text so that corrections can be made.

DELAWARE DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

In re:

DCIS # 00000000

Ms. Smith, a minor

Appearances: Mrs. Jones, pro se, Appellant's Mother  
Mr. Smith, pro se, Appellant's Father

Lisa Zimmerman, Chief of Operations, Division of Medicaid and Medical Assistance

Anthony J. Brazen, III, D.O., Medical Director, Division of Medicaid and Medical Assistance

Maureen Ludlam, R.N., Medicaid Prior Authorization Nurse, Division of Medicaid and Medical Assistance

I.

Ms. Smith ("Appellant"), by and through her parents, Mrs. Jones ("Mrs. Jones") and Mr. Smith ("Mr. Jones"), opposes a decision by the Division of Medicaid and Medical Assistance ("DMMA") to approve her for only two (2) days of Prescribed Pediatric Extended Care ("PPEC") benefits per week.

The Division of Medicaid and Medical Assistance ("DMMA") contends that the Appellant is eligible for PPEC services for only two (2) days per week, when both of her parents are unavailable to care for her due to their work schedules.

The Appellant contends that five (5) days of weekly PPEC services are medically necessary in light of the Appellant's medical diagnoses.

II.

On May 17, 2011, the Appellant received a Medicaid Advance Action Notice, informing her that she was approved for PPEC services two (2) days each week, when both of her parents were unavailable to care for her. (Exhibit 3)

The Appellant filed a timely request for a fair hearing on June 2, 2011. (Exhibit 2) According to the fair hearing summary dated June 8, 2011, benefits have continued. (Exhibit 1)

The Appellant was notified by certified letter dated June 29, 2011, that a fair hearing would be held on July 18, 2011. A continuance was granted on July 12, 2011. The Appellant was notified by certified letter dated July 26, 2011, that a fair hearing would be held on August 15, 2011. The hearing was conducted on that date in Newark, Delaware.

This is the decision resulting from that hearing.

### III.

Jurisdiction for this hearing is pursuant to §5304 and §5304.3 of the Division of Social Services Manual (DSSM). Under §5304:

an opportunity for a hearing will be granted to any applicant who requests a hearing because his/her claim ... is denied... and to any recipient who is aggrieved by any action of the Division of Medicaid and Medical Assistance... Only issues described in the notice of action sent to the Claimant or issues fairly presented in the Claimant's request for a fair hearing or in the Division's response in its hearing summary may be presented for the hearing officer's review at the hearing.

### IV.

Maureen Ludlam, R.N., ("Ludlam") testified that she is the prior authorization nurse for DMMA. Ludlam testified that when DMMA's prior authorization unit receives a request for PPEC services, DMMA requests supporting documents, a letter of medical necessity from the child's physician, documentation that no parent or legal guardian is available to care for the child, and verification that a licensed or traditional daycare facility cannot meet the child's needs. Once all of these supporting documents are received, Ludlam testified, the medical review team reviews the information to determine the child's eligibility for PPEC services.

Ludlam testified that she received the request for PPEC services from Nurses-n-Kids Pediatric Medical Program ("Nurses-n-Kids") on the Appellant's behalf on May 4, 2011. (Exhibit 4) Ludlam testified that the supporting documents sent with this request included a letter of medical necessity from the Appellant's physician requesting that the Appellant attend Nurses-n-Kids during the week while the parents were working. (Exhibit 6) Ludlam testified that she also received documentation of Jones's and Mr. Jones's work schedules from their respective employers. (Exhibits 7 and 8) In addition, Ludlam testified that she received documentation identifying that a traditional daycare would be unable to care for the Appellant. Lastly, Ludlam

testified that a home visit was held on May 11, 2011, in which the Appellant was observed in her father's care. Ludlam testified that during this visit, she reviewed all of the discharge instructions, physician's orders, and verified the Appellant's care needs with Mr. Smith.

Ludlam testified that after reviewing all of this documentation, DMMA approved the Appellant for PPEC services in accordance with Level I eligibility rules, found in section 3.5.3 of the provider policy manual. Ludlam testified that as the Appellant's needs could be met by her parents three (3) days per week, she was approved to receive PPEC services two (2) days per week. (Exhibit 3)

Dr. Brazen, D.O., ("Brazen") testified that he is the Medical Director at DMMA. Brazen testified that in this position, he discusses all PPEC admissions with the prior authorization nurse. Brazen testified that in this instance, he discussed the Appellant's eligibility with Ludlam. Brazen testified that the Appellant's medical needs met the lowest level of care—Level I—requiring PPEC services: The Appellant, he testified, was prescribed two (2) oral medications and that the Appellant's parents were able to administer those medications at home. (Exhibit 9) Brazen testified that to his understanding, the Appellant's greatest need was to be observed due to her seizures, but that no specific treatments were prescribed for the Appellant. Lastly, Brazen testified that the Appellant's parents were able to administer medication and observe their child; any further medical issues, he testified, could be dealt with just as any other parent would react, by calling their daughter's physician or emergency services.

Brazen testified that the documentation from the parents' employers showed that Mrs. Jones worked Monday through Friday during normal business hours, while Mr. Smith worked Thursday nights, Friday nights, and the weekend. (Exhibits 8 and 7) Brazen testified that this documentation showed that Mr. Smith was available to care for his daughter on Monday, Tuesday, and Wednesday. As a result, he testified, he approved PPEC services for the Appellant for Thursdays and Fridays, when neither parent was able to care for her due to their work schedules.

Mrs. Jones testified that her daughter needs nursing care provided in a medical daycare. Mrs. Jones testified that at the time of this hearing, her daughter was nine (9) months old, yet was not at the same developmental stage as other infants her age. Mrs. Jones testified that due to this developmental delay, her daughter requires therapy. In support of her claim, Mrs. Jones submitted a letter from Nurses-n-Kids dated August 8, 2011, identifying that the Appellant was prescribed Speech Language Pathology therapy three (3) times per week, Occupational Therapy three (3) times per week, and Physical Therapy two (2) to three (3) times per week. (Exhibit 10).<sup>1</sup> Mrs. Jones testified that her daughter required a lot of therapy, and that two (2) days per week

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<sup>1</sup> Upon reviewing this documentation, the State stipulated that this letter was not provided before the determination to approve two (2) days per week of PPEC services was rendered on May 17, 2011. Brazen testified that at the time the decision was rendered, no therapies had been prescribed. Brazen further stated that although this letter identifies that the Appellant was prescribed additional therapies, DMMA would need to determine whether these therapies could be provided in the home, as well as whether these therapies would be covered under the Appellant's primary insurance.

was insufficient. Mrs. Jones further testified that her daughter only receives these therapies when she attends Nurses-n-Kids.

Mrs. Jones testified that she and her husband do not know how to care for the Appellant: Mrs. Jones testified that she had to take her daughter to the emergency room the previous Sunday morning, due to her daughter's problems with breathing and seizures. Mrs. Jones further testified that her daughter has problems with eating: When Mr. Jones cares for the Appellant during the day, he has difficulty feeding his daughter. Mrs. Jones testified that the Appellant will not eat for Mr. Jones, and that sometimes her daughter will not eat from the time Mrs. Jones leaves at 5:30 in the morning until she returns at 6:00 p.m. Mrs. Jones testified that her daughter's difficulty eating has been documented by Nurses-n-Kids, and that the nurses there have tried several methods to encourage her daughter to eat, including the prescribed Speech therapy. Mrs. Jones testified that her daughter has an appointment to determine whether she is aspirating, and testified that the nurses at Nurses-n-Kids have identified problems to her that she and her husband did not have the medical knowledge necessary to discover. Ultimately, Mrs. Jones testified, her daughter needs more than therapists coming to the home, and requires care from people who are more medically knowledgeable than her parents.

Lastly, Mrs. Jones testified that her daughter has primary insurance through AmeriHealth, and secondary insurance through Medicaid.<sup>2</sup>

## V.

The Division of Medicaid and Medical Assistance of the Department of Health and Social Services operates the Medicaid Program under Title XIX of the federal Social Security Act and under the authority it derives from 31 Del. C. 502(5), 503(b) and 505(3). The Medicaid Program provides for services to defined groups of individuals and families and is financed with State and federal funds. Children qualifying for benefits must meet income, resource and status eligibility tests.

Prescribed Pediatric Extended Care is a package of comprehensive nursing, nutritional assessment, developmental assessment, speech, physical and occupational therapy services provided in an outpatient setting, as ordered by an attending physician. (See, Provider Policy Manual ("PPM") Section 822, subsection 1.1.1)<sup>3</sup>

PPEC services are primarily provided for infants and children ages 0-36 months old, who are severely disabled and require a level of care consistent with an acute care in-patient hospitalization, a skilled nursing facility, or private duty nursing being authorized for continuous 8 hour shifts. (PPM, Section 822, subsection 1.1.3)

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<sup>2</sup> I note that the Appellant's primary health insurer—AmeriHealth—denied coverage for PPEC services on April 14, 2011. (Exhibit 5)

<sup>3</sup> Del. Register of Regulations, Vol. 7, Issue 5, November 1, 2003.

PPEC services are provided as an alternative to more expensive institutionalization or as an alternative to community/home care for children who are determined to be in medical need of services. (PPM, Section 822, subsection 1.1.4)

PPEC services may be provided when parent(s) are employed and required medical care is not available in home or daycare. Hours of employment must be documented. Documented parental inability to care for the child, or an inability to access needed medical care will be considered in determining eligibility for PPEC services. (PPM, Section 822, subsection 1.1.5)

DMAP's Medical Evaluation Team will evaluate the child and complete a PPEC Scoring sheet to determine the reimbursable PPEC level of care. (PPM, Section 822, subsection 3.5.1) Levels of care are determined by the intensity of the child's daily needs. (PPM, Section 822, subsection 3.5.2)

Four elements must be met to establish Level I eligibility criteria: (1) the child is not eligible at Level 2 or higher level; and (2) the child has a medical condition(s) that prevents him/her from being accepted by traditional day care; and (3) the service is prescribed by a physician; and (4) there is no parent or legal guardian available to care for the child. (PPM, Section 822, subsection 3.5.3)

In order to establish eligibility for a higher level of care, the PPEC Scoring sheet must be utilized. To establish eligibility at Level II, the client must have a scoring between one (1) and twenty-one (21). Some of the conditions listed on the PPEC Scoring sheet include, but are not limited to: "daily 3 OT treatment to 2x/week, Speech Therapy Treatment more than twice per week, Parenteral Nutrition, and Seizure Precautions." (PPM, Section 822, subsection 5.0 Appendix A—PPEC Scoring Sheet)

At the outset, DMMA acknowledges that the Appellant is severely disabled and significantly developmentally delayed.

The Division of Medicaid and Medical Assistance, however, argues that as her father is available to care for her during the day from Mondays through Wednesdays, the Appellant is not eligible for more than two (2) days per week of PPEC services at Level I care.

The Appellant, through her parents, contends that two (2) days of PPEC services is insufficient. The Appellant argued that as her physician found PPEC services to be medically necessary, they should then be provided.

A review of the record reveals that the initial medical necessity letter from the Appellant's physician, dated March 21, 2011, identifies that the Appellant was diagnosed with microcephaly, poor visual attention and developmental delay. (Exhibit 6) The letter further states that an MRI conducted on March 16, 2011 showed encephalomalacia with cystic areas in both frontal and parietal lobes, while an EEG performed on March 14, 2011 suggested severe epileptic encephalopathy. (Exhibit 6) The letter states that the Appellant's physician wanted her to attend Nurses-n-Kids during the week while her parents were working. (Exhibit 6)

This letter of medical necessity also identifies that the Appellant was prescribed two (2) medications to be administered orally—Topamax and Prednisone—to treat her uncontrolled seizures. (Exhibit 6) This document further identifies that the Appellant was able to feed orally, but that her ability to do so could change over time. (Exhibit 6) In addition, this letter instructs that the Appellant would need to be monitored for seizures, may require emergency seizure care, and would also need to have her breathing patterns monitored. (Exhibit 6) This letter further states that the physician would like the Appellant to receive Occupational Therapy, Physical Therapy, and sensory stimulation while at Nurses-n-Kids. (Exhibit 6) Lastly, the letter identifies that if the Appellant is started on Prednisone, her blood pressure would need to be checked thrice daily, her urine monitored for glucose and blood, and her stools checked for blood. (Exhibit 6)

In this instance, the State argued that as the Appellant met only the Level 1 criteria for PPEC eligibility, they were prevented from approving more than two (2) days per week of services because the Appellant's father was available to care for his daughter pursuant to subsection 3.5.3. However, the letter of medical necessity dated March 21, 2011, clearly states that the Appellant suffered from uncontrolled seizures, required monitoring for such seizures, and could need emergency seizure care.<sup>4</sup> (Exhibit 6) According to the PPEC Scoring sheet found in Appendix A of the Provider Policy Manual, this diagnosis alone should have qualified the Appellant for Level II PPEC care. From his testimony, it appears that Dr. Brazen based his determination on the fact that the Appellant was prescribed oral medications, and that she only needed to be observed for seizures. However, as previously noted, even seizure precautions is sufficient to qualify a person for Level II PPEC services pursuant to the Provider Policy Manual. As a result, the State has not met its burden in showing that it was correct in approving the Appellant for Level I PPEC services.

V.

For these reasons, the Division of Medicaid and Medical Assistance determination to approve the Appellant's PPEC Services at Level I for two (2) days per week is REVERSED and REMANDED for further consideration consistent with this decision.

Date: September 27, 2011



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MICHAEL L. STEINBERG, J.D.  
HEARING OFFICER

THE FOREGOING IS THE FINAL DECISION OF THE DIVISION OF MEDICAID AND MEDICAL ASSISTANCE

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<sup>4</sup> Although the submitted plan of care for the Appellant, dated May 19, 2011, was not received by DMMA before it made its decision, I note that it confirms that the Appellant suffered from seizures and notes that safety precautions must be followed for the Appellant's reflux and seizures. (Exhibit 9)

September 27, 2011

POSTED

cc: Ms. Smith  
Lisa Zimmerman, DMMA  
Anthony J. Brazen, III, D.O., DMMA  
Maureen Ludlam, R.N., DMMA

EXHIBITS FILED IN OR FOR THE PROCEEDING

EXHIBIT 1 – DMMA Hearing Summary consisting of three (3) pages date-stamped June 8, 2011.

EXHIBIT 2 – Copy of the Appellant’s request for a fair hearing, date-stamped June 2, 2011, consisting of one (1) page.

EXHIBIT 3 – Copy of a Medicaid Advance Action Notice, dated May 17, 2011, consisting of three (3) pages.

EXHIBIT 4 – Copy of a Nurses-n-Kids Intake Form, dated March 16, 2011, consisting of one (1) page.

EXHIBIT 5 – Copy of a letter from AmeriHealth dated April 14, 2011, consisting of one (1) page.

EXHIBIT 6 – Copy of a letter of medical necessity from Bandal Jain, M.D., dated March 21, 2011, consisting of one (1) page.

EXHIBIT 7 – Copy of a letter from Mr. Smith’s Employer, dated May 6, 2011, consisting of one (1) page.

EXHIBIT 8 – Copy of a letter from Mrs. Jones’s Employer, dated May 4, 2011, consisting of one (1) page.

EXHIBIT 9 – Copy of a Plan of Care for the Appellant, dated May 19, 2011, consisting of two (2) pages.

EXHIBIT 10 – Copy of a letter from Nurses-n-Kids, dated August 8, 2011, consisting of three (3) pages.

