

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

[REDACTED], a minor	:	
by and through [REDACTED], his	:	
mother, and [REDACTED], his	:	
father,	:	Docket No.
	:	[REDACTED]
Petitioner,	:	
	:	[REDACTED]
v.	:	
	:	
GEORGIA DEPARTMENT OF	:	
COMMUNITY HEALTH,	:	
	:	
Respondent.	:	

INITIAL DECISION

I. Introduction

Petitioner appealed Respondent's adverse action seeking to terminate the skilled nursing hours Petitioner receives through the Georgia Pediatric Program (GAPP). A hearing was held on August 14, 2013, in Toccoa, Georgia. [REDACTED], Petitioner's mother, appeared as Petitioner's personal representative. Elizabeth Brooks, Esq. appeared as Respondent's legal counsel. For the reasons indicated below, Respondent's decision to terminate Petitioner's participation in GAPP is hereby **AFFIRMED**.

II. Findings of Fact

Overview of GAPP

1.

The GAPP Program was implemented in 2002 to provide continuous skilled nursing care to medically fragile children under the age of 21 who suffer from multiple systems diagnoses.¹ In

¹ For GAPP purposes, skilled nursing care means services that are ordered by a physician and require the skills of technical or professional personnel such as registered nurses, licensed practical nurses, physical therapists, occupational therapists, and speech pathologists or audiologists and are furnished either directly by, or under the supervision, of such personnel. *Exhibit R-1, Appendix R-5.*

addition to providing skilled nursing services, the GAPP Program serves as a teaching program with the stated purpose of teaching the primary and secondary caregivers how to perform the necessary medical services in the absence of a skilled nurse. As the medical condition of the individual stabilizes, skilled nursing care services are reduced to give more of the responsibility of the care to the parents or caregivers. *Testimony of Sharon Collins, Respondent's GAPP Program Specialist; Exhibit R-1, Sections 601, 803.A(c).*

2.

To be eligible for GAPP, a child must require skilled nursing care as outlined in the Pediatric Nursing Facility Level of Care Criteria set forth in Appendix R of the GAPP Policy Manual. The child must be found to not require hospital care, but must, on a regular basis, require licensed nursing services, rehabilitation services, or other health-related services ordinarily provided in an institution. *Testimony of Collins; Ex. R-1, Appendix R-1, Section 702.1(A).*

3.

Once a child is approved for the GAPP Program, Respondent authorizes a specified number of skilled nursing hours per week that the child may receive as medically necessary to correct or ameliorate his condition. GAPP hours are approved based on a child's current medical needs, including the training needs of the primary caregiver, and is not granted solely to prevent the possibility that a child's condition could worsen. It is left to the discretion of the nursing agency and the caregivers to agree upon a schedule that best utilizes the approved hours. The service providers deliver services to the members as ordered by the physician. The services are provided in the member's home or in a medical day care facility. Services cannot be rendered in a hospital, skilled nursing facility, intermediate care facility, school training center, public, charter or private school, intermediate care facility for the mentally retarded (ICF-MR), or any other similar institution. *Testimony of Collins; Ex. R-1, Sections 601.3, 702.1(D), and 801.2B(e).*

4.

In addition to receipt of skilled nursing care, a GAPP member may also receive assistance with his Activities of Daily Living (ADLs). Certified Nursing Assistants provide such care to eligible GAPP members. This includes assistance with feeding, bathing, dressing, personal hygiene, preparation of meals, light housekeeping, assisting with mobility and ambulation and other services that are ordered by the physician and are listed in the member's plan of care. This type of assistance, although required, is not considered to be "skilled care" because it is not so

inherently complex that it can be safely and effectively performed only by, or under the supervision of, technical or professional personnel, such as registered nurses, licensed practical nurses, physical therapists, and speech pathologists or audiologists. *Testimony of Collins; Exhibit R-1, Sections 601.3(B), 902.*

5.

Discharge from the GAPP Program can occur when:

- The GMCF Medical Review unit, in consultation with the nursing agency's case manager and the individual's physician, determine that the individual is no longer appropriate or eligible to receive GAPP services.
- The Department of Community Health Program Integrity staff recommends in writing that a member be discharged from service, or
- The individual has not required skilled care within the last 30 days.

Exhibit R-1, Section 806.

Petitioner's Participation in GAPP

6.

Petitioner first enrolled in the GAPP program on April 15, 2009. He is currently approved to receive 16 hours per week of skilled nursing care. *Testimony of Melissa Holloway, Registered Nurse; Exhibits R-3, R-4.*

7.

As part of the application and renewal process, Petitioner's mother signed a Letter of Understanding. In the letter, Petitioner's mother acknowledges that (1) her child must require skilled nursing care equivalent to care received in an institutional setting to be eligible for GAPP, (2) the GAPP program is designed to teach her about the care of her child's medical condition, (3) services will be reduced over time based on Petitioner's medical needs, and (4) GAPP services will be discontinued when Petitioner's condition no longer requires skilled nursing services. *Testimony of Holloway; Exhibit R-1, Sections 601.1(l), 905.11 and Appendix J; Exhibit R-5.*

8.

At Petitioner's last recertification review, due in February, 2013, Respondent determined that Petitioner no longer met the requisite Level of Care to continue his participation in GAPP.

Respondent then sought to terminate Petitioner's participation in GAPP.² *Testimony of Holloway; Exhibits R-3, R-4.*

Petitioner's Condition

9.

Petitioner is 9 years old (date of birth 6/7/2004). He has a primary diagnosis of Respiratory System Disease. He also has been diagnosed with bone and cartilage disease, cerebral palsy, blindness, severe neurological deficits, joint contractures, Gastro-esophageal Reflux Disease, dysphagia,³ and aphasia.⁴ He is G/J tube dependent. *Testimony of Holloway; Exhibit R-4.*

10.

Petitioner currently attends school. He is there 5 to 6 hours per day, 4 days per week. He does not require the assistance of a nurse full-time while at school. *Testimony of Holloway; Exhibit R-4.*

11.

Petitioner's condition has been stable since at least 2011. He has had no exacerbations or hospitalizations during this time while he received 16 hours of skilled nursing care through GAPP. *Testimony of Holloway.*

Petitioner's Current Skilled Nursing Needs

12.

Petitioner does not currently have extensive skilled nursing needs. Petitioner's Letter of Medical Necessity, completed December 19, 2012 as part of Petitioner's renewal application, states that Petitioner has the following skilled nursing needs:

- Assessment and monitoring of cardiac status and vascular condition related to immobility;
- Monitoring and interventions for seizure activity;

² Respondent asserts that there are other programs, such as the Community Care Services Program (CCSP), that may be better suited to meet Petitioner's family's needs, including providing respite services. *Testimony of Collins.*

³ An inability to swallow. *Testimony of Holloway.*

⁴ An inability to communicate. *Testimony of Holloway.*

- Skilled assessment and observation of respiratory conditions, including continuous pulse oximetry while asleep, intermittent checks while awake, occasional suctioning, CPT vest treatments, and supplemental oxygen for decreased saturations; and
- Repositioning at least every 2 hours, along with monitoring and interventions for contractions and range-of-motion deficits.

Testimony of Holloway; Exhibit R-4.

13.

The Letter of Medical Necessity also lists the following needs, none of which are considered to be “skilled” nursing needs for GAPP purposes.⁵

- Tube feeding: Administration of Pediasure+fiber @75mL/hour continuous feeds via J tube, plus scheduled water boluses, plus Benefiber at 1pm for a total of 1320 mL/day;
- Provide personal care including bathing, diapering, dressing, skin and oral care, and also observation for skin breakdown related to immobility;
- Monitoring output for changes in hydration status;
- Monitoring for changes in bowel habits related to nutritional/hydration status; and
- Monitoring closely for signs and symptoms of infection.

Testimony of Holloway; Exhibit R-4.

14.

A review of the nurses’ notes for the 3 months prior to Petitioner’s review shows that the nurses completed skilled assessments, and provided assistance with ADLs such as bathing and feeding. Most of Petitioner’s physician’s instructions are not skilled nursing needs as required for the GAPP level of care. Petitioner’s physician has primarily ordered skilled assessment and monitoring of Petitioner’s condition. The completion of a skilled assessment would take no more than 1 hour, and would only be completed to note a change in condition. However, GAPP is not intended to provide oversight to avoid the potential worsening of a condition. Instead, it is intended to meet the current skilled nursing needs of medically fragile children. *Testimony of Holloway; Exhibit R-4.*

⁵ To be considered a skilled service, the service must be so inherently complex that it can be safely and effectively performed only by, or under the supervision of, professional or technical personnel. 42 C.F.R. 409.32.

15.

Petitioner's mother is proficient in providing for Petitioner's medical needs independently. *Testimony of Holloway; Exhibits R-6, R-8.*

Respondent's Review of Petitioner's Physician's Recommendation

16.

Respondent has contracted with the Georgia Medical Care Foundation (GMCF) to review applications for admission and continued stay in the GAPP Program. *Testimony of Collins; Exhibit R-1, Sections 601.2(C), (D).*

17.

The GMCF review team consists of a pediatric physician and three GAPP review nurses. They review information submitted with each authorization request to determine the needs of the child in question. The review team reviews all documentation submitted with the authorization request, including form Appendix K, Letter of Medical Necessity; the Letter of Understanding; the DMA-6; and the nursing notes for the prior three months. They also consider the skilled needs of the child at the time of the review, and take into consideration the stability of the child's condition. *Testimony of Collins; Testimony of Holloway; Ex. R-1.*

18.

As noted above, the GMCF medical review team typically considers the nurse's notes for the prior three months to determine exactly what skilled services are being provided on a day-to-day basis, as well as to determine the stability of the child's condition. Here, the nurse's notes for the three months preceding the request for continued skilled nursing hours showed that Petitioner's condition remained stable, i.e. the nurses did not report any problems to Petitioner's parents and Petitioner's parents did not report any problems to the nurses when they came on shift. Additionally, the only skilled service provided was skilled assessments. Other than the skilled assessment, the nurses primarily provided non-skilled services such as assistance with diapering, bathing, administration of medications, and tube feedings. Based on GMCF's review, it was determined that in-home skilled nursing services were no longer medically necessary to correct or ameliorate Petitioner's condition. *Testimony of Holloway; Exhibit R-1, Sections 801.3(d), 802(h).*

19.

Upon completing its review of Petitioner's request to continue skilled nursing hours at 16 hours per week, which including a review of the authorization request, the supporting documentation, and Petitioner's nursing notes from the previous three months, the team recommended that Petitioner receive 16 hours per week from the date of the notice (April 2, 2013) until termination from the program thirty days later on May 2, 2013. The team determined that the requested skilled hours were not medically necessary to correct or ameliorate Petitioner's condition.

Testimony of Holloway; Exhibit R-3.

20.

The Final Notification advising Petitioner of the proposed termination from the program states that Petitioner's skilled nursing hours were being terminated for the following reasons:

- The child's condition does not meet hospital inpatient-qualifying criteria which necessitate:
 - (1) Nursing interventions every 4-8 hours,
 - (2) Post critical care or weaning monitoring,
 - (3) Procedures/interventions which require hospitalization/interventions or IV medications which require hospitalization (see CFR 409.31-409.34 and 440.10).
- Services for this child are not required 24 hours per day nor are they required to be ordinarily furnished on an inpatient basis which is a requirement of 42 CFR 409.31-409.34
- The child does not meet nursing home skilled level of care admission criteria (see CFR § 409.31-409.34 and 42 CFR § 440.10).
- The nurse's notes reviewed for the past 3 months document the stability of your child's condition.
 - (1) Oxygen saturations are documented to be 94%-96% while on room air.
 - (2) The 60 day summary states: "████████ continues in school 5 days per week with regular hours. He rides the school bus to and

from school, but no nurse accompanies.” “His lowest documented O2 saturation of [90%]⁶ on room air 12/6/12.”

- Your child’s condition has remained stable with no exacerbations in disease process or hospitalizations since last pre-certification period.
- There is no evidence from the documentation submitted that the current hours are medically necessary to correct or ameliorate the child’s medical condition (see 42 USCS 1382h(b), OCGA 49-4-169.1) and GAPP Manual 702.2(A)).
- Other reason(s):
 - (1) G-tubes are not so inherently complex to require a professional licensed person on a daily basis. This does not require GAPP nursing hours which require continuous skilled nursing care or skilled nursing care in shifts (GAPP Manual § 601) and it does not meet medical necessity and require the level of care provided in a nursing facility or hospital (See 42 CFR § 409.31-409.34 and 42 CFR § 440.10).
 - (2) [REDACTED] requires pulse oximetry, oxygen PRN via nasal cannula and g-tube/nebulizer medications; all of which are not so inherently complex to require a professional licensed person on a daily basis.
 - (3) Although [REDACTED] has a history of seizures, having skilled nursing will not prevent their duration or intensity. Additionally, the documentation submitted by your agency states “family denies any seizures.”
 - (4) [REDACTED] is able to attend school 5 days per week without a nurse in attendance.
 - (5) Skilled nursing hours cannot be granted for projected potential problems. It is to provide for the current skilled need of the child.

⁶ The letter states 98%. However, Nurse Holloway testified that it was a typographical error and should read 90%.

- (6) Members served by the GAPP program are required to meet the same level of care as for admission to a hospital or nursing facility and must be Medicaid eligible. (GAPP Manual § 601 (See 42 CFR § 409.31-409.34 and 42 CFR § 440.10).

Testimony of Holloway; Ex. R-3.

III. Conclusions of Law

1.

Medicaid is a joint federal-state program that provides comprehensive medical care for certain classes of eligible recipients whose income and resources are determined to be insufficient to meet the costs of necessary medical care and services. 42 U.S.C. §§ 1396-1396v. Each state is required to designate a single state agency to administer its Medicaid plan. In Georgia, Respondent serves as that agency. 42 C.F.R. § 431.10(a); O.C.G.A. § 49-2-11(f).

2.

GAPP is a Medicaid program designed to serve eligible children under the age of 21 who require "skilled nursing care in shifts on a continuous basis." *Part II, Policies and Procedures for the Georgia Pediatric Program (GAPP) ("GAPP Manual")* § 702.2. A child's need for services is determined based on medical necessity, "taking into consideration the overall medical condition of the member, the equipment and the level of care and frequency of care required for the member." *Id.* A child enrolled in the GAPP program is eligible to receive private duty nursing services.⁷ 42 U.S.C. § 1396d(a)(8); *GAPP Manual* § 601. By regulation, private skilled nursing services are provided by registered nurses or licensed nurse practitioner's under the direction of the recipient's physician. 42 C.F.R. 440.80.

3.

To qualify for GAPP, a child must require services which are so inherently complex that they can be safely and effectively performed only by, or under the supervision of, technical or

⁷ Private duty nursing service is defined as "nursing services for recipients who require more individual and continuous care than is available for a visiting nurse or routinely provided by the nursing staff of the hospital or skilled nursing facility." 42 C.F.R. § 440.80. These services are provided by a registered nurse or nurse practitioner under the direction of the recipient's physician at the recipient's home, a hospital or a skilled nursing facility. *Id.*

professional personnel such as registered nurses, licensed practical nurses, physical therapists, and speech pathologists or audiologists,

AND

the service is one of the following or similar and is required seven days per week:

- Overall management and evaluation of a care plan for an individual who is totally dependent in all activities of daily living,⁸
- Observation and assessment of an individual's changing condition because the documented instability of his or her medical condition is likely to result in complications, or because the documented instability of his or her mental condition is likely to result in suicidal or hostile behavior,
- Intravenous or intramuscular injections or intravenous feeding,
- Enteral feeding that comprises at least 26 per cent of daily calorie requirements and provides at least 501 milliliters of fluid per day,
- Nasopharyngeal or tracheostomy aspiration,
- Insertion and sterile irrigation or replacement of uprapubic catheters,
- Application of dressings involving prescription medications and aseptic techniques,
- Treatment of extensive decubitus ulcers or other widespread skin disorder,
- Heat treatments as part of active treatment which requires observation by nurses
- Initial phases of a regimen involving administration of medical gases,
- Rehabilitation nursing procedures, including the related teaching and adaptive aspects of nursing, that are part of active treatment,

⁸ When, because of the patient's physical or mental condition, the activities require the involvement of technical or professional personnel in order to meet the patient's needs, promote recovery and ensure medical safety. Although the service may be performed by a properly instructed person, such a person would not have the ability to understand the relationship between the services and evaluate the ultimate effect of one service on the other. When such an understanding is essential to ensure the patient's recovery and safety, it can be considered skilled care.

OR

The service is one of the following or similar and is required five days per week:

- Ongoing assessment of rehabilitation needs and potential; services concurrent with the management of a patient care plan,
- Therapeutic exercises and activities performed by PT or OT,
- Gait evaluation and training to restore function to a patient whose ability to walk has been impaired by neurological, muscular, or skeletal abnormality,
- Range of motion exercises which are part of active treatment of a specific condition which has resulted in a loss of, or restriction of mobility,
- Maintenance therapy when specialized knowledge and judgment is needed to design a program based on initial evaluation,
- Ultrasound, short-wave, and microwave therapy treatment,
- Hot pack, hydrocollator, infrared treatments, paraffin baths, and whirlpool treatment when the patient's condition is complicated by circulatory deficiency, areas of desensitization, open wounds, etc. and specialized knowledge and judgment is required,
- Services of a speech pathologist or audiologist when necessary for the restoration of function in speech or hearing

OR

The service is one of the following only if additional special medical complication requires that it be performed or supervised by technical or professional personnel:

- Administration of routine medications, eye drops, and ointments
- General maintenance care of colostomy or ileostomy
- Routine services to maintain satisfactory functioning of indwelling bladder catheters,

- Changes of dressings for non-infected postoperative or chronic conditions,
- Prophylactic and palliative skin care, including bathing and application of creams, or treatment of minor skin problems
- Routine care of incontinent individuals, including use of diapers and protective sheets
- General maintenance care (e.g. in connections with a plaster cast)
- Use of heat as a palliative and comfort measure (e.g. whirlpool and hydrocollator)
- Routine administration of medical gases after a regimen of therapy has been established
- Assistance in dressing, eating, and toileting,
- Periodic turning and positioning of patients,
- General supervision of exercises that were taught to the individual and can be safely performed by the individual including the actual carrying out of maintenance programs.

AND

- The service needed has been ordered by a physician⁹
- The service will be furnished either directly by, or under the supervision of, appropriately licensed personnel¹⁰
- The beneficiary must require skilled nursing or skilled rehabilitation services, or both, on a daily basis.¹¹

Exhibit R-1, Appendix R-3 through R-11; Exhibit R-2.

⁹ 42 C.F.R. 409.31(a)(2)(3).

¹⁰ 42 C.F.R. 409.31(b)(3).

¹¹ 42 C.F.R. 409.35.

4.

Petitioner's letter of medical necessity recommends 16 hours of skilled nursing care per week. However, Respondent has shown that Petitioner does not currently require 16 hours of skilled nursing care per week. At this time, the only skilled care noted on the Letter of Medical Necessity for GAPP purposes, and the only skilled care administered based on the nursing notes during the preceding three months, shows Petitioner requires skilled assessment and monitoring of his condition. Based on the record, most of the skilled assessments referenced on the Letter of Medical Necessity do not meet the criteria set forth above. For example, the assessments are not for the purpose of assessing a "changing condition [due to] documented instability of [Petitioner's] medical condition [that] is likely to result in complications." Additionally, although Petitioner requires assistance with some activities of daily living, such assistance does not rise to the level of "skilled care" because his physical or mental condition does not require the involvement of technical or professional personnel in order to meet Petitioner's "needs, promote recovery or ensure medical safety."

Petitioner does receive enteral feedings, and those feedings appear to provide for at least 501 milliliters of fluid per day. However, for GAPP purposes, tube feedings are not considered to be so inherently complex that they can be safely and effectively performed only by, or under the supervision of, technical or professional personnel. Petitioner did not present evidence to rebut Respondent's position.

Therefore, considering the record in this matter, Respondent has established that Petitioner does not meet the requisite Level of Care to qualify for GAPP, and Petitioner has not effectively rebutted Respondent's evidence.

5.

Respondent's policy provides, in relevant part, that discharge from the GAPP Program can occur when (1) the GMCF Medical Review unit, in consultation with the nursing agency's case manager and the individual's physician, determine that the individual is no longer appropriate or eligible to receive GAPP services, (2) the Department of Community Health Program Integrity staff recommends in writing that a member be discharged from service, or (3) the individual has not required skilled care within the last 30 days. *Exhibit R-1, Section 806*. Here, Petitioner has required skilled care within the last 30 days, namely the skilled assessments ordered by his

physician. Additionally, the Department of Community Health Program Integrity staff did not recommend that Petitioner be discharged. Accordingly, Petitioner may only be discharged if the GMCF Medical Review unit, in consultation with the nursing agency's case manager and Petitioner's physician, determined that Petitioner is no longer appropriate or eligible to receive GAPP services. The term "consultation" is not defined. However, the GMCF Medical Review unit reviewed and considered information provided by the nursing agency's case manager and Petitioner's physician in reaching the determination that Petitioner is no longer eligible to receive GAPP services. Based on the record as a whole, the court concludes Respondent met its burden and that Petitioner failed to effectively rebut Respondent's evidence. Ga. Comp. R. & Regs. 616-1-2-.07.

IV. Decision

IT IS HEREBY ORDERED THAT Respondent's determination to terminate Petitioner's skilled nursing hours is **AFFIRMED**. Respondent is authorized to terminate Petitioner's skilled nursing hours as indicated in the Final Adverse Notice, unless Respondent is prompted to reevaluate Petitioner's eligibility based on a change in condition prior to the termination of services.

SO ORDERED this 6th day of September, 2013.

Ana Kennedy
Administrative Law Judge