

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

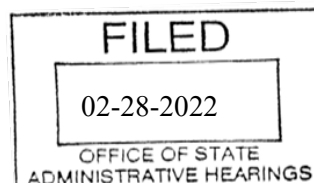
**K [REDACTED] W [REDACTED],
Petitioner,**

v.

**DEPARTMENT OF COMMUNITY
HEALTH,
Respondent.**

**Docket No.: [REDACTED]
[REDACTED]-OSAH-DCH-GAPP-145-Walker**

Agency Reference No.: [REDACTED]



INITIAL DECISION

The Petitioner, K [REDACTED] W [REDACTED], appeals the Respondent's (also "Department") decision to reduce the amount of skilled nursing services provided to her through the Georgia Pediatric Program ("GAPP" or "GAPP program"). The evidentiary hearing in this matter was conducted on February 14, 2022. A [REDACTED] W [REDACTED], the Petitioner's mother, appeared on her behalf. Kathrina Biassou, Esq., represented the Department.

I. Findings of Fact

1.

The GAPP program provides in-home services to Medicaid-eligible children. The Department administers the GAPP program. (Testimony of Sharon Collins; Exhibit R-1 §§ 601, 701.)¹

2.

To be eligible for GAPP services, a child must require medically necessary skilled nursing and/or personal support care. Skilled nurses provide medically necessary services to correct or improve a child's condition. In turn, personal care support personnel assist GAPP members with

¹ Sharon Collins holds graduate degrees in nursing and education and is the Department's Program Specialist.

the activities of daily living, such as eating, bathing, dressing, and ambulation. (Testimony of Sharon Collins; Testimony of Brianne Taylor; Exhibit R-1 §§ 601.3, 702.)

3.

The Department reviews a child's eligibility for GAPP services every six months and has hired Alliant Health Solutions ("Alliant") to perform these medical reviews. Alliant conducts "paper reviews" and does not evaluate a GAPP participant in-person. During a review, an Alliant Medical Review Team ("GAPP team") assesses a child's need for services based on medical necessity, taking into consideration the overall medical condition of the member and the equipment, level and frequency of care required. After evaluating these factors, the GAPP team determines the number of hours per week of skilled nursing services that is medically necessary. (Testimony of Sharon Collins; Testimony of Brianne Taylor; Exhibit R-1 §§ 601, 701.)

4.

The Petitioner is an eleven-year-old girl with a primary diagnosis of muscular dystrophy. As a result of this diagnosis, she is non-verbal and non-ambulatory. Additional diagnoses include unspecified convulsions, cerebral palsy, kidney disease and gastro-esophageal reflux disease. She currently receives fifty-six hours of skilled nursing services per week. (Testimony of Brianne Taylor; Exhibits R-2, R-3.)

5.

The Petitioner's physician, Dr. Stephanie Kong, has prepared a Plan of Care for the Petitioner. In her most recent addendum to the Plan of Care for the certification period from August 10, 2021, to October 8, 2021 (the "Addendum"), Dr. Kong reports that the Petitioner is a medically fragile child with no recent hospitalizations. While Dr. Kong has seen the Petitioner more frequently due to increased vomiting and an ear infection, she also notes that the Petitioner

has had no seizure activity since February 2020. (Exhibit R- 5.)

6.

Dr. Kong's Addendum is four pages and details a course of specific, individualized treatment for the Petitioner. For example, it indicates that to maintain the Petitioner's health, skilled nursing personnel should perform a full assessment, perform respiratory assessments (including measuring her pulse rate, respiratory rate, auscultation of breath sounds, and oxygen saturation) to include suctioning as needed and subsequent monitoring, administer food and medication via a gastrostomy tube, monitor seizures, assess skin integrity, and assist the Petitioner with her activities of daily living. Although Dr. Kong did not testify during the hearing, the Addendum specifies that the Petitioner continues to need fifty-six hours of skilled nursing services per week. (Exhibit R-5.)

7.

The GAPP program requires Providers to maintain records pertaining to the provision of GAPP services. Registered Nurse Karen Jackson provides skilled nursing services to the Petitioner. In addition to the Petitioner's medical records, Alliant reviewed the daily nursing notes kept by Ms. Jackson from August 16, 2021, to September 28, 2021. Ms. Jackson's notes reflect that she performed daily assessments, including airway and skin assessments, manual chest physiotherapy treatment, at times continuously throughout her shift, and administered medication and feedings via a gastrostomy tube. She also assisted the Petitioner with clothing and diaper changes, laundry, bathing, and brushing her teeth. (Exhibits R-1 § 602.5, R-12.)

8.

The GAPP team consisted of physicians and nurses with experience in pediatric care. Brianne Taylor is a GAPP pediatric review nurse with Alliant and was a member of the GAPP

team that assessed the Petitioner's need for continuing GAPP services. (Testimony of Brianne Taylor.)

9.

On or about November 9, 2021, the GAPP review team evaluated the Addendum to the Petitioner's Plan of Care and her medical and educational records, including the nursing shift notes and her Individualized Education Plan ("IEP").² The GAPP team determined that the Petitioner required skilled nursing care in the following areas: physical assessment, airway management, neurological (seizures), hydration and catheterization. It then used a scoring tool to assign points for each listed condition. After calculating the total points for the Petitioner, the scoring guidelines directed the GAPP team to give the Petitioner individual consideration. The GAPP team then examined the physician's Addendum to the Plan of Care and compared it to the services provided to the Petitioner as documented in Ms. Jackson's daily nursing notes. (Testimony of Brianne Taylor; Exhibits R-1 § 602.5, R-10.)

10.

On or about November 17, 2021, Alliant sent Ms. W [REDACTED] a Notice of Determination of Request for GAPP Services ("Notice"). The Notice stated that the Petitioner would still receive fifty-six hours of services per week; however, Alliant had determined that the Petitioner needed only twenty-eight hours per week of skilled nursing services and allotted the remaining twenty-eight hours per week to personal support services. (Exhibit R-9.)³

² The IEP reflects that the Petitioner attends school daily. It also notes that she wears diapers, requires assistance for all adaptive needs, is nonverbal and cannot hold her head up for very long. (Exhibit R-11).

³ The Notice stated:

K [REDACTED]'s participation in the GAPP [sic] has been given careful consideration, and the following medical needs determination has been made.

Medically necessary hours: 28 hours/week skilled services and 28 hours/week personal support services[.]

11.

According to the Notice, the reduction in skilled nursing hours was “based on [the Petitioner] no longer requiring BIPAP support.” The Notice also informed the Petitioner that if new skilled or personal care support services were needed the home health agency should contact the GAPP nurse and update her on these changes. For additional information, the Notice stated that Ms. W [REDACTED] should contact the GAPP Program Specialist, and/or refer to the GAPP Manual at www.mmis.georgia.gov. (Exhibit R-9.)

12.

Ms. W [REDACTED] objects to the Department’s decision. As an initial matter, she testified that the Notice made no sense because her daughter had never received BIPAP services.⁴ Therefore, the Department had not demonstrated that the reduction in weekly skilled nursing services was warranted. (Testimony of A [REDACTED] W [REDACTED].)

13.

Ms. W [REDACTED] also stated that the Petitioner and her family like Ms. Jackson, and do not want to change providers. She noted that the GAPP team had not met her daughter and added that the records submitted by the Provider and reviewed by the GAPP team did not reflect the scope and severity of her daughter’s condition.⁵ In addition to the fact that her daughter does not adjust

REVIEWER COMMENTS AND RATIONALE FOR THIS DECISION:

At this time, 28 hours/week skilled services and 28 hours/week personal support services are awarded based on K [REDACTED] no longer requiring BIPAP support as noted in the renewal submitted by Aveanna Healthcare. She also requires assistance with activities of daily living. The hours allotted should meet her needs.

⁴ Dr. Kong’s Addendum states “BIPAP as needed per Mom.” (Exhibit R-5.)

⁵ Ms. W [REDACTED] maintained that the records omitted mention of the severity of her daughter’s seizures and the degree of suctioning that she needs and noted that several of Petitioner’s diagnoses had not been included in the medical records. She has additional records she would like to submit, and the Department advised her regarding the submission of this material.

well to change, Ms. W [REDACTED] is uncomfortable having different people in and out of the home. Ms. W [REDACTED] testified that the Petitioner should receive the level of services currently provided because Ms. W [REDACTED] has had several strokes and has not completely regained her strength. Additionally, she has two other children in the home. (Testimony of A [REDACTED] W [REDACTED].)

II. Conclusions of Law

1.

This matter concerns the Department's reduction of Petitioner's benefits; therefore, the Department bears the burden of proof. Ga. Comp. R. & Regs. 616-1-2-.07. The standard of proof is a preponderance of evidence. Ga. Comp. R. & Regs. 616-1-2-.21.

2.

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. §§ 1396-1396w-6. In Georgia, the Department is the state agency responsible for administering the state Medicaid plan. O.C.G.A. § 49-2-11(f); 42 C.F.R. § 431.10(a).

3.

The Medicaid Act requires a state to provide medically necessary services or treatments to eligible children under the age of twenty-one as needed "to correct or ameliorate defects and physical and mental illnesses." 42 U.S.C. § 1396d(r)(5).⁶ "While the states must live up to their

⁶ Georgia law defines "correct or ameliorate" as "to improve or maintain a child's health in the best condition possible, compensate for a health problem, prevent it from worsening, prevent the development of additional health problems, or improve or maintain a child's overall health, even if treatment or services will not cure the recipient's overall health." O.C.G.A. § 49-4-169.1.

obligations to provide all EPSDT [Early and Periodic Screening, Diagnostic, and Treatment] services, the statute and regulations afford them discretion as to how to do so.” Moore v. Reese, 637 F.3d 1220, 1238 (11th Cir. 2011) (citation omitted).

4.

In Georgia, GAPP serves eligible children under the age of twenty-one who require “skilled nursing care and/or personal support care” based on medical necessity. Part II, Policies and Procedures for Georgia Pediatric Program (GAPP) In-Home Nursing, rev. October 1, 2021 (“GAPP Manual”) § 601.1. While the Department “may place appropriate limits on a service based on such criteria as medical necessity,” the statute mandates that the skilled nursing services provided must be “sufficient in amount, duration, and scope” to reasonably correct or ameliorate her medical condition. 42 C.F.R. § 440.230(b), (d); see Moore, 637 F.3d at 1234 (quoting 42 C.F.R. § 440.230(b), (d)).

5.

The GAPP Manual specifies that “[t]he primary care physician develops the child’s initial plan of care.” GAPP Manual § 601.2(C); Moore, 637 F.3d at 1257. However, the physician’s plan of care is not “dispositive,” because the Department may conduct its own assessment regarding medical necessity. Id.; 42 C.F.R. § 440.230(b), (d). In assessing whether skilled nursing services are medically necessary, the Department takes into consideration “the overall medical condition of the member, the equipment and the level and frequency of care required for the member.” GAPP Manual § 702(A); see also 42 C.F.R. § 440.230(d). Although the Medicaid Act allows the Department discretion in fashioning GAPP program standards, ultimately the Department must ensure that the services provided to the Petitioner are reasonably sufficient in amount, duration and scope to correct or ameliorate her medical condition. Moore, 637 F.3d at

6.

“The purpose of notice under the Due Process Clause is to apprise the affected individual of, and permit adequate preparation for, an impending ‘hearing.’” C.R. v. Noggle, 2021 U.S. Dist. LEXIS 193679, at *28 n.9 (N.D. Ga. Sep. 13, 2021) (citing Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 15 (1978)); see Susan J. v. Riley, 254 F.R.D. 439, 456-57 (M.D. Ala. 2008) (State administration of Medicaid programs must meet the constitutional due process minimums as set out in Goldberg v. Kelly, 397 U.S. 254, 267-71 (1970)). After evaluating the Petitioner’s need for medically necessary services, the Department was obligated to provide written notice of its proposed action to the Petitioner. 42 C.F.R. §§ 431.206(b), 431.206(c)(2). Such notice must include a clear statement of the specific reasons supporting the intended action. 42 C.F.R. § 431.210.

7.

Ms. Taylor testified that the GAPP team had made its decision to reduce the number of hours of skilled services provided to the Petitioner for multiple reasons, including its review of the skilled services provided as detailed in Dr. Kong’s Addendum to the Plan of Care and Ms. Jackson’s nursing notes. However, the Notice sent to the Petitioner simply stated that the Department had reduced the weekly hours of skilled services because “K [REDACTED] no longer require[ed] BIPAP support as noted in the renewal submitted by Aveanna Healthcare.” See

⁷ A skilled nursing service is “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(a). Pursuant to 42 C.F.R. § 409.33(1)(a), skilled services also include “the management of a plan involving a variety of personal care services only when, in light of the patient’s condition, the aggregate of those services requires the involvement of technical or professional personnel.”

Exhibit R-9.


8.


The Department failed to give the Petitioner adequate notice regarding the reasons for its action. Cf. M. H. v. Berry, 2021 U.S. Dist. LEXIS 60126, at *19 (N.D. Ga. Mar. 29, 2021) (adverse action notice letters deficient because they do not address or respond to the treating physician’s recommendation); C.R., 2021 U.S. Dist. LEXIS 193679, at *25 (notices failed to supply “intelligible explanation” for denial). The failure to provide adequate notice had a substantial bearing on the Petitioner’s opportunity to fully and fairly present her case at the hearing. If the Department had given the Petitioner notice that it had reduced the number of skilled services based upon several factors - including a review of the skilled services detailed in the Addendum to the Plan of Care and the nursing notes - the Petitioner could have presented Dr. Kong or Ms. Jackson as witnesses, whether in person, virtually or by telephone, to rebut the Department’s determinations.⁸

III. Decision

Accordingly, the Department’s decision to reduce the Petitioner’s skilled services is **REMANDED** for further action in accordance with the Findings of Fact and Conclusions of Law in this Initial Decision.

SO ORDERED, this 28th day of February 2022.


Ronit Walker
Administrative Law Judge



⁸ Opposing parties must be notified before the Administrative Law Judge can consider a request for a witness to appear virtually. Additionally, any subpoena served on a third-party witness under OSAH Rule 19 must include a statement notifying such witnesses that they may request to appear by telephone or video conference, rather than in person, by contacting the judge’s assistant at least two (2) business days prior to the date set for the hearing.