

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

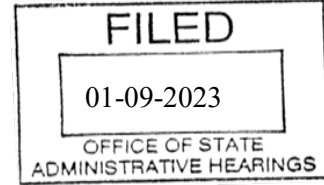
R [REDACTED] C [REDACTED],
Petitioner,

v.

**DEPARTMENT OF COMMUNITY
HEALTH,**
Respondent.

Docket No.: [REDACTED]
[REDACTED]-OSAH-DCH-GAPP-33-
Woodard

Agency Reference No.: [REDACTED]



INITIAL DECISION

Petitioner R [REDACTED] C [REDACTED] has appealed the Respondent’s decision to reduce the in-home skilled nursing services he receives through the Georgia Pediatric Program (“GAPP”) from 24 hours a week to 4 hours a week. The evidentiary hearing on this matter took place via telephone on October 6, 2022. The Petitioner’s mother, L [REDACTED] C [REDACTED], acted as his personal representative. Jason Reeves, Esq., represented the Respondent.

For the reasons indicated below, the Respondent’s decision to reduce Petitioner’s skilled nursing hours is **AFFIRMED**. However, the reduction is **MODIFIED** to provide that the Petitioner will receive five hours per week of in-home skilled nursing services.

I. FINDINGS OF FACT

1. The GAPP program provides in-home services to Medicaid-eligible children. The Department of Community Health (“Respondent” or “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

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

with the activities of daily living, such as eating, bathing, dressing, and ambulation. (Testimony of Sharon Collins; Testimony of Karis Jones;² 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"), which consists of three to four doctors and three to four specialty nurses, 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 Karis Jones; Exhibit R-1 §§ 601, 701.).
4. The Petitioner was born [REDACTED] 2019 and is three years old. He was born six weeks premature with a congenital diaphragmatic hernia (CDH). Due to the hernia, at birth Petitioner's lung capacity was at only 15% of a normal infant's, and his intestine, stomach, bowel, spleen, and fifty percent of his liver located in his chest instead of his abdomen. He was put on extracorporeal membrane oxygenation (ECMO) shortly after birth due to his poor oxygenation issues. While the CDH was repaired the day after birth, Petitioner's organs are still not in a "standard placement." In total, Petitioner spent twenty-two days in ECMO, thirty-five days intubated, and eighty-five days in the neonatal intensive care unit (NICU).
5. In the days and weeks after his birth, Petitioner suffered two pulmonary hemorrhages, one self-extubation, and three occasions of emergency lack of oxygen. He also had a G-tube inserted, which he was entirely dependent on for feeding until August 2021. He also had a bilateral

² Karis Jones, who has a B.S. degree in nursing, is the pediatric team manager with Alliance.

inguinal hernia repair on November 4, 2019. At thirteen months old, he had a cardiac stent inserted. At twenty-seven months old, he had a G-tube stoma repair. (Testimony of L ■■■■■ C ■■■■■; Letter; Petitioner's Exhibits).

6. Petitioner's G-tube was removed on August 23, 2021. However, the stoma remained open for four months thereafter and was continuing to leak stomach fluid until it was surgically repaired in December 2021. It took several months for the stoma to fully heal. (Exhibit R-8; Testimony of L ■■■■■ C ■■■■■).
7. Petitioner currently attends occupational therapy, physical therapy, and speech therapy once or twice weekly. Petitioner is self-ambulatory. As of the date of the hearing, he was about to start attending a special-needs preschool through the ■■■■■ County School District. Ms. C ■■■■■ testified that people outside the family struggle to understand Petitioner when he speaks, which is part of the reason he is attending the special-needs preschool. Petitioner currently receives twenty-four hours of skilled nursing services per week. (Testimony of L ■■■■■ C ■■■■■; Testimony of Karis Jones; Exhibit R-7).
8. The GAPP program requires Providers to maintain records pertaining to the provision of GAPP services. Registered Nurse Karen Snyder provides skilled nursing services to the Petitioner. In addition to the Petitioner's medical records, Alliant reviewed the daily nursing notes kept by Ms. Snyder from July 15, 2021, to August 31, 2021. Ms. Snyder's notes reflect that she performed daily assessments—including cardiovascular status, monitoring G-tube site for any complications, oxygen saturation, pulse, and bowel movements—continuously throughout her shift. She also administers medications, including a nebulizer if necessary, and administers feedings via a gastronomy tube. She also fed the Petitioner soft foods as tolerated. (Exhibit R-8).

9. Additionally, Petitioner submitted nursing notes from January 5, 2022, through October 6, 2022. These notes generally show Ms. Snyder performing the same functions as in 2021, except that she did not need to monitor a G-tube. She also would accompany R [REDACTED] to camp and school. (Petitioner's Exhibits).
10. On or about March 16, 2022, Alliant sent L [REDACTED] C [REDACTED], Petitioner's mother, a Notice of Determination of Request for GAPP services. The Notice stated that Alliant had determined Petitioner needed only four hours per week of skilled nursing services. It noted that Petitioner "requires nebulizer treatments, medications, and assessment of the skin around his previous g-tube site to assess for proper healing. The hours allotted should meet his needs." (Exhibit R-10).
11. After Ms. C [REDACTED] submitted an appeal, the Department sent a Letter of Notification stating that the Petitioner would continue to receive twenty-four hours of skilled services pending a hearing decision. (Exhibit R-5; Testimony of Karis Jones).
12. Ms. C [REDACTED] objects to the Department's decision. She stated that although it is amazing how far Petitioner has come considering his medical issues, he is still having issues with breathing, particularly after any infections. For example, Ms. C [REDACTED] said that there was a recent incident where Petitioner's nurse needed to provide him a nebulizer because his oxygen saturation levels were at 92%. While Ms. C [REDACTED] was trained in what to observe to determine whether Petitioner's oxygen levels were low—his nailbeds, the mucus membranes of the mouth, the color of his skin—during this particular instance "none of the typical signs" were present. The only sign the nurse observed was that Petitioner's face was flushed, which Ms. C [REDACTED] had assumed was because Petitioner had been playing outside in the heat. (Testimony of L [REDACTED] C [REDACTED]).

13. In a letter to Respondent dated March 28, 2022, Ms. C [REDACTED] stated that Petitioner needed his nurse for “therapy practice, nebulizer treatments, medications, monitoring of pulmonary status, and g-tube site assessments.” As for his medical status at that time, she stated that Petitioner “is receiving nebulizer treatments 4 times per day, amoxicillin 2 times per day, oral steroid once per day, plus Zyrtec and Flonase due to allergies affecting his breathing. This recent uptick in need for more medication and treatment is a huge reason why he still needs his nurse.” (Exhibit R-11).
14. The nursing records covering 2021 submitted by Respondent do not show any incidents of Petitioner’s oxygen saturation levels dropping below 95%. The nursing records covering January through October 2022, however, show at least six occasions where Petitioner’s oxygen levels dropped below 95%. In particular, on April 1, 2022, Petitioner was sent home early from school because he was “coughing a lot and breathing fast,” and his oxygen level was measured at 92%. In response, Ms. Snyder gave him a nebulizer treatment. On July 6, 2022, Petitioner’s oxygen was at 93% after he had been playing outside and Ms. Snyder had him come inside to cool off. She observed that he was “flushed and sweating.”³ (Exhibit R-8; Petitioner’s Exhibits).
15. The 2022 notes also show Petitioner requiring regular administrations of Albuterol through a nebulizer during approximately four periods of time—March 24 through April 8, May 27 through June 1, July 26 through August 2, and September 20 through September 22—mainly to treat a cough and/or congestion. He also received allergy medications and/or antibiotics during some of these periods. In neither set of nursing records does it show that Petitioner ever received supplemental oxygen. (Petitioner’s Exhibits).

³ The Court assumes that Ms. C [REDACTED] was referring either to the April 1 incident or the July 6 incident in her testimony.

16. Ms. C [REDACTED] stated that Petitioner does not fully understand “the sensations in his own body.” For example, he does not understand the concepts of “hunger” or “fullness.” Ms. C [REDACTED] worries that he would not be able to realize and then communicate if his oxygen levels were dropping, or if his stint was coming loose in his chest. (Testimony of L [REDACTED] C [REDACTED]).
17. Jamie Shumock testified on behalf of Petitioner. Ms. Shumock is Petitioner’s occupational therapist and has been working with him for nearly two years. She is working with Petitioner on upper body strength, using both arms at the same time, activities of daily living, oral motor skills, fine motor skills, the ability to eat safely, and overall developmental skills. Ms. Snyder is present while Ms. Shumock is working with Petitioner. Ms. Shumock says this is very helpful because it allows her to focus on the vital parts of occupational therapy that can be taxing on the body, such as muscle building. Ms. Snyder can assess whether an emergency situation has occurred and address it properly during a session, something that Ms. Shumock would not be able to do. She says that Ms. Snyder does regular oxygen checks and tells Ms. Shumock to slow down if necessary. Ms. Shumock says Petitioner’s progress has been tremendous because she has been able to focus on the therapeutic elements while Ms. Snyder makes sure Petitioner is safe. She noted that Petitioner is at risk of bowel obstruction and reherniation, and that the work she does with him could heighten that risk. She did concede however, that non-medical personnel could perform oxygen checks. (Testimony of Jamie Shumock)⁴.
18. Ms. C [REDACTED] noted that, while the twenty-four hours Petitioner is currently getting would be optimal, the most important thing to her was that Petitioner had a nursing presence during his

⁴ Ms. Shumock submitted a letter to the Court, the contents of which were similar to that of her testimony. Additionally, Lindsay Corona, Petitioner’s physical therapist, also submitted a letter (Ms. Corona did not testify). Like Ms. Shumock, Ms. Corona stated that a nursing presence was extremely beneficial to her sessions with Petitioner.

physical and occupational therapy sessions. However, she says that the staffing agency will not staff a shift for fewer than eight hours (although they have done six hours occasionally as an exception). Therefore, she requested at least twelve or sixteen hours a week of skilled nursing services in order to cover the two days a week that Petitioner is in therapy. Petitioner is in physical and occupational therapy a total of five hours a week. (Testimony of L [REDACTED] C [REDACTED]; Exhibit R-11).

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 the 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. 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).⁵ "While the states must live up to their 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) (citations omitted).

⁵ 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.

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. July 1, 2022 (“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 the child’s medical condition. 42 C.F.R. § 440.230(b), (d); see Moore, 637 F.3d 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 1257-58.
6. 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.”

7. In this instance, reducing Petitioner's skilled nursing hours is appropriate in light of the improvement in his condition. The record shows that, while Petitioner had his G-tube in place, his nurse needed to clean the G-tube at least daily, monitor the G-tube site for complications, and put the G-tube back in if it fell out. In the months following the G-tube's removal, she had to monitor the site and change the dressing. (Exhibit R-8). But once the G-tube site had healed, his nurse's duties were limited to giving him his regular medication, changing diapers, taking his vitals, and determining whether a nebulizer treatment or supplemental oxygen is necessary (Petitioner's exhibits). It is thus clear that Petitioner's skilled nursing needs are lower than they were before the G-tube was removed.
8. Ms. C [REDACTED] expressed concerns about monitoring Petitioner for signs of breathing issues and low oxygen levels. However, GAPP is, in part, a teaching program, and the GAPP Manual contemplates that skilled nursing hours will be reduced when a child's caregivers have been trained to provide more care. The number of approved hours is based on the “specific medical treatment needs of the member . . . and the documented training needs of the primary caregiver.” GAPP Manual § 702(D). There is an “expectation that the primary caregiver(s) will become competent to assume some responsibility for the care of the child.” GAPP Manual § 702(E). The record indicates that Ms. C [REDACTED] has been trained in determining whether supplemental oxygen or a nebulizer treatment is necessary, including administering a pulse ox and observing external signs of low oxygen. Thus, a reduction of skilled nursing hours is appropriate.

9. Ms. C [REDACTED] also indicated that a nurse would need to administer Petitioner’s oral medications, as well as nebulizer treatments and supplemental oxygen as necessary. But while the “[i]nitial phases of a regimen involving the administration of medical gases” would constitute skilled nursing services, the “administration of medical gases after a regimen of therapy has been established” is not a skilled nursing service. 42 C.F.R. §§ 409.33(b)(8), (d)(10). Neither is the “[a]dministration of routine oral medications.” 42 C.F.R. § 409.33(d)(1). The record indicates that a regimen of therapy has been established—as stated above, Ms. C [REDACTED] has been trained to determine whether Petitioner’s oxygen levels are low, as well as how to administer the nebulizer or oxygen treatment.
10. Ms. C [REDACTED] indicated that her highest priority is having a nursing presence for Petitioner while he was in therapy, because of the physical risks that therapy presents. She stated that four hours a week would still be inadequate because the staffing agency would not staff a shift less than six hours. However, a child’s need for GAPP skilled nursing 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.” GAPP Manual § 702(A). The staffing agency’s policies cannot be taken into account.
11. The Court, having considered Ms. Shumock’s testimony concerning the real risks presented by Petitioner’s participation in occupational and physical therapy, agrees that Petitioner should receive sufficient skilled nursing services to cover his time in therapy. See 42 C.F.R. § 440.230(b) (“Each service must be sufficient in amount, duration, and scope to reasonably achieve its purpose.”). Because Petitioner is in therapy for five hours a week, the Court concludes that Petitioner should be afforded five hours a week of skilled nursing care. This

number of skilled nursing hours does not compromise what is medically necessary to correct or ameliorate his conditions. See 42 U.S.C. § 1396d(r)(5), O.C.G.A. § 49-4-169.1(1).

III. DECISION

In accordance with the foregoing Findings of Fact and Conclusions of Law, the Respondent's decision to reduce the Petitioner's skilled nursing hours is **AFFIRMED**. However, the reduction is **MODIFIED** to provide that the Petitioner will receive **five** hours per week of in-home skilled nursing services.

SO ORDERED, this 9th day of January, 2023.



M. Patrick Woodard
Administrative Law Judge

