

STATE OF RHODE ISLAND  
EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES  
APPEALS OFFICE

V.

DOCKET No. 25-1116

Executive Office of Health and  
Human Services

**DECISION**

**I. INTRODUCTION**

A Microsoft Teams hearing on the above-entitled matter came before an Appeals Officer on April 7, 2025, with the Executive Office of Health and Human Services (EOHHS), Neighborhood Health Plan of Rhode Island (NHPRI), NHPRI's third party vendor, Evolent, and the Appellant's Authorized Representative, [REDACTED] (hereinafter the "Authorized Representative"). The Appellant declined the option of a video hearing. The Appellant initiated this matter to appeal against EOHHS' decision to deny the Appellant's prior authorization request for occupational therapy (OT), as stated in the NHPRI and Evolent Notice dated January 13, 2025. NHPRI's position is that the Appellant's prior authorization request for OT was correctly denied for three reasons. First, the requested treatment targets lower complexity goals and activities which do not require the skills of a therapist to provide or supervise the service at this point in care. Second, the supporting documentation sent by the Appellant's OT Provider, the [REDACTED] (hereinafter "[REDACTED]") does not show why a skilled therapist is needed at this point in care. Third, the notes from [REDACTED] do not show evidence of a critical period to gain skills or a risk of regression with a break from care. The Authorized Representative does not dispute that the notes sent to NHPRI by [REDACTED] do not show why a skilled therapist is needed at this point in care, but she feels that the Appellant should continue her OT to prevent her from regressing and to help the

Appellant continue to improve her handwriting and puzzle-solving skills, as well as her ability to focus.

For the reasons discussed in more detail below, the Appellant's Appeal is denied.

## **II. JURISDICTION**

EOHHS is authorized and designated by R.I.G.L. § 42-7.2-6.1 and EOHHS regulation 210-RICR-10-05-2 to be the entity responsible for appeals and hearings related to EOHHS programs. The Administrative Hearing was held in accordance with the Administrative Procedures Act, R.I.G.L. § 42-35-1 et seq., and EOHHS regulation 210-RICR-10-05-2.

## **III. ISSUE**

Did EOHHS correctly deny the Appellant's prior authorization request for OT?

## **IV. STANDARD OF PROOF**

It is well settled that in formal or informal adjudications modeled on the Federal Administrative Procedures Act, unless otherwise specified, a preponderance of the evidence is generally required to prevail. See (2 Richard J. Pierce, *Administrative Law Treaties* §10.7 (2002) & *Lyons v. Rhode Island Pub. Employees Council 94*, 559 A.2d 1130, 134 (R.I. 1989) (preponderance standard is the "normal" standard in civil cases)). This means that for each element to be proven, the factfinder must believe that the facts asserted by the proponent are more probably true than false. When there is no direct evidence on a particular issue, a fair preponderance of the evidence may be supported by circumstantial evidence. See (*Narragansett Electric Co. vs. Carbone*, 898 A.2d 87 (R.I. 2006)).

## **V. PARTIES AND EXHIBITS**

Present for EOHHS was John Neubauer from the EOHHS Medicaid Office, Outside Counsel to NHPRI, Doug Emmanuel, Esq., NHPRI Appeals Nurse, Lisa Lambert, NHPRI Clinical Manager of the Grievance and Appeals Department, Catherine Daignault, Evolent Director of Appeals, Susan Jacobson, Evolent Clinical Reviewer, Sarah Bartlett, Evolent Senior Field Medical Director, Dr. Lindsay Argo,

Evolent Clinical Operations Manager, Emily Umbreit, and the Evolent Appeals Clinical Manager, Crystal Mosby.

John Neubauer, Sarah Bartlett, and Dr. Lindsay Argo provided testimony regarding the Appellant's prior authorization request for OT. The following exhibit was offered as evidence by EOHHS:

Exhibit #1 – Documentation in Support of EOHHS' Decision.

The Appellant was not present; however, the Authorized Representative attended the hearing and testified on the Appellant's behalf. The following exhibit was offered as evidence by the Authorized Representative:

Exhibit #2 – Appeal Form, Date March 5, 2025.

## **VI. RELEVANT LAW/REGULATIONS**

Federal law and regulations authorize the Medicaid agency or its authorized contractual agent (managed care plan / organization) to place appropriate restrictions on a Medicaid-funded benefit or service based on such criteria as medical necessity or utilization control (42 C.F.R. § 440.230(d)). See (210-RICR-10-00-1.5(C)).

Medical necessity refers to reasonable or necessary services that require the specific training, skills, and knowledge of a physical or occupational therapist and / or speech / language pathologist to diagnose, correct, or significantly improve / optimize as well as prevent deterioration or development of additional physical health conditions. These services require a complexity of care that can only be safely and effectively performed by or under the general supervision of a licensed practitioner. See (Evolent Clinical Guidelines, Record Keeping and Documentation Standards: Physical Medicine, Guideline Number: Evolent\_CG\_606-01, Implementation Date: July 2024, Page 7 of 11).

Documentation should clearly reflect why the skills of a practitioner are needed and that the care is medically necessary. See (Evolent Clinical Guidelines, Record Keeping and Documentation Standards: Physical Medicine, Guideline Number: Evolent\_CG\_606-01, Implementation Date: July 2024, Page 2 of 11).

Treatment can be discontinued if the skills of a therapist are not needed to provide or supervise the service. See (Evolent Clinical Guidelines, Outpatient Habilitative Physical and Occupational Therapy, Guideline Number: Evolent\_CG\_603, Implementation Date: July 2024, Page 9 of 13).

## **VII. FINDINGS OF FACT**

1. The Appellant is a seven-year-old child with a diagnosis of developmental disorder of speech and language, unspecified, other symptoms and signs involving appearance and behavior, and feeding difficulties, unspecified.
2. The Appellant began OT services at [REDACTED] in July 2022 for support in the areas of visual motor skills, sequencing skills, strength, and ADL independence.
3. [REDACTED] submitted a prior authorization request to NHPRI on December 30, 2024, requesting an additional 50 visits for OT.
4. A licensed occupational therapist from Evolent reviewed [REDACTED] supporting documentation for the prior authorization request which included a progress note and a plan of care dated December 4, 2024, and daily treatment notes from November 4, 2024, to November 25, 2024.
5. Evolent then pended [REDACTED] prior authorization request and requested more recent daily notes from [REDACTED] on January 2, 2025.
6. By January 10, 2025, no new additional daily notes were sent to Evolent.
7. Evolent reviewed the daily treatment notes from November 4, 2024, to November 25, 2024, and found that the notes showed activities such as swinging, climbing a ladder, completing obstacle courses, food trials, completing a word search, and completing craft activities. The notes showed repetitive activities with the same or similar activities during each OT session.

8. The progress note from December 4, 2024, showed little progress from the ongoing goal concepts developed in a previous progress note dated September 10, 2024.
9. Evolent concluded that the documentation provided by [REDACTED] was lacking information to support ongoing skilled need to achieve the Appellant's treatment goals as many of the OT activities could be completed at home with a trained caregiver. [REDACTED] request for additional OT visits was denied by Evolent on January 13, 2025.
10. The Appellant appealed the January 13, 2025, denial to NHPRI on January 30, 2025.
11. Evolent received additional documentation after the Appeal with NHPRI was filed, consisting of a plan of care dated January 29, 2025, and daily treatment notes from December 2, 2024, through December 23, 2024.
12. Evolent reviewed the additional documentation on February 7, 2025. The additional documentation showed no targeted end date for the Appellant's treatment goals and very little functional progress when compared to the progress note dated September 10, 2024. Daily treatment notes dated December 2, 2024, through December 23, 2024, again showed repetitive and lower complexity activities such as swinging, food trials, completing craft activities, manipulating putty to find small objects, completing obstacle courses, handwriting, color by number, and creative painting.
13. None of the documentation provided by [REDACTED] described a home program for OT or caregiver education.
14. Following an initial assessment in 2022, no further standardized testing was administered to further support the Appellant's developmental delays.
15. The documentation sent by [REDACTED] showed no evidence that the Appellant was at a critical period to gain new skills nor that the Appellant would be at a risk of regression due to a break from care.
16. Two different licensed occupational therapists from Evolent reviewed the supporting documentation and concluded that medical necessity was not met for ongoing care.

17. Evolent issued a final determination to uphold the January 13, 2025, denial because the notes provided by [REDACTED] did not show treatment activities that required the skills of a therapist, nor did they meet the medically necessary criteria when working with members with developmental delays.
18. The Authorized Representative does not dispute that the supporting documentation does not support the need for continued OT.

### **VIII. DISCUSSION**

As stated above Federal law and regulations authorize the Medicaid agency or its authorized contractual agent (managed care plan / organization) to place appropriate restrictions on a Medicaid-funded benefit or service based on such criteria as medical necessity or utilization control. Medical necessity refers to reasonable or necessary services that require the specific training, skills, and knowledge of a physical or occupational therapist and / or speech / language pathologist to diagnose, correct, or significantly improve / optimize as well as prevent deterioration or development of additional physical health conditions. Medically necessary services require a complexity of care that can only be safely and effectively performed by or under the general supervision of a licensed practitioner. Documentation should clearly reflect why the skills of a practitioner are needed and that the care is medically necessary. Lastly, treatment can be discontinued if the skills of a therapist are not needed to provide or supervise the service.

EOHHS asserts that NHPRI correctly denied the Appellant's OT request on January 13, 2025, for three reasons. First, the requested treatment targets lower complexity goals and activities which do not require the skills of a therapist to provide or supervise the service at this point in care. Second, the provider did not document any updates to the home program or treatment plan that would require the skills of a licensed therapist. Third, the notes do not show evidence of a critical period to gain skills or a risk of regression with a break from care. Therefore, EOHHS asserts that NHPRI correctly denied the

Appellant's prior authorization request for additional OT because the documentation provided by [REDACTED] did not show that continued OT was medically necessary at this point in care.

The Authorized Representative testified that she feared that the Appellant would regress without continued OT. However, the Authorized Representative did not offer any evidence to show that there was a risk of regression with a break from care. The Authorized Representative also testified that the Appellant still needs extra help with forming and recognizing all letters of the alphabet, handwriting, focusing, and with her puzzle-solving skills. The Authorized Representative further testified that the Appellant was doing OT exercises at home based on homework provided by [REDACTED] however the Authorized Representative did not dispute that the supporting documentation sent to NHPRI by [REDACTED] did not show any evidence describing a home program for OT or caregiver education. Ultimately, the Authorized Representative did not provide any evidence to show that OT was medically necessary at this point in care.

For NHPRI to approve the Appellant's December 30, 2024, request for continued OT, it must receive sufficient documentation to show that continued OT is medically necessary. NHPRI testified that the notes provided by McNeill did not show treatment activities that required the skills of a therapist as many of the activities completed by the Appellant during her OT sessions could be completed at home with a trained caregiver. Furthermore, NHPRI testified that the current progress notes show very little functional progress when compared to the progress note dated September 10, 2024. Because there is insufficient evidence to show that continued OT is medically necessary at this point in care and because there is no evidence to show that the Appellant is at a critical period to gain skills or at a risk of regression with a break from care, there is a preponderance of evidence to show that EOHHS correctly denied the Appellant's prior authorization request for OT.

#### **IX. CONCLUSION OF LAW**

After careful review of the testimony and evidence present at the administrative hearing, this Appeals Officer concludes that:

1. For EOHHS to approve the Appellant's prior authorization request for continued OT, it must receive documentation that clearly shows why the skills of a practitioner are needed and that the care is medically necessary.
2. The supporting documentation sent by [REDACTED] does not clearly show why the skills of a practitioner are needed nor that the care is medically necessary at this point in care.
3. EOHHS correctly denied the Appellant's prior authorization request for OT.

**X. DECISION**

Based on the foregoing findings of fact, conclusions of law, evidence, and testimony it is found that a final order be entered that there is sufficient evidence to support EOHHS' denial of the Appellant's prior authorization request for OT.

**APPEAL DENIED**

*/s/ Jack Peloquin*

Jack Peloquin

Appeals Officer



### **NOTICE OF APPELLATE RIGHTS**

This final order constitutes a final order of the Executive Office of Health and Human Services pursuant to RI General Laws §42-35-12. Pursuant to RI General Laws §42-35-15, a final order may be appealed to the Superior Court sitting in and for the County of Providence within thirty (30) days of the mailing date of this decision. Such an appeal, if taken, must be completed by filing a petition for review in Superior Court. The filing of the complaint does not itself stay enforcement of this order. The agency may grant, or the reviewing court may order, a stay upon the appropriate terms.

### **CERTIFICATION**

I hereby certify that I mailed, via regular mail, postage prepaid, a true copy of the foregoing to [REDACTED]; copies were sent, via email to [REDACTED], Robert Fine, Esq., at [rfine@erflp.com](mailto:rfine@erflp.com), Mary Eldridge at [meldridge@nhpri.org](mailto:meldridge@nhpri.org), Amy Coleman, Esq., at [acoleman@nhpri.org](mailto:acoleman@nhpri.org), Doug Emanuel, Esq., at [demanuel@erflp.com](mailto:demanuel@erflp.com), John Neubauer, and Jane Morgan, Esq., on this 21st day of April, 2025.

