

STATE OF FLORIDA
DEPARTMENT OF CHILDREN AND FAMILIES
OFFICE OF APPEAL HEARINGS

FILED

FEB 03 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07733

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 13 Hillsborough
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Per notice, a hearing was held before the undersigned hearing officer on December 18, 2009, at 1:37 p.m. All parties appeared by phone. The petitioner was not present, but was represented by his mother _____, who also testified. David Beaven, Medicaid health care program analyst with the Agency For Health Care Administration (AHCA), represented the respondent and testified.

Two persons with Kepro appeared as witnesses for the respondent by telephone: Melanie Clyatt, registered nurse and review operations supervisor, and Dr. Robert A. Buzzeo, physician reviewer.

ISSUE

At issue is the respondent's decision of October 13, 2009 to reduce the amount of private duty nursing (PDN) hours paid by Medicaid. The respondent

previously approved 24 hours PDN daily, 7 days weekly. The respondent's action is to have a step-down reduction of PDN hours to 16 hours daily, seven days weekly. The respondent requests continued PDN hours 24 hours daily, seven days (24/7) weekly. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is 16 years old and lives with his mother. There is no father in the home and no siblings. His mother is his caregiver.
2. The petitioner diagnoses include arthrogryposis, developmental delay, tracheostomy status, ventilator dependence, and gastrostomy status. Services performed by private duty nursing include medication administration, tube feedings/care, aspiration precautions and tracheostomy care. His joints are fused and his hips are dislocated, so he is completely dependent on others for care. The petitioner's overall care needs are very involved, and require constant attention.
3. The current certification period for PDN hours is September 28, 2009 to March 26, 2010. The petitioner has received approved 24/7 PDN hours for the past approximate six month period.
4. On October 13, 2009, the contracted KePRO reviewer sent notice to reduce PDN hours for the current certification period. Upon request for reconsideration on November 4, 2009, KePRO rescinded the prior amount of reduced PDN hours. KePRO continued to approve 24/7 PDN hours for the first 60 days of the certification period, until the end of November 2009. This reduction in hours is to be followed by a

reduction of two hours between 9:00 p.m. to 11:00 p.m. through the remainder of the certification period that ends on March 26, 2010.

Further, KePRO determined that if the caregiver had not secured employment within 90 days of the certification period, through December 28, 2009, then approved PDN hours would be reduced by another six hours, to total eight hours per day. The petitioner seeks continued 24/7 PDN hours.

5. The petitioner's mother is able to provide needed care for the petitioner. The caregiver's mother provided some support in the past, but she has recently passed away. The petitioner's mother has been involved with her deceased mother's matters since she passed away.
6. The petitioner's mother is not presently working, but is now seeking employment. She has not worked for the last 16 years. The respondent's KePRO organization has approved a step-down of approved PDN hours to allow for the petitioner to seek and possibly obtain employment, as described above.
7. There have been four nurses who have alternately provided care for the petitioner. The petitioner's mother believes that these nurses do not want to have reduced work hours that may result from reduced PDN hours for the petitioner.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Families and Children, the Agency for Health Care Administration

has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80 F.S. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration.

1. As to the issue as to whether or not medical necessity was demonstrated for 24 hour private duty nursing.

Florida Administrative Code 59.G-1.010, "Definitions", states for medical necessity:

(166) "Medically necessary" or "medical necessity" means that the medical or allied care, goods, or services furnished or ordered must:

(a) Meet the following conditions:

1. Be necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain;
2. Be individualized, specific, and consistent with symptoms or confirmed diagnosis of the illness or injury under treatment, and not in excess of the patient's needs;
3. Be consistent with generally accepted professional medical standards as determined by the Medicaid program, and not experimental or investigational;
4. Be reflective of the level of service that can be safely furnished, and for which no equally effective and more conservative or less costly treatment is available; statewide; and
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(b) "Medically necessary" or "medical necessity" for inpatient hospital services requires that those services furnished in a hospital on an inpatient basis could not, consistent with the provisions of appropriate medical care, be effectively furnished more economically on an outpatient basis or in an inpatient facility of a different type.

(c) The fact that a provider has prescribed, recommended, or approved medical or allied care, goods, or services does not, in itself, make such care, goods or services medically necessary or a medical necessity or a covered service.

The petitioner's mother is capable to provide needed care to the petitioner. The language of the cited "Home Health Services Coverage and Limitations Handbook," on page 2-15, shows that parents and caregivers must participate in care "to the fullest extent possible," to provide care as in the following excerpt:

Private duty nursing services are authorized to supplement care provided by parents and caregivers. Parents and caregivers must participate in providing care to the fullest extent possible. Training can be offered to parents and caregivers to enable them to provide care they can safely render.

It is undisputed that nursing services are required due to the petitioner's medical needs. The evidence supports that the petitioner requires 24 hour daily nursing care. However, simply because medical necessity is found for the petitioner to require 24 hour PDN does not mandate the granting of this benefit. The analysis must continue to determine if there are other parties that may be responsible for providing this benefit.

2. As to whether or not private duty nursing hours can be reduced pursuant to parental responsibility.

The Home Health Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2). The Home Health Services Coverage and Limitation Handbook under Private Duty Nursing, on page 2-15 "Parental Responsibility", states:

Private duty nursing services are authorized to *supplement* care provided by parents and caregivers. Parents and caregivers must participate in providing care to the fullest extent possible...
(emphasis added)

The basis for the reduction by the respondent was essentially that while medical necessity was demonstrated for skilled nursing services 24 hours daily, the hours should be reduced to allow for the parents to provide care to the fullest extent possible. The respondent determined that the reduction in PDN hours should occur through a step-down reduction of approved PDN hours to allow time for the petitioner to seek and obtain employment. The respondent contracted KePRO approved continued 24/7 PDN coverage through the end of November 2009. After this, the respondent reduced PDN coverage by two hours daily through the end of the certification period. The respondent KePRO further allowed a 90-day period, until the end of December 2009, to see if the petitioner obtained employment, which would then reduce the caregiver's availability to provide care to the petitioner.

In sum, the evidence shows that the petitioner's medical needs require constant care. The petitioner's mother is capable to provide this care when she is available. The respondent KePRO has permitted a reasonable and sufficient 60-day time period to allow the petitioner to seek and obtain employment before the reduction of any PDN hours from 24/7. If the petitioner did not obtain employment by the ninety-day period that ended in December 2009, the reduction of eight PDN hours daily would still permit the caregiver to have adequate eight-hour sleep time, plus an additional eight hours daily to perform shopping, errands, or any other needed household chores.

This hearing authority and decision solely addresses the merit of the reduced PDN hours at issue. It is outside the scope of this hearing decision to address the impact of this decision on individual nurses' hours.

DECISION

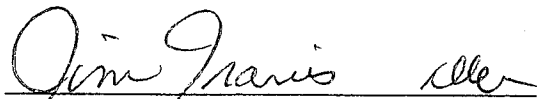
This appeal is denied and the respondent's action affirmed.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. The Notices must be filed within thirty (30) days of the date stamped on the first page of the final order. The petitioner must either pay the court fees required by law or seek an order of indigency to waive those fees. The Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE AND ORDERED this 3rd day of February, 2010,

in Tallahassee, Florida.



Jim Travis
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To