

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

FILED
JUL 27 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-3615

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on June 24, 2009, at 8:35 a.m., in Miami, Florida. The petitioner was represented by her mother, Present, on behalf of the respondent was Monica Otoriola, program specialist with the Agency for Health Care Administration (AHCA). Appearing telephonically as witnesses for the agency was Dr. Rakesh Mittal, physician reviewer and Melanie Clyatt, nurse reviewer supervisor, both with Keystone Peer Review Organization (KēPRO) South. Dennis Torres with AHCA was present as an observer.

ISSUE

At issue is the agency's action of April 24, 2009 and May 4, 2009, denying 200 hours of private duty nursing (PDN) from the requested 4,320 hours during the certification period of April 27, 2009 through October 23, 2009. As an initial request the petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner is 14 months old and a Medicaid beneficiary in the state of Florida. The petitioner's diagnosis as reported to the agency, "24 hrs gestational age: Reactive airway disease: Gastrostomy: Ventilator: Ox."
2. On April 23, 2009, the provider (RGR LLC) requested 4,320 hours (24 hours daily/7 days a week) of skilled nursing for the certification period of April 27, 2009 through October 23, 2009.
3. The agency has contracted KēPRO South to perform medical reviews for Private Duty Nursing and the Personal Care Prior Authorization Program for Medicaid beneficiaries. This prior authorization review determines medical necessity of the hours requested, under the terms of the Florida Medicaid Program.
4. The request for service is submitted by the provider, along with all information/documentation required in order for KēPRO to make a determination on medical necessity for the level of service being requested. This service is reviewed every 180 days (6 months) and a request for modification can be requested by the petitioner.
5. An initial screening of the request was completed by a registered nurse reviewer. At this level of review, the amount of hours being requested was not approved by the nurse reviewer. The request was referred to a board certified pediatric specialty physician consultant, for review of the level of care (hours) being requested.

6. The physician consultant reviewed the information submitted and denied 200 hours of PDN documenting, "Mother off on Sunday. Recommend mother covers 8 hr on Sun 2P-10P. Approve remaining hours." On April 24, 2009, a PDN/PC Recipient Denial Letter was issued to the petitioner denying 200 hours.
7. On April 27, 2009, the provider then submitted a reconsideration request and provided additional information stating, "...asking for 24 hours per day because of the fragility of her daughter. The extra hours that mother has for herself is for running pertinent errands, doing household chores etc."
8. A different board certified physician consultant reviewed the entire case, including the petitioner's medical condition as reported and social needs. The reviewing physician concluded that the petitioner could run errands Sunday mornings and therefore, upheld the original decision to deny 200 hours from 2pm to 10pm.
9. On May 4, 2009, a PDN/PC Recipient Reconsideration-Denial Upheld notice was issued to the petitioner and provider informing them of the denial of service. The petitioner appealed the decision on May 29, 2009.
10. The respondent records show that the petitioner has been in the hospital from birth through April 2009. The petitioner's mother is a single mother with no other minor children in the home.
11. The petitioner's mother provided a letter (May 14, 2009) from the treating physician listing the medical conditions (considered by both reviewing

physicians) of the petitioner and her recommendation for 24 hour/7 days a week nursing care as being medically necessary.

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 Florida Statute, Chapter 120.80.

Florida Statute 409.905 addresses Mandatory Medicaid services and states as follows:

The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(4)(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services...The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents...

Fla. Admin. Code 59G-1.010 definitions states in part:

(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;
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(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.

Fla. Admin. Code 59G-4.130 Home Health Services states in part:

(1) This rule applies to all home health agencies licensed under Chapter 400, Part III, F.S., and certified by the Agency for Health Care Administration for participation in the Medicaid program for home health care.

(2) All home health agency providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Home Health Services Coverage and Limitations Handbook, July 2008, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. ...

The Home Health Services Coverage and Limitations Handbook (July 2008), pages 2-17 and 2-19 states in part:

Private Duty Nursing Definition

Private duty nursing services are medically-necessary skilled nursing services that may be provided in a child's home or other authorized settings to support the care required by the child's complex medical condition.

Parental Responsibility

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. Medicaid does not reimburse private duty nursing services provided solely for the convenience of the child, the parents or the caregiver.

Authorization Process

Private duty nursing services are authorized by the Medicaid peer review organization if the services are determined to be medically necessary. *Private duty nursing services will be decreased over time as parents and caregivers are taught skills to care for their child and are capable of safely providing that care or as the child's condition improves.*

Prior Authorization

All private duty nursing services must be prior authorized by the Medicaid peer review organization prior to the delivery of services.

The petitioner's mother states that her daughter had been since birth in the hospital and she went home in April 2009, but only with 24/7 nursing care. She states that the petitioner is back in the hospital with a heart problem and will be there for approximately six more weeks. The mother states that she has taken the CPR classes and training however she does not feel confident of caring for her on her own. She states she gets emotional when her daughter "crashes" and she panics when she has an episode which has been four since April 2009. The mother stated that the Sunday hours were not to do chores.

The physician consultant responded by informing the mother that she has been trained however, given her testimony he would recommend for the first 60 days from when

the petitioner is returned home that 24 hours, 7 days a week nursing continue in order for her to gain more experience and feel more confident.

The hearing officer finds that according to the above-mentioned rules, evidence and testimony received from both parties, the approval of an additional 60 days of 24/7 PDN hours is warranted. The petitioner will receive the additional 60 days of 24/7 PDN effective with the petitioner's return home from the hospital or from the date of this Final Order, whichever is greater. If any changes occur, the petitioner's mother can request a modification of the hours.

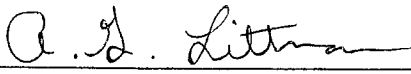
DECISION

The appeal is granted in part as explained in the Conclusions of Law.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the agency. 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 appropriate District Court of Appeal. 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 agency has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE and ORDERED this 27th day of July, 2009,
in Tallahassee, Florida.

A. G. Littman 
A. G. Littman
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To: