

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

FILED

JUL 14 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-02592

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 06 Pinellas  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 23, 2009, at 8:21 a.m. The petitioner was present. The petitioner was represented by his mother . Present on behalf of the petitioner was his father, , and licensed practical nurse, . The respondent was represented by Stephanie Lang, registered nurse specialist. Present by telephone as witnesses for the respondent from Keystone Peer Review Organization (KePRO) were Robert Buzzeo, M.D., physician reviewer, and Melanie Clyatt, review operations supervisor. , registered nurse specialist was observing.

**ISSUE**

The petitioner is appealing the notices of March 25 and April 20, 2009 for the respondent's action to deny 720 hours of private duty nursing for the period

of April 7, 2009 through October 3, 2009. The respondent has the burden of proof.

### FINDINGS OF FACT

1. The petitioner is a four year old Medicaid eligible individual. The petitioner care is medically complex. The petitioner attends school during the school year Monday through Friday from 9:30 a.m. to 3:30 p.m. and during the summer from 8:30 a.m. to 1:00 p.m. The petitioner resides with his mother, father and a ten year old sibling. The mother is not employed. The mother is trained in the petitioner's care and is the petitioner's primary caregiver. The father is employed. He works Monday through Friday from 8:00 a.m. to 6:00 p.m. and Saturday 8:00 a.m. to 2:00 p.m.

2. The nursing agency requested 3,321 hours of private duty nursing for the petitioner for the period of April 7, 2009 through October 3, 2009. This request would be twelve hours a night, seven days a week and nine hours a day, Monday through Friday.

3. Prior authorization for private duty nursing is reviewed every 180 days. KePRO is the contract provider for the respondent for the prior authorization decisions for private duty nursing. The request for private duty nursing is reviewed by a nurse reviewer and a physician consultant.

4. The initial nurse reviewer screened the petitioner's request for private duty nursing using the Internal Focus Finding. The Internal Focus Finding provides information to KePRO of case identifiers and additional information regarding the petitioner. This information is generated to the computer for review

by KePRO from the information entered by the petitioner's home health agency via computer. The request was then referred to the board certified physician consultant.

5. The initial physician consultant determined was based on the information received from the nursing agency. The initial physician consultant recommended a reduction in evening hours to eight hours a day from 11:00 p.m. to 7:00 a.m. providing for eight hours of rest for the caretaker parent. A PDN/PC Recipient Denial Letter was sent to the petitioner on March 25, 2009.

6. The nursing agency requested a reconsideration. The nursing agency indicated that from 7:00 p.m. to 11 p.m. the petitioner receives medication and continuous JG-tube feedings. The petitioner wears a hip brace. The mother has difficulty in lifting the child as he weighs 41 pounds. The reconsideration was reviewed by a second physician consultant. The second physician consultant opined that the father was available after work and could assist with the petitioner's care. The respondent sent a PDN/PC Recipient Reconsideration - Denial Upheld notice on April 20, 2009. The notice informed the petitioner that for the requested 3,321 hours of private duty nursing for the period of April 7, 2009 through October 3, 2009, 2,601 hours were approved and 720 hours were denied. The hours that were approved were from Monday through Friday 7:00 a.m. to 7:00 p.m. and 11:00 p.m. to 7:00 a.m. and Saturday and Sunday from 11:00 p.m. to 7:00 a.m. The hours that were denied were 7:00 p.m. to 11:00 p.m. seven days a week. No day hours requested by the nursing provider were denied.

7. The petitioner's mother attested as follows. She wants the skilled nursing service to continue. The petitioner has been hospitalized for pseudomonas, breathing problems, high fevers and seizures. She also needs to take her 10 year old daughter to and from school. She opined that the petitioner's life is better with the requested hours of skilled nursing.

The petitioner's father attested as follows. When he goes to work, he is up at 6:00 a.m. and leaves home at 7:00 a.m. and does not return until 7:00 p.m. He is not capable of administering the petitioner's medication or performing the petitioner's medical care. When he is home, he has to help his ten year old daughter as the mother is caring for the petitioner. He sometimes gets called back to work once a week. He helps when needed with the petitioner's care.

The petitioner's nurse attested as follows. The petitioner is getting heavy and difficult for one person to lift him. The petitioner's hip brace is a bulky. The mother must be careful of the petitioner's hips. The petitioner has spikes in his temperature.

8. The review physician attested as follows. The evidence did not demonstrate the medical necessity for skilled nursing services from 7:00 p.m. to 11:00 p.m. The mother was trained and capable of providing care for the petitioner from 7:00 p.m. to 11:00 p.m. The decision to deny the hours of 7:00 p.m. to 11:00 p.m. was based on services described as the necessity to have a skill nurse to assist in lifting the petitioner. Lifting does not require a skilled nurse. The father is in the home to assist with lifting the petitioner most

nights from 7:00 p.m. to 11:00 p.m. It was suggested that the petitioner could apply for other services such as home health aid.

### 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.

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 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...

The Home Health Services Coverage and Limitation Handbook under Licensed Nurse and Home Health Aide Visit Services, on pages 2-14 and 2-15 "Skilled Nursing Services", states:

The following are examples of services that require the direct care skills of a licensed nurse:

- Administration of intravenous medication;
- Administration of intramuscular injections, hypodermoclysis, and subcutaneous injections only when not able to be self administered appropriately.
- Insertion, replacement and sterile irrigation of catheters;
- Colostomy and ileostomy care; excluding care performed by recipients;
- Treatment of decubitus ulcers when:  
deep or wide without necrotic center;  
deep or wide with layers of necrotic tissue; or  
infected and draining;
- Treatment of widespread infected or draining skin disorders;
- Administration of prescribed heat treatment that requires observation by licensed nursing personnel to adequately evaluate the individual's progress;
- Restorative nursing procedures, including related teaching and adaptive aspects of nursing, which are a part of active treatment and require the presence of licensed nurses at the time of performance;
- Nasopharyngeal, tracheotomy aspiration, ventilator care; Levin tube and gastrostomy feedings, excluding feedings performed by the recipient, family or caregiver; and

- Complex wound care requiring packing, irrigation, and application of an agent prescribed by the physician.

The Home Health Services Coverage and Limitation Handbook under Licensed Nurse and Home Health Aide Visit Services, on page 2-15 "Home Health Aide Services", states:

Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

- Assisting with the change of a colostomy bag;
- Assisting with transfer or ambulation;
- Reinforcing a dressing;
- Assisting the individual with prescribed range of motion exercises that have been taught by the RN;
- Assisting with an ice cap or collar;
- Conducting urine test for sugar, acetone or albumin;
- Measuring and preparing special diets;
- Providing oral hygiene;
- Bathing and skin care; and
- Assisting with self-administered medication.

Home health aides must not perform any services that require the direct care skills of a licensed nurse.

The evidence demonstrates that the petitioner is in need of services. The basis for the reduction by the respondent was that medical necessity was not demonstrated for skilled nursing services from 7:00 p.m. to 11:00 p.m. The mother is capable of caring for the petitioner. The evidence demonstrated that it is difficult for one person to lift the petitioner. The services as described by the parents and petitioner's nurse during the services hours of 7:00 p.m. to 11:00 p.m. were for monitoring and lifting the petitioner. The service as described by the parents and petitioner's nurse for lifting the petitioner are services that can be preformed by the petitioner's father. The handbook sets forth that parents and

caregivers must participate in providing care to the fullest extent possible.

Additionally, the services as described by the parents and petitioner's nurse for monitoring and lifting the petitioner are services that can be preformed by a home health aid. The rule sets forth that the service must 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. The service of a home health aid for monitoring and lifting would be less costly service. The request for skilled nursing for the hours of 7:00 p.m. to 10 p.m. does not meet the definition of medical necessity. Based on the above cited authorities, the respondent's action to deny 720 hours of private duty nursing for the period of April 7, 2009 through October 3, 2009 was within the rules of the Program.

### **DECISION**

This appeal is denied.

### **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.

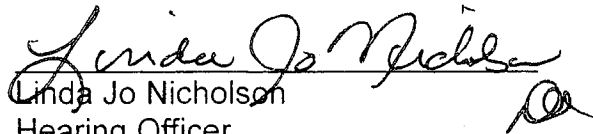


FINAL ORDER (Cont.)

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DONE and ORDERED this 12<sup>th</sup> day of July, 2009,  
in Tallahassee, Florida.

  
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Copies Furnished To