

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

FILED

JUL 17 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-02705

PETITIONER,

Vs.

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

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 23, 2009, at 9:51 a.m. The petitioner was present. The petitioner was represented by his mother . Present on behalf of the petitioner was registered nurse, and licensed practical nurse. The respondent was represented by Stephanie Lang, registered nurse specialist, and Patricia Cobb, 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, R.N., review operations supervisor.

ISSUE

The petitioner is appealing the notices of April 7 and April 17, 2009 for the respondent's action to deny 200 hours of private duty nursing for the period of April 6, 2009 through October 2, 2009. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is a twelve year old Medicaid eligible individual. The petitioner care is medically complex. The petitioner resides with his mother and father. The mother is not employed. The mother attends school Monday through Friday from 9:40 a.m. to 3:40 p.m. The mother has a back injury and has difficulty lifting the petitioner. The father is employed. He works six days a week.

2. The nursing agency requested 3,460 hours of private duty nursing for the petitioner for the period of April 6, 2009 through October 2, 2009. This request would be private duty nursing for 22 hours a day from 9:00 a.m. to 8:00 p.m. and 9:00 p.m. to 8:00 a.m. Monday through Friday and 12 hours from 7:00 p.m. to 7:00 a.m. Saturday and Sunday.

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 Saturday and Sunday hours. The hours from 7:00 p.m. to 11:00 p.m. on Saturdays and Sundays was denied for the period of April 6, 2009 through October 2, 2009. A PDN/PC Recipient Denial Letter was sent to the petitioner on April 7, 2009.

6. The nursing agency requested a reconsideration. The nursing agency indicated that the hours from 7:00 p.m. to 11 p.m. are necessary as the petitioner's mother is having back pain from moving the petitioner due his size, the father works overtime on weekends arriving home between 5:00 p.m. and 6:00 p.m. and the parents are concerned with the petitioner's safety. The reconsideration was reviewed by a second physician consultant.

7. The second physician consultant reviewed the request. He opined that the father was available after work and could assist with the petitioner's mother if needed on the weekends from 7:00 p.m. to 11:00 p.m. The respondent sent a PDN/PC Recipient Reconsideration - Denial Upheld notice on April 17, 2009. The notice informed the petitioner that for the requested 3,460 hours of private duty nursing for the period of April 6, 2009 through October 2, 2009, 3,230 hours were approved and 20 hours were denied. The hours that were denied were 7:00 p.m. to 11:00 p.m. on Saturday and Sunday.

7. The petitioner's registered nurse attested as follows. The petitioner now weighs 57 pounds and his mother is unable to lift him. The parents are concerned for the petitioner. The petitioner continues to have frequent vomiting

and is at risk for aspiration. The petitioner is so ill, he is unable to make it to school every day and attends school three days of five each week. The petitioner has been hospitalized two or three times with pneumonia. His allergies create two to three times more than normal secretions. The petitioner attempts to swallow the secretions and traps air in his stomach. The petitioner needs to be vented every two hours. If he is not vented every two hours, the petitioner vomits. On March 9, 2008, the petitioner went into cardiac arrest. Since then, the petitioner health has deteriorated. More brain damaged occurred. The petitioner lost additional motion, neuromuscular and orthopedic function.

8. The petitioner's mother is already caring for the petitioner 12 hours a day on Saturdays and Sundays. The licensed practical nurse opined as follows. The mother is unable to care for the petitioner for 16 hours on Saturdays and Sundays. The four additional hours are very difficult and tiring for the mother due the petitioner's size. The petitioner's hours should not be reduced for the safety of the petitioner as the mother has knowledge deficit for which the mother needs additional training. Teaching is in the Plan of Care.

9. The review physician opined as follows. The evidence did not demonstrate the medical necessity for skilled nursing services from 7:00 p.m. to 11:00 p.m. on Saturdays and Sundays. The rules set forth that parents are the primary caregivers and must participate in providing care to the fullest extent possible. The decision to deny the hours of 7:00 p.m. to 11:00 p.m. on Saturdays and Sundays was based on services described as the necessity to have a skill nurse to assist in lifting the petitioner and assessing for diminished

lung capacity and aspiration. Lifting does not require a skilled nurse. The father is in the home to assist with lifting the petitioner on Saturdays and Sundays from 7:00 p.m. to 11:00 p.m. The physician reviewer believed the petitioner's mother was trained and capable of solely providing primary care for the petitioner 16 days every Saturdays and Sundays for the period of April 6, 2009 through October 2, 2009.

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 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. on Saturdays and Sundays for the period of April 6, 2009 through October 2, 2009. The handbook sets forth that parents and caregivers must participate in providing care to the fullest extent possible. The physician reviewer believed the petitioner's mother was trained and capable of solely providing primary care for the petitioner 16 days every Saturdays and Sundays for the period of April 6, 2009 through October 2, 2009. The petitioner's nurse attested that the four additional hours are very difficult and tiring for the mother due the petitioner's size and the petitioner's hours should not be reduced for the safety of the petitioner as the mother has knowledge deficit for which the mother needs

additional training. The mother is solely providing primary care for the petitioner two hours a day Monday through Friday and 12 hours on Saturdays and Sundays. The father works six days a week and is not home every Saturday and Sunday. The hearing officer concludes that the respondent did not meet their burden of proof that medical necessity was not demonstrated for that the petitioner's mother was capable of solely providing primary care for the petitioner 16 hours a day on Saturdays and Sundays. Additionally, the hearing officer concludes that the respondent should not reduce private duty nursing hours when there is a training issue impacting the safety of the petitioner that needs to be addressed. The additional 180 days should provide sufficient time for the nurses to train the petitioner's mother. Therefore, the hearing officer reverses the respondent's reduction of the 200 hours of private duty nursing for the period of April 6, 2009 through October 2, 2009 to provide the petitioner's mother with additional training.

DECISION

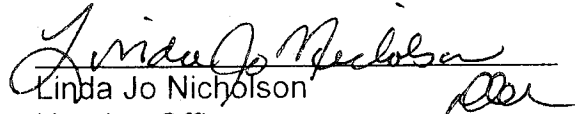
This appeal is granted.

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 17th day of July, 2009,
in Tallahassee, Florida.


Linda Jo Nicholson
Hearing Officer
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Copies Furnished To