

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

FILED

JUL 30 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-02748

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 11:18 a.m. The petitioner was present. The petitioner was represented by his mother, Present on behalf of the petitioner was 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 Rakesh Mittal, M.D., physician reviewer, and Melanie Clyatt, review operations supervisor.

The hearing officer left the record open for ten days for the petitioner to submit additional evidence. Any addition evidence was due no later than July 3, 2009. The hearing officer received a facsimile from the petitioner dated June 27, 2009 which was entered into record as Petitioner Exhibit 16. The hearing officer

received a facsimile from the petitioner dated June 28, 2009 which was entered into record as Petitioner Exhibit 17. On July 9, 2009, the hearing officer received a facsimile from the petitioner which was entered into record as Petitioner Exhibit 18. The record was closed on July 9, 2009.

### **ISSUE**

The petitioner is appealing the notices of March 23 and April 13, 2009 for the respondent's action to deny 50 hours of private duty nursing for the period of March 9, 2009 through September 4, 2009. The respondent has the burden of proof.

### **FINDINGS OF FACT**

1. The petitioner is a 12 year old Medicaid eligible individual. The petitioner care is medically complex. The petitioner resides with his mother, step-father and siblings ages 24, 22, 15 and 4. The mother is trained in the petitioner's care and is the petitioner's primary caregiver. The step-father does not participate in the petitioner's care. The petitioner's father is minimally involved in the petitioner's care and provides care when the petitioner's mother is out of town.

2. The nursing agency requested 2,880 hours of private duty nursing for the petitioner for the period of March 9, 2009 through September 4, 2009. This request would be 16 hours a day of private duty nursing. In response to the Pertinent Questionnaire Information, the nursing agency responded as follows. The mother is the primary caregiver. The mother is a stay at home parent. The mother has neck/back problem and has weight limitations. The stepfather is not

involved with the petitioner's care. The petitioner has a brother 15 years old and a sister 4 years old. The petitioner's nutrition is provided via G-tube feeding. The petitioner's functional limitations, respiratory status and problems were bowel/bladder incontinence, contracture, ambulation, speck, ADL's, semi-comatose, intermittent oxygen, therapy, tracheostomy, tracheostomy suctioning, oxygen saturation monitoring, nebulizer treatments, ABI vest, chest physiotherapy, multiple suctioning per day, oxygen use is infrequent and "CPT BID".

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 the respondent to approve eight hours a day from 6:00 a.m. to 2:00 p.m. Mondays through Fridays and 14 hours a day on Saturdays and

Sundays from 6:00 a.m. to 8:00 p.m. and deny the rest of the requested hours.

The physician consultant recommended that if a two person lift was required, a home health aide could assist the mother during the rest of the day when she would not have skilled services. A PDN/PC Recipient Denial Letter was sent to the petitioner on March 23, 2009.

6. The nursing agency requested a reconsideration. The nursing agency reported information not reported on the initial request. The petitioner is running a business out of the home. The mother works from 8:00 a.m. to 10:00 p.m. Monday through Saturday. The reconsideration was reviewed by a second physician consultant. The second physician consultant recommended based on the new information to deny 8:00 p.m. to 10:00 p.m. on Sundays and approve the rest of the requested hours. The respondent sent a PDN/PC Recipient Reconsideration - Denial Upheld notice on April 13, 2009. The notice informed the petitioner that for the requested 2,880 hours of private duty nursing for the period of March 9, 2009 through September 4, 2009, a total of 2,780 hours were approved and 50 hours were denied. The hours that were approved were 16 hours a day from 6:00 a.m. to 10:00 p.m. Mondays through Fridays, 16 hours a day on Saturdays from 6:00 a.m. to 10:00 p.m. and 14 hours a day on Sundays from 6:00 a.m. to 8:00 p.m. The hours that were denied from the petitioner's initial and reconsideration requests were 2 hours on Sundays from 8:00 p.m. to 10:00 p.m.

7. The review physician opined that the petitioner's mother is not working on Sundays and is capable of providing care for the petitioner from 8:00 p.m. to

10:00 p.m. It was suggested that the petitioner could apply for other services such as home health aid.

8. Additional evidence was submitted at the hearing and after the hearing. The petitioner's mother has medical problems. The mother is not able to lift more than 15 pounds. The mother wrote on July 28, 2009 that she had a slip-and-fall accident which resulted in a trip to the emergency room due to head injury. She alleged that she cannot lift more than 5 pounds.

9. The mother attested that her 4 year old daughter has sleep disorder and developmental delays. The mother attested that she needs to have skilled nursing for the petitioner from 8:00 p.m. to 10:00 p.m. on Sundays to get her 4 year old daughter to bed and sleep. The mother tries to put the 4 year old to bed early but sometimes the child does not go to sleep until 11:00 p.m. The interpretation of the sleep study dated June 28, 2009 was "...Interpretation: This was a normal study. The patient has primary snoring...".

10. The step-father blind in one eye and has no depth perception. The step-father is not trained in the petitioner's care. The step-father works 19 to 20 hours a day. The mother does not allow the petitioner's siblings to participate in the petitioner's care, as they are not trained.

11. The petitioner's nurse attested that after 7:00 p.m. is a busy time for the petitioner's care. The petitioner is at risk for aspiration. The petitioner has not been hospitalized in more than a year.

### 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 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 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 8:00 p.m. to 10 p.m. on Sundays for the period of May 9 through September 4, 2009. The petitioner disputed the reduction due to her medical impairments which prevents the petitioner from lifting the petitioner, the daughter's sleep disorder which takes time away from the petitioner and the petitioner's need for skilled care from 8:00 p.m. to 10:00 p.m. The petitioner's stepfather and older siblings are unable to care for the petitioner as they are not trained to care for the petitioner. The evidence demonstrates that the mother is not working on Sundays and is trained to provide care for the petitioner. The physician reviewer and the respondent did concur that the petitioner may need other services to assist in his care for the hours of 8:00 p.m. to 10 p.m. on Sundays. 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. Therefore, the request for skilled nursing for the hours of 8:00 p.m. to 10 p.m. on Sundays does not meet the definition of medical necessity. Based on the above cited authorities, the respondent's action to deny 50 hours of



private duty nursing for the period of March 9, 2009 through September 4, 2009 was within the rules of the Program.

**DECISION**

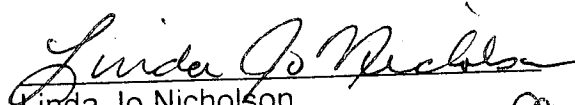
This appeal is denied.

**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.

DONE and ORDERED this 30<sup>th</sup> day of July, 2009,

in Tallahassee, Florida.



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