

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

FILED  
JUL 03 2009  
OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-02985

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 17 Broward  
UNIT: AHCA

RESPONDENT.  
\_\_\_\_\_ /

**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on June 3, 2009, at 9:45 a.m., in Fort Lauderdale, Florida.

The petitioner was present with her mother ( \_\_\_\_\_ ), and her father, \_\_\_\_\_.

Also present was \_\_\_\_\_, Medicaid waiver support coordinator, and \_\_\_\_\_, private duty nurse. The respondent was represented by Ken Hamlin, program operations administrator. Present on the telephone from Kepro was Dr. Robert Buzzeo, and Melanie Clyatt, review operations supervisor.

**ISSUE**

At issue is the Agency's April 20, 2009 action of approving the petitioner's skilled home nursing services for 3,600 hours, and denying 720 hours for April 22, 2009 to October 18, 2009. The petitioner has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner, date of birth \_\_\_\_\_, is ten years old. She is a Medicaid benefits recipient in Broward County Florida.
2. Included in the evidence is a copy of a Recipient Denial Letter dated April 20, 2009, stating that 3,600 hours of skilled home nursing services were approved, and 720 hours were denied for the petitioner for April 22, 2009 to October 18, 2009.
3. Included in the evidence is a copy of a Reconsideration Denial Upheld Letter dated April 30, 2009. This states that upon reconsideration, the 3,600 hours of skilled home nursing services that were approved, and 720 hours that were denied for the petitioner for April 22, 2009 to October 18, 2009, was upheld.
4. The notices sent to the petitioner explained that it was determined by Kepro that the medical care of the private duty nursing services of 3,600 hours was determined to be medically necessary. This was determined by two physicians board certified in pediatrics.
5. Included in the evidence is a copy of a Kepro Internal Focus Review Finding Report on the petitioner dated April 16, 2009, stating that her mother works, and her father, who has a traumatic brain injury, is a full time student, and that they also have a 15 year old daughter. It also states that one of the services preformed by the private duty nurse, is teaching. This is training for the petitioner's caregivers, her parents.
6. The petitioner's diagnosis is cerebral palsy, she has a g-tube, fundoplication, chronic lung disease, a seizure disorder, and mental retardation.
7. Included in the evidence is a copy of a Kepro Synopsis Of Case Report, that is dated April 16, 2009, stating that skilled home nursing services was previously approved for the petitioner for 24 hours per day 7 days per week. The April 20, 2009 determination

was for skilled home nursing services for 20 hours per day 7 days per week, which is independent care from 7:00 p.m. to 11:00 p.m. seven days per week.

8. According to the synopsis, the petitioner's mother works Mondays through Fridays, and every other weekend from 9:00 a.m. to 6:00 p.m. Her father is a full time student from 7:00 a.m. to 3:00 p.m. on Mondays through Fridays.

9. Included in the evidence is a copy of a letter from Dr. [REDACTED] dated June 1, 2009, with a diagnosis of the petitioner of complex psycho-motor delay with quadriplegic cerebral palsy, respiratory complications, gastro-esophageal reflux, chronic seizure disorder, severe scoliosis, and she used a feeding tube. She states that it is medically necessary for the petitioner to have 24 hour nursing care.

10. Included in the evidence is a copy of a letter from Dr. [REDACTED] dated June 2, 2009, stating that it is medically necessary to have home health nursing all of the time for the petitioner.

11 According to the petitioner's mother at the hearing, she is under a doctor's care for anxiety and depression.

12 Included in the evidence is a copy of a letter from Dr. [REDACTED] dated June 1, 2009, stating that the petitioner's 15 year old sister has severe obsessive compulsive disorder, and generalized anxiety disorder. According to the petitioner's father, his 15 year old daughter is in a Special Education Program at a Broward County School.

### **CONCLUSIONS OF LAW**

By agreement between the Agency for Health Care Administration and the Department of Children and Families, 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. Fla. Admin. Code 59G-1.010 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.

(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.

Fla. Admin. Code 59G4.290 discusses skilled services, and states in part:

(f) Skilled care recipient. A Medicaid applicant or recipient who requires skilled nursing or skilled rehabilitative services.

(3) Skilled Services Criteria.

(a) To be classified as requiring skilled nursing or skilled rehabilitative services in the community or in a nursing facility, the recipient must require the type of medical, nursing or rehabilitative services specified in this subsection.

(b) Skilled Nursing. To be classified as skilled nursing service, the service must meet all of the following conditions:

1. Ordered by and remain under the supervision of a physician;
2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.

3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effective performance;
4. Required on a daily basis;
5. Reasonable and necessary to the treatment of a specific documented illness or injury;
6. Consistent with the nature and severity of the individual's condition or the disease state or stage.

The Home Health Services Coverage and Limitations Handbook explains on page 2-15 that private duty nursing services must be ordered by the attending physician, and documented as medically necessary. Skilled home nursing services of 3,600 hours were approved, and 720 hours were denied for the petitioner for April 22, 2009 to October 18, 2009. This determination took into account the petitioner's condition, and her mother's work hours, as reported by the nursing service to Kepro. According to the physician that testified at the hearing, he was one of the two physicians that made this determination.

The skilled home nursing service hours that were denied are from 7:00 p.m. to 11:00 p.m. seven days per week. The petitioner's parents submitted into evidence statement from two physicians stating that the petitioner needs the skilled home nursing services all of the time. This is in contradiction to the two physicians from Kepro, who approved the skilled home nursing services for 19 hours daily 7 days per week.

The findings show that one of the services performed by the private duty nurse, is teaching, which is training for the petitioner's caregivers, her parents. The doctor that testified at the hearing explained that it was determined by him and another physician that the petitioner's caregiver can care for her for 4 hours daily 7 days per week. After careful consideration, it is determined that this is correct. It is determined that the Agency's

action to approve skilled home nursing services of 3,600 hours, and deny 720 hours for the petitioner for April 20, 2009 to October 18, 2009, is upheld.

**DECISION**

The appeal is denied and the Agency's action is affirmed.

**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 1st day of July, 2009,

in Tallahassee, Florida.



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

Copies Furnished To: