

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

FILED
JUL 01 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03161

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 1:45 p.m., in Fort Lauderdale, Florida. The petitioner was present with _____, support coordinator from the Agency for Persons with Disabilities Program. The respondent was represented by Ken Hamblin, 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 15, 2009 action of denying 512 hours of the petitioner's son's home health aide services from February 19, 2009 to August 17, 2009. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner's son _____ is seven years old, date of birth _____. The petitioner requested home health aide services for him for 6:30 a.m. to 8:30 a.m., and 6:30 p.m. to 8:30 p.m., on Mondays through Fridays.
2. Included in the evidence is a copy of a Recipient Denial Letter dated April 15, 2009, stating that home health aide services of 512 hours from February 19, 2009 to August 17, 2009, was denied, and zero hours were approved for the petitioner's son.
3. Included in the evidence is a copy of a Recipient Reconsideration Denial Upheld notice dated May 1, 2009, stating that upon reconsideration, home health aide services of 512 hours from February 19, 2009 to August 17, 2009, was denied, and zero hours were approved for the petitioner's son.
4. The notices explains that it was determined by Kepro that based on the information received, it was determined that it is not medically necessary for home health aide services for the petitioner, therefore the request for these services was denied.
5. Included in the evidence is a copy of an Internal Focus Review Findings report dated April 13, 2009, stating that the petitioner is a single parent, and she does not work. Her son has autism, and she also has a 16 years old daughter in the household.
6. Included in the evidence is a copy of a Synopsis of Case dated April 13, 2009, stating that the petitioner's son requires assistance with activities of daily living, and he wears a helmet for safety reasons.
7. Included in the evidence is a copy of a letter from _____ chiropractor, dated May 22, 2009, stating that the petitioner has increasing back pain since 2008, and she has difficulty handling and lifting her son. She has moderate to severe myospasm,

trigger points in the superior trapezius, lower trapezius, rhomboid and lumbar extensor musculature, along with pain at the limits of motion.

8. According to the petitioner, she needs help with her son for two hours in the morning, and two hours in the evening when he attends school, and he is attending summer school.

9. Dr. Buzzeo agreed at the hearing to have another reconsideration done for home health aide services for the petitioner's son.

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 59G-4.130 explains home health services. The Home Health Services Coverage and Limitations Handbook explains on page 2-14 that home health services must be ordered by the attending physician and medically necessary. The petitioner's son was denied home health aide services for two hours in the morning and two hours in the evening on Mondays through Fridays, which was 512 hours from February 19, 2009 to August 17, 2009.

The respondent agreed to have another determination done for home health aide services for the petitioner's son. This was after the petitioner submitted into evidence a chiropractor's letter stating that she has neck and back pain that interferes with her handling and lifting her son. The respondent should promptly determine the petitioner's son's eligibility for home health aide services, and provide her with a written notice of the determination. The petitioner's cooperation is necessary.

DECISION

The appeal is partially granted. The respondent's action to deny the petitioner's son home health aide services is not upheld. The respondent is ordered to have another determination done, and the home health aide services will not be ordered at this time, as it is premature.

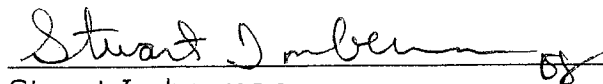
NOTICE OF RIGHT TO APPEAL

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: 9