

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

FILED

JUL 16 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03230

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 10:45 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented by his mother _____ and his father, _____. 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 29, 2009 action of approving the petitioner's skilled home nursing services for 4010 hours, and denying 258 hours for April 30, 2009 to October 26, 2009. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth _____, is 15 years old, and he is a Medicaid benefits recipient in Broward County Florida.
2. Included in the evidence is a copy of a Recipient Denial Letter dated April 29, 2009, stating that 4,010 hours of skilled home nursing services were approved, and 258 hours were denied for the petitioner for April 30, 2009 to October 26, 2009.
3. Included in the evidence is a copy of a Reconsideration Denial Upheld Letter dated May 12, 2009. It states that upon reconsideration, the 4,010 hours of skilled home nursing services that were approved, and 258 hours that were denied for the petitioner from April 30, 2009 to October 26, 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 4,010 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 24, 2009, stating that his mother works full time, and his father works part time. They also have a 13 year old son. It also states that one of the services performed by the private duty nurse, is teaching. This is training for the petitioner's caregivers, his parents.
6. The petitioner's diagnosis is cerebral palsy, he has a g-tube, a tracheostomy, he is ventilator dependant, he has a dislocated L hip, he has a neurogenic bladder, and he has a severe neurological deficit.
7. Included in the evidence is a copy of a Kepro Synopsis Of Case Report, that is dated April 24, 2009, stating that skilled home nursing services was previously approved

for the petitioner for Mondays through Saturdays 24 hours per day, and for 22 hours on Sundays. The appeal is to keep these hours of skilled home nursing for the petitioner.

8. The April 29, 2009 determination was for skilled home nursing services that was denied for two hours from 12:00 p.m. to 2:00 p.m. on Mondays, Tuesdays, Thursdays, Fridays, and Saturdays, and the rest of the hours were approved.

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 4,010 hours were approved, and 258 hours were denied for the petitioner for April 30, 2009 to October 26, 2009. This determination took into account the petitioner's condition, and his parent's work hours, as reported by the nursing service to Kepro.

The skilled home nursing service hours that were denied are for two hours from 12:00 p.m. to 2:00 p.m. on Mondays, Tuesdays, Thursdays, Fridays, and Saturdays, and the rest of the hours were approved. The findings show that one of the services performed by the private duty nurse, is teaching, which is training for the petitioner's caregivers, his parents. The doctor that testified at the hearing explained the petitioner's

caregivers, who are his parents can care for him for the denied hours of skilled home nursing care. 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 4,010 hours, and deny 258 hours for the petitioner from April 30, 2009 to October 26, 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.

FINAL ORDER (Cont.)
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DONE and ORDERED this 16th day of July, 2009,
in Tallahassee, Florida.

Stuart Imberman *sj*
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Copies Furnished To