

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

FILED

NOV 10 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03264

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 08 Alachua
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened by telephone before the undersigned-hearing officer on October 22, 2009, at 9:30 a.m. The petitioner was not present. Present representing the petitioner was her mother, The respondent was represented by Kelly Loveall, registered nurse specialist, Agency for Health Care Administration (AHCA). Present as witnesses for the respondent were Dr. Robert Buzzeo, associate medical director, Keystone Peer Review Organization (KePRO) and Melanie Clyatt, RN, review operations supervisor, KePRO.

The hearing was scheduled for July 21, 2009 and September 24, 2009. However, continuances were granted as stipulated by the parties.

ISSUE

The petitioner is appealing the respondent's action of May 7, 2009, to decrease the number of hours of private duty nursing for the period of April 21, 2009 through October 17, 2009.

The respondent has the burden of proof.

FINDINGS OF FACT

1. Prior to the action under appeal, the petitioner was receiving private duty nursing services through Medicaid from 6:00 a.m. to 6:00 p.m. Monday through Friday (12 hours) and from 8:00 a.m. to 4:00 p.m. (8 hours) on Saturday. The petitioner requested the continuation of private duty nursing services at the same level for the period of April 21, 2009 through October 17, 2009.

2. The petitioner is 16 years old and has been diagnosed with Retts Syndrome, seizures and apnea. She is verbally non-communicative and needs total care. The petitioner lives with her mother, a single parent, and a younger brother. The mother works from 8:00 a.m. to 5:00 p.m. Monday through Friday and has one hour drive to and from work. The father is not in the home and does not assist in caring for the petitioner. There are no other available caregivers.

3. Keystone Peer Review Organization (KePRO) is the Peer Review Organization (PRO) contracted by AHCA to perform medical review for the private duty nursing and personal care assistance under the Prior Authorization Program for Medicaid recipients in the State of Florida.

4. A prior authorization review was completed by KePRO. On April 28, 2009, KePRO denied the petitioner's request for all of the hours of private duty nursing

services requested. A reconsideration was requested. A reconsideration review was completed by KePRO on May 7, 2009. Upon reconsideration, KePRO approved private duty nursing services for from 6:00 a.m. to 6:00 p.m. Monday through Friday (12 hours) and from 8:00 a.m. to 12:00 p.m. (4 hours) on Saturday. KePRO denied the petitioner's request for private duty nursing from 12:00 p.m. to 4:00 p.m. (4 hours) on Saturday.

5. During the hearing the petitioner's mother reported that she has been taking classes online on Saturdays and her school hours are over four hours on Saturdays. Prior to the hearing, KePRO was not aware that the petitioner was attending school on Saturdays. Based on this new information, KePRO agreed to approve the additional four hours of private duty nursing from 12:00 p.m. to 4:00 p.m. on Saturdays which had been previously denied.

6. Subsequent to the hearing, KePRO submitted a copy of notes entered into the petitioner's record dated October 22, 2009 which state that the four hours that were denied on Saturday from 12:00 p.m. to 4:00 p.m. were being approved for the certification period of April 21, 2009 through October 17, 2009 and that the previous denial was being rescinded. The notes were entered into evidence as the Respondent's Exhibit 5.

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.

Fla. Stat. ch. 409.9132(d) states in part:

Medical necessity or 'medically necessary means any goods or services necessary to palliate the effects of a terminal condition, or to prevent, diagnose, correct, cure, alleviate, or preclude deterioration of a condition that threatens life, causes pain or suffering, or results in illness or infirmity, which goods or services are provided in accordance with generally accepted standards of medical practice. For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided."

The above controlling authority explains that Medicaid reimburses for services determined to be medically necessary. It also explains that determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency and must be based upon information available at the time the goods or services are provided.

Fla. Admin. Code 59G-1.010 Definitions, defines medically necessary as applied in Medicaid prior authorization decisions and 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; and

5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(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 above legal definition of medically necessary, as applied in Medicaid prior authorization decisions by the agency physician, requires that the service reimbursed by Medicaid must not be in excess of the patient's needs, 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 as well as the restriction that the service must be furnished in a manner not primarily intended for the convenience of the recipient's caretaker.

The Florida Medicaid Home Health Services Coverage and Limitations

Handbook defines the guidelines for private duty nursing services as follows at page 2-17:

Private Duty Nursing Definition. Private duty nursing services are medically necessary skilled nursing services that may be provided in a child's home or other authorized settings to support the care required by the child's complex medical condition...

Private Duty Nursing Requirements. Private duty nursing services must be: ordered by the attending physician; documented as medically necessary; provided by a registered nurse or a licensed practical nurse; consistent with the physician approved plan of care; and authorized by the Medicaid service authorization nurse...

Parental Responsibility. 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. Training can be offered to parents and caregivers to enable them to provide care they can safely render. Medicaid does not reimburse private duty nursing services provided solely for the convenience of the child, the parents or the caregiver...

The findings show that the respondent agreed to approve the additional four hours of private duty nursing that was denied for Saturday from 12:00 p.m. to 4:00 p.m. for the certification period of April 21, 2009 through October 17, 2009. Therefore, the denial of the four hours of private duty nursing on Saturday from 12:00 p.m. to 4:00 p.m. is reversed.

DECISION

The appeal is granted. The denial of four hours of private duty nursing on Saturdays is reversed.

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.

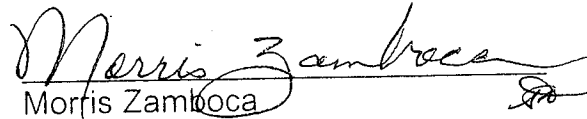
FINAL ORDER (Cont.)

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DONE and ORDERED this 10th day of November, 2009,

in Tallahassee, Florida.



Morris Zamboca
Hearing Officer
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Copies Furnished To:

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