

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

FILED
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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03369

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
CIRCUIT: 02 Leon
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on October 19, 2009, at 11:15 a.m., in Tallahassee, Florida. The petitioner was not present. She was represented by Justin Howard, student attorney, Public Interest Law Center, FSU College of Law. Testifying on behalf of the petitioner was her mother, _____ LPN,

_____ caretaker. The respondent was represented by Willis Melvin, assistant general counsel, Agency for Health Care Administration (AHCA). Testifying on behalf of the respondent was Debbie Jamski, RN specialist, AHCA. Also testifying on behalf of the respondent by telephone was Dr. Rakesh Mittal, physician reviewer, Keystone Peer Review Organization (KePRO). Also testifying on behalf of the respondent by

telephone was Melanie Clyatt, RN, review operations specialist supervisor, KePRO and Bonnie Wallington, RN, review operations supervisor, KePRO.

Observing the proceeding was Paolo Annino, J.D., public interest law center, FSU, College of Law, Sharon Peddie, RN specialist, AHCA and Harold Walker, program administrator, AHCA.

The hearing was originally scheduled to be held on July 16, 2009 but was continued at the request of the petitioner. The hearing was rescheduled for September 2, 2009 and was also continued at the request of the petitioner.

ISSUE

The petitioner is appealing the Agency's action to deny 852 hours of private duty nursing from a request of 4,320 hours for the period of April 28, 2009 to October 24, 2009.

The respondent bears the burden of proof.

FINDINGS OF FACT

- 1) The petitioner's care is medically complex. The petitioner is 12 years of age and is a Medicaid recipient. The petitioner needs assistance with all the activities of daily living; she is incontinent, developmentally delayed, has Cerebral Palsy, does not speak, requires gastrointestinal (G-tube) feeding, needs total assistance transferring to and from a wheelchair, has seizure activities and Strider attacks and uses supplemental oxygen. She also has neuromuscular scoliosis among other medical complications.

- 2) The petitioner lives with her parents and 17 year old sibling. Both parents are employed. The petitioner's mother is employed with the Department of _____, as a select exempt employee for the past 34 years. She is responsible for supervising support staff and works from 45 to 50 hours per week and occasionally on weekends. Her employment requires her to travel at least once a month as needed. The father is working as a substance abuse counselor. He is on call everyday, sometimes from the home. The petitioner's brother is going to school and does not participate in the petitioner's care.
- 3) The petitioner's mother is 53 and suffers from bulging discs in her back as well as degenerative disk disease. She has been advised that she is prohibited from lifting over 20 pounds. The father is 51 and has a history of quadruple coronary bypass. The father is precluded from lifting over 20 pounds at a time. He has been urged to use caution in providing care to his daughter. In addition, the father has diabetes and suffers from a panic and anxiety disorder that is intensified under stress. Correspondence from the father's physician (undated) indicates "I do not recommend that you be considered as a sole provider for her physical needs for any period of time" (Petitioner's Composite Exhibit 1).
- 4) Requests for PDN are reviewed with a contract provider who completes prior authorization for the requested service. That contract provider is KePRO. The request for services is submitted by the home health care provider, in this case, Interim Health Care Services, Inc. All communication is sent between KePRO

and the provider until a decision is reached. KePRO reviews the written request for services to determine if the number of hours requested is medically necessary, as defined in rule. If additional information is needed, KePRO contacts the provider. Once services are rejected or modified, a notice is sent to the recipient's family.

- 5) The petitioner had been receiving private duty nursing (PDN) services 24 hours/seven days per week for the previous certification. She continues to receive PDN services at the prior rate pending the outcome of the appeal. The petitioner weighs at least 56 pounds. A request for 4,320 hours of PDN was submitted by the provider, Interim Healthcare of NW Florida, for the period of April 28, 2009 to October 24, 2009. Information pertaining to the petitioner is generated to KePRO from information entered by the petitioner's home health agency through the internet. This exchange of information is referred to as I-Exchange. The information provided by the home health agency is converted into a document called the Internal focus finding. A KePRO Registered Nurse Reviewer (RNR) completed a screening of the Plan of Care submitted on April 30, 2009.
- 6) At AHCA's direction, the RNR used modified InterQual Criteria and a Pediatric Home Care Guide for Private Duty Nursing (PDN) Hourly Utilization to review the request for PDN services. Using that documentation, a Utilization Form was developed. The Utilization Form assigns point values to physical conditions of

the petitioner and level of care that is anticipated. KePRO concluded that based on the points the petitioner scored, a physician's review was required.

- 7) The case was then referred to a board certified pediatric specialty physician consultant. A board certified pediatrician reviewed the case and made the following determination: "12 y/o with seizures, quadriplegia, CP, Gtube. Parents work 8A-5P, dad on call 24/7, and both have "bad backs". Would approve SN, but 24/7 coverage is excessive. Would approve SN for 7A-7P M-F and 7A-3P S/S. If needed, parents may request HHA for extended coverage beyond SN coverage if needed". The initial PDN/PC Recipient Denial Letter dated May 4, 2009 was submitted to the petitioner approving 1,952 hours and denying 2,368 hours.
- 8) A reconsideration was requested on May 5, 2009 and a second KePRO physician consultant, board certified in pediatrics, who had not issued the initial denial determined "12yo medically complex child, requires 24 total care and supervision, high risks for seizure activity, cannot talk, must be given all medications, up to wheelchair with total assist, oxygen applied via nasal canula if oxygen sats drop, anemic, weak, pale, receives cpt and oral suctioning.***Suggest to RESCIND previous DENIAL and MODIFY the DENIAL to represent a DENIAL of four(4) hours, 7pm to 11pm, M-F with a replacement of a HHA to assist the PCG during this period, and a DENIAL of 8 hours, 7am to 3pm on sat and Sunday with a replacement of a HHA to assist PCG with ADL are

during this time, and APPROVAL of the REST of the HOURS PREVIOUSLY REQUESTED. This decision would therefore be in compliance with Coverage and Limitations Handbook for Home Health Care by AHCA and still provide the needed skilled nursing care and sleep coverage for the PCG's and PCG's independent participation. A Recipient and Provider Recon letter was issued on May 11, 2009 modifying the original denial of PDN hours."

- 9) Dr. Mittal noted that parental supports are considered when assessing medical necessity for PDN services under Medicaid. PDN 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.
- 10) The petitioner has been receiving 24/7 PDN since at least February 2009. Prior to receiving 24/7 PDN, the mother who is the primary caregiver, was providing for the petitioner's care. There have been no changes in the petitioner's medical condition other than her weight gain. The respondent believes that since both parents are in the home, they should be able to provide for some of the petitioner's care. The respondent took into consideration the weight restrictions of the parents and has offered a Home Health Aide for the hours when private duty nursing services were denied to assist with activities of daily living (ADL's) such as bathing, positioning, lifting and transferring the petitioner to and from her

wheelchair, dressing and other activities that require lifting. Only the skilled nursing activities would be provided by the parents. Dr. Mittal's opinion is that the parents will be able to provide the skilled nursing activities for their daughter together with the home health aide.

- 11) The petitioner's mother is concerned that without the approval of the 24/7 PDN, she will be unable to tend to her other obligations such as running the household. Further, the petitioner's mother is concerned that her daughter's frequent seizures and "Strider attacks" (esophageal spasms) can result in death. The home health aide offered by the respondent is not able to provide skilled nursing care to the petitioner should the caregiver be required to leave the room.
- 12) The petitioner provided a letter from the treating physician, Dr. Susan M. Cross, dated October 5, 2009 to support the need for 24/7 nursing care (Respondent's Composite Exhibit 1). The correspondence indicated the petitioner "is permanently and totally disabled. She is wheelchair and bed bound and is profoundly handicapped mentally and physically. is not safe to ever be unattended. She has frequent seizures and often needs suctioning, oxygen, repositioning, and medication to prevent aspiration, airway obstruction and death. It is imperative that she continue to receive 24 hour care, as I believe the alternative would be institutionalization and family disintegration".

13)The petitioner has recently undergone surgery to remove a rod placed in her spine to help correct scoliosis and she contracted an infection (MRSA). The surgery occurred in October 2009 and she needs additional wound care.

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. 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 and its website explains:

Medicaid is the state and federal partnership that provides health coverage for selected categories of people with low incomes. Its purpose is to improve the health of people who might otherwise go without medical care for themselves and their children. Medicaid is different in every state.

Florida implemented the Medicaid program on January 1, 1970, to provide medical services to indigent people. Over the years, the Florida Legislature has authorized Medicaid reimbursement for additional services. A major expansion occurred in 1989, when the United States Congress mandated that states provide all Medicaid services allowable under the Social Security Act to children under the age of 21.

Federal Regulations at 42 C.F.R. § 440.230, Sufficiency of amount, duration, and scope, informs:

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

Florida Administrative Code 58G-1.010, definitions, states in part:

(149) 'Medicaid' means the medical assistance program authorized by Title XIX of the federal Social Security Act, 42 U.S.C. s. 1396 et seq., and regulations thereunder, as administered in this state by the department under Section 409.901 et seq., F.S.

Florida Statute 409.905 addresses *Mandatory* Medicaid services under the State

Medicaid Plan and informs:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

(2) EARLY AND PERIODIC SCREENING, DIAGNOSIS, AND TREATMENT SERVICES.--The agency shall pay for early and periodic screening and diagnosis of a recipient under age 21 to ascertain physical and mental problems and conditions and provide treatment to correct or ameliorate these problems and conditions. These services include all services determined by the agency to be medically necessary for the treatment, correction, or amelioration of these problems, including personal care, private duty nursing, durable medical equipment, physical therapy, occupational therapy, speech therapy, respiratory therapy, and immunizations...

(4) HOME HEALTH CARE SERVICES.--The agency shall pay for nursing and home health aide services, supplies, appliances, and durable medical equipment, necessary to assist a recipient living at home...

(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents. When implemented, the private duty nursing

utilization management program shall replace the current authorization program used by the Agency for Health Care Administration and the Children's Medical Services program of the Department of Health. The agency may competitively bid on a contract to select a qualified organization to provide utilization management of private duty nursing services. The agency is authorized to seek federal waivers to implement this initiative...

(c) The agency may not pay for home health services unless the services are medically necessary and...

The above statute indicates that for a recipient under age 21 under the State Medicaid Plan, under a comprehensive benefit called Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT), services determined by the agency to be medically necessary for the treatment, correction, or amelioration of physical or mental conditions, including private duty nursing services, are to be provided. The agency will implement a prior authorization program for all private duty nursing services to include completing an assessment based on the child's condition, family support and care supplements, a family's ability to provide care and a family's and child's schedule regarding work, school, sleep and care for other family dependents. The agency may not pay for home health services unless the service is medically necessary.

The Florida Medicaid Child Health Check-Up Coverage and Limitations Handbook, October 2003, beginning on page 1-1, states in relevant part:

Introduction - This chapter describes the Florida Medicaid Child Health Check-Up Program, provider eligibility, and the requirements for enrollment. "Child Health Check-Up" is Florida's name for the federal program known as the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program.

Legal Authority - The Child Health Check-Up Program is governed by Title XIX of the Social Security Act and the Code of Federal Regulations, Title 42, Part 441, Subpart B. The program was implemented

through Chapter 409.905, Florida Statutes, and Chapter 59G, Florida Administrative Code...

A Child Health Check-Up is a comprehensive, preventive health screening service.

Child Health Check-Ups are performed according to a periodicity schedule that ensures that children have a health screening on a routine basis. In addition, a child may receive a Child Health Check-Up whenever it is medically necessary or requested by the child or the child's parent or caregiver.

If a child is diagnosed as having a medical problem, the child is treated for that problem through the applicable Medicaid program, such as physician, dental and therapy services.

Note: See Chapter 2, page 2-4, of this handbook for the definition of medically necessary.

CHAPTER 2, CHILD HEALTH CHECK-UP, COVERED SERVICES, LIMITATIONS, AND EXCLUSIONS...

Under federal law, Florida provides medically necessary treatment for all medical conditions that are diagnosed from a Child Health Check-Up.

Once the child has had a Child Health Check-Up, any further diagnoses and treatments, referrals and follow-up are provided through the applicable Medicaid program, such as physician services.

Chapter 59G-1.010 (166), Florida Administrative Code defines medically necessary as follows: ...

The above Florida Medicaid handbook informs that "Child Health Check-Up" is Florida's name for the federal program known as the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program for children under age 21. This is a comprehensive preventive health screening service. Under federal law, Florida provides medically necessary treatment for all medical conditions that are diagnosed from a Child Health Check-Up. When any further diagnoses and treatments are determined needed, referrals and follow-up are provided through the applicable Medicaid program. The above Florida Medicaid handbook indicates this program

follows the definition of “medically necessary” from the Florida Administrative Code as quoted above.

Florida Statute 409.913 addresses Oversight of the integrity of the Medicaid program, with (1)(d) describing “medical necessity or medically necessary” standards and says in relevant part: “...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity...”

Although the term medically necessary may be used in a variety of contexts, at issue is whether or not medical necessity as defined in Medicaid rules was demonstrated for 24 hour private duty nursing to be paid for by Medicaid. Consistent with statute, Fla. Admin. Code 59G-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. ...

(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 petitioner argues that the federal definition, specifically as promulgated in 42 U.S.C. § 1396d(r)(5) is controlling in this case and that the application of a more narrow definition as laid out in the Florida Medicaid Home Health Services Coverage and Limitations Handbook would be in violation of Federal Medicaid law. 42 U.S.C. § 1396d(r)(5) states:

Early and periodic screening, diagnostic, and treatment services
The term “early and periodic screening, diagnostic, and treatment services” means the following items and services: ... (5) Such other necessary health care, diagnostic services, treatment, and other measures described in subsection (a) of this section to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services, whether or not such services are covered under the State plan.

Based on a review of the above cited authorities, the undersigned concludes that the Florida Medicaid law is not in conflict with the Federal Medicaid law. In fact, the above authorities explain that under federal law, Florida provides medically necessary treatment for all medical conditions that are diagnosed from a Child Health Check-Up (or EPSDT in federal law). This reference also explains that the medically necessary definition for this program is the definition from 59G-1.010 (166) Florida Administrative Code. The petitioner also argues that the Florida Medicaid Health Services Coverage and Limitations Handbook definition of Medical Necessity, specifically the requirement that the medical service must be “furnished in a manner not primarily intended for the convenience of the recipient, the recipient’s caregiver, or the provider” is overly vague and should therefore be void for vagueness. This is not the proper proceeding if the

petitioner is seeking to invalidate the rule. The hearing officer notes that this requirement is the last of five conditions that must be met in order to be considered medically necessary and simply requires that Medicaid not pay for a service when it is furnished for the recipient or caregiver's convenience with no other evidence that the service is necessary for the individual's protection, to prevent significant illness or disability or to alleviate severe pain.

The Florida Medicaid Home Health Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2).

The Florida Medicaid Home Health Services Coverage and Limitation Handbook, under Private Duty Nursing, on page 2-15 Parental Responsibility, states:

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. (emphasis added)

The Florida Medicaid Home Health Services Coverage and Limitations Handbook, July 2008, discusses the authorization process for private duty nursing services as follows at page 2-19:

Private duty nursing services are authorized by the Medicaid peer review organization if the services are determined to be medically necessary. Private duty nursing services will be decreased over time as parents and caregivers are taught skills to care for their child and are capable of safely providing that care or as the child's condition improves.

The basis for the reduction by the respondent was essentially that while there is a demonstrated need for nursing services 24 hours daily, the hours should be reduced to allow for the parents to provide care to the fullest extent possible. Further, as parents

are taught skills necessary to provide for the care of their child, PDN services are reduced over time.

The hearing officer considered all evidence submitted at the hearing and reviewed all conditions for medical necessity as set forth in the rules of the Program. The petitioner's care is medically complex. The evidence clearly supports that this petitioner requires 24 hour nursing care and this is undisputed. The treating physician states that the petitioner is not safe to ever be unattended and recommends that the petitioner continue to receive 24 hour care. The petitioner argues that substantial weight must be given to the treating physician and the failure to credit the opinion of the treating physician must be accompanied by a showing of good cause. Again, the need for the 24 hour care is undisputed.

For the Medicaid Program to authorize and pay for private duty nursing service to meet this need, the required nursing care must meet the rule definition of medical necessity. The analysis must continue to determine if there are other parties that may be responsible for providing this benefit. Both the statute and the Florida Medicaid handbook sets forth that private duty nursing services are authorized to *supplement* care provided by parents and parents must participate in providing care to the fullest extent possible. The issue then rests on whether the parents can provide the services during the time period that the respondent has determined that they can. If this is true, then the service would not meet the medically necessary definition for private duty nursing services under Medicaid.

To make that determination, the undersigned next looked at the skill of the parents and the impact of other responsibilities in the household along with the following services provided by both a skilled nursing service and a home health aide service.

The Florida Medicaid Home Health Services Coverage and Limitation Handbook, under Licensed Nurse and Home Health Aide 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 procedure, including related teaching and adaptive aspects of nursing, which are a part of active treatment and require the presence of licenses nurses at the time of performance;
- Nasopharyngeal, tracheotomy aspiration, ventilator care; Levin tube and gastrostomy feeding, 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 Florida Medicaid Home Health Services Coverage and Limitation Handbook under Licensed Nurse and Home Health Aide Services, on page 2-15 "Home Health Aide Services", states;

Home health aide services help maintain a recipient's health or facility treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

- Assisting with the change of a colostomy bag;
- Assisting with transfer or ambulation;
- Reinforcing a dressing;
- Assisting the individual with prescribed range of motion exercises that have been taught by the RN;
- Assisting with an ice cap or collar;
- Conducting urine test for sugar, acetone or albumin;
- Measuring and preparing special diets;
- Providing oral hygiene
- Bathing and skin care; and
- Assisting with self-administered medication.

Home health aides must not perform any services that require the direct care skills of a licensed nurse.

The undersigned considered the father's inability to lift over 20 pounds and his difficulty coping under stressful situations. If the father is unable to provide for the petitioner's care, he is certainly capable of doing household errands and chores to provide a measure of relief for the petitioner's mother. The hearing officer also considered the mother's inability to lift the petitioner due to back problems and weight restrictions as a barrier to providing care for the petitioner. The rule sets forth that the request 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. The evidence demonstrated that the mother has degenerative disc disease in her back and that it is recommended that she not lift over 20 pounds. The evidence further

indicates the petitioner weighs at least 56 pounds. The evidence did not demonstrate that the mother was incapable of providing care to the petitioner with the assistance of a home health aide that could perform such functions as lifting or repositioning the petitioner. In fact, the findings show that the mother has provided for the care of the petitioner since her birth. By the mother's testimony, there has been no change in the petitioner's need for care other than her weight and the parents' restrictions regarding weight limitations. Lifting and repositioning are not skilled nursing services and these are services that could be performed by a home health aide. The services of a home health aide would be a less costly service. In the opinion of the respondent's physician expert, the parents can provide the petitioner's required care when home, with home health aide assistance. The petitioner can request services of a home health aide to assist with repositioning the petitioner and lifting the petitioner so that the caregivers (mother and father) can perform the petitioner's care. On this basis, when the parent can provide the service with the assistance of a home health aide, the service would not meet the Medicaid criteria for medical necessity.

Next to consider are the hours that the parents would be available to provide care to the petitioner with assistance. The respondent determined that the parents should provide care for the petitioner from 7 p.m. to 11:00 p.m. Mondays through Fridays and 7 a.m. to 3:00 p.m. Saturdays and Sundays. The father is on call and works out of the home on occasions. The mother is out of the home for work from 7:00 a.m. to 7:00 p.m. as she works from 8:00 a.m. to 5 or 6 p.m., Monday through Friday

and occasionally on weekends. Parents should be allowed eight hours of sleep time therefore, they would be unavailable to care for the petitioner eight hours per night. There is a 17 year old child in the home that does not require care.

The hearing officer concludes that the mother and father could provide care for the petitioner with assistance from a home health aide from 7 p.m. to 11 p.m. Mondays through Fridays and from 7:00 a.m. through 3:00 p.m. on Saturdays and Sundays. Should the parents' work schedules cause a conflict with these hours, a modification could be requested by the home health care provider. Based on the above cited authorities, the hearing officer concludes the respondent's action to approve 3,468 of private duty nursing and denial of 852 hours of the 4,320 hours requested for the period of April 28, 2009 to October 24, 2009 was within Program rules. The petitioner's request for private duty nursing 24 hours a day, seven days a week is denied with the substitution of home health aide services hour for hour to assist the parents providing for the petitioner's care when PDN is not provided.

DECISION

The appeal is denied. The respondent's action is affirmed according to the above Conclusions of Law.

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 20th day of November, 2009,

in Tallahassee, Florida.



Linda Garton
Hearing Officer
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