

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-03958

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 August 6, 2009, at 10:00 a.m., in Fort Lauderdale, Florida. The hearing was rescheduled from July 13, 2009 at the petitioner's request. The petitioner was not present. He was represented by Justin Howard, student attorney from Florida State University. Present was _____, his father, and his nurse from _____ Healthcare.

The respondent was represented by Andrew Sheeran, attorney. Present from the Agency for Health Care Administration (AHCA) was Ken Hamblin, program operations administrator. Present on the telephone from AHCA was Laura Rumph, program operations administrator, and Diane LoCastro, registered nurse consultant. Present on the telephone was Dr. William Bruno, pediatric medical director of Children's Medical Services (CMS) at Memorial Healthcare Systems. Present from CMS was Mary

Hooshmand, executive health nursing director; Barbara Williamson, nursing director; Nicole Griffin, project manager; Eleanor Lipman, registered nurse care coordinator; Kathy Sandy, nursing supervisor; and Stephanie Bankston, registered nurse.

ISSUE

At issue is the Agency's June 10, 2009 action of reducing the petitioner's skilled home nursing services from 24 hours per day 7 days per week to 23 hours per day 7 days per week. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth _____, is three years old. He is a Medicaid benefits recipient in Broward County, Florida.
2. Included in the evidence is a copy of a Notice of Denial for Requested Services from CMS dated May 27, 2009, stating that the petitioner's skilled home nursing services was reduced from 24 hours per day 7 days per week to 22 hours per day 7 days per week.
3. Included in the evidence is a copy of a notice from CMS dated June 10, 2009, stating that the reduction in the petitioner's skilled home nursing services was changed from 22 hours per day 7 days per week to 23 hours per day 7 days per week.
4. Included in the evidence is a copy of a Memorial Regional Hospital medical report on the petitioner stating that he sustained a prolonged submersion injury in a swimming pool. The date of his admission to the hospital was May 27, 2007, and the date of discharge was July 25, 2007.
5. The petitioner's discharge diagnosis from the hospital on July 25, 2007, according to Dr. _____, was a near drowning, chronic respiratory failure, hypoxic ischemic

encephalopathy, status post tracheostomy, status post gastrostomy tube, parenthetically no fundoplication, history of seizure activity, history of hypertension, history of urosepsis, with enterococcus, history of staphylococcus aureus and escherichia coli tracheitis, history of coagulase negative staphylococcus on blood culture, and a history of unresolved ileus.

6. Included in the evidence is a copy of a statement from Dr. [REDACTED] dated July 2, 2009, stating that the petitioner has a complicated medical condition following his accident. In the recent past there has been no change in his illness or prognosis. He is concerned that shortening his nursing service will expose him to greater risks of complications, and he believes that the petitioner requires 24 hour nursing care.

7. Included in the evidence is a copy of a CMS assessment form on the petitioner dated May 22, 2009, stating that the petitioner lives with his father, [REDACTED], who is divorced from his mother [REDACTED]. According to the assessment form, the petitioner's mother lives in Lake Worth, Florida, and she visits him 3 to 4 times per week.

8. According to [REDACTED] at the hearing, he works as an information systems director from 8:30 a.m. to 6:00 p.m. Mondays through Fridays, and he is on call 24 hours per day 7 days per week.

9. Included in the evidence are copies of [REDACTED] Home Care Primary Caregivers (PCG) Skills Checklists dated December 16, 2008, and December 19, 2008. According to these checklists, the petitioner's parents are trained in nasal and suctioning techniques, and ventilator and circuit, and trouble shooting alarms for the petitioner.

10. According to the PCG Skills checklist dated December 19, 2008, signed by a registered nurse from [REDACTED] Healthcare, the petitioner's father was already very

competent, and well trained on the items in the checklist, including suctioning, and use of a catheter.

11. According to the PCG Skills checklist dated December 16, 2008, signed by a registered nurse from [redacted] Healthcare, the petitioner's mother is extremely competent with all of the procedures listed on the checklist, including use of the ventilator, tracheotomy, and the g-tube.

12. Included in the evidence is a copy of a CMS Multidisciplinary Review Team Staffing Summary showing that members of the review team met, including Dr. Bruno, on May 27, 2009. It was determined at that time that the petitioner's home skilled nursing care would be reduced from 24 hours per day 7 days per week to 22 hours per day 7 days per week.

13. After reviewing the petitioner's case, Dr. Rosha McCoy, Director of Medical Affairs at Joe DiMaggio Memorial Pediatric Hospital, recommended increasing the petitioner's nursing care from 22 hours per day 7 days per week to 23 hours per day 7 days per week. The petitioner's father was notified of this decision in a notice dated June 10, 2009.

14. Dr. Bruno explained at the hearing that he agreed with the determination of 22 hours per day 7 days per week nursing care for the petitioner. To help the petitioner's father ease the transition of the reduced number of nursing care hours, the doctor agreed to increase the hours to 23 hours per day 7 days per week. The petitioner's father is requesting to restore the number of nursing hours to 24 hours per day 7 days per week.

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 24 hours per day 7 days per week was reduced to 23 hours per day 7 days per week. The findings show that according to the Home Care Primary Caregivers (PCG) Skills Checklist, the petitioner's father, who is the home, is trained in nasal and suctioning techniques, and use of a catheter.

According to the petitioner's father, he works as an information systems director from 8:30 a.m. to 6:00 p.m. Mondays through Fridays, and he is on call 24 hours per day 7 days per week. The findings show that the petitioner's mother does not live with him, however she visits him 3 to 4 times per week. According to the Home Care Primary Caregivers Skills Checklists, the petitioner's mother is extremely competent with all of the procedures on the checklist, including use of the ventilator, tracheotomy, and the g-tube.

It is the opinion of Dr. that the petitioner requires 24 hour nursing care. It is also the opinion of the doctor that testified at the hearing, Dr. Bruno that the petitioner's requires 23 hours per day 7 days per week nursing care. It is also the opinion of Dr. Rosha McCoy, Director of Medical Affairs at Joe DiMaggio Memorial Pediatric

Hospital, that the petitioner's requires 23 hours per day 7 days per week nursing care.

After careful consideration, it is determined that this is correct, and the Agency's action to reduce the petitioner's skilled home nursing services from 24 hours per day 7 days per week to 23 hours per day 7 days per week, 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 28th day of September 2009,

in Tallahassee, Florida.

Stuart Imberman

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