

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

FILED

AUG 31 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04027

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 July 27, 2009, at 8:40 a.m., in Fort Lauderdale, Florida. The petitioner was not present. She was represented by her mother, \_\_\_\_\_ The respondent was represented by Ken Hamblin, program operations administrator. Present on the telephone from Kepro was Dr. Rakesh Mittan, and Gary Erickson, registered nurse reviewer.

**ISSUE**

At issue is the Agency's May 1, 2009 action of approving the petitioner's skilled home nursing services for 3,160 hours, and denying 260 hours from April 20, 2009 to October 16, 2009. The petitioner has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner is 19 year old, date of birth . . . . . She is a Medicaid benefits recipient in Broward County, Florida.
2. Included in the evidence is a copy of a Recipient Denial Letter dated May 1, 2009, stating that 3,160 hours of skilled home nursing services were approved, and 260 hours were denied for the petitioner from April 20, 2009 to October 16, 2009.
3. Included in the evidence is a copy of a Recipient Reconsideration Denial Upheld notice dated June 12, 2009, stating that the approval of 3,160 hours of skilled home nursing services, and the denial of 260 hours were upheld for the petitioner.
4. Included in the evidence is a copy of an Internal Focus Review Findings form from Kepro, stating that the petitioner requested skilled home nursing services of 19 hours daily 7 days per week from 9:00 a.m. to 7:00 p.m., and 10:00 p.m. to 7:00 a.m.
5. According to the Kepro Internal Focus Review Findings report, the petitioner was diagnosed with cerebral palsy (CP), seizures, and she has hypertension (HTN), a tracheostomy, and a gastrointestinal tube.
6. Included in the evidence is a copy of a Synopsis Of Case form from Kepro, stating that the petitioner's requested nursing hours are approved except for the hours of 11:00 a.m. to 1:00 p.m. from Mondays through Fridays. Included in the household are the petitioner's siblings, ages 11, 13, and 18. It was determined that the petitioner's mother, who is home, can take care of her when she is not receiving the nursing 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. 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-4.290 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. Physicians at Kepro for the Agency, approved the petitioner for skilled home nursing services of 3,160 hours, and denied 260 hours from April 20, 2009 to October 16, 2009.

In the Agency's determination of the number of hours of nursing care for the petitioner, what is medically necessary is taken into account, and her mother's availability to take care of her. The physician that testified at the hearing agrees that the petitioner needs nursing care, and the denial of the 260 hours from April 20, 2009 to October 16, 2009. After careful consideration of the proper authorities and evidence, including the petitioner's diagnosis and condition, it is determined that the Agency's action of the denial of the 260 hours of skilled home nursing services, 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

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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 31<sup>st</sup> day of August, 2009,

in Tallahassee, Florida.

Stuart Imberman

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Copies Furnished To