

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

FILED

AUG 13 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04112

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on August 10, 2009, at 9:05 a.m., in Lake Worth, Florida. The petitioner was not present. Representing the petitioner was her mother, _____ . Appearing as a witness was _____ licensed practical nurse (LPN), _____ . Representing the Agency was David King, management analyst, Agency for Health Care Administration (AHCA). Appearing as witnesses were: Rahesh Mittal, MD, reviewer; Gary Erickson, registered nurse (RN), nurse reviewer; Carol King, RN; and Marlene Ramnon, RN. Both Dr. Mittal and Mr. Erickson were from the Keystone Peer Review Organization (KePro), and appeared telephonically at their request. Ms. King and Ms. Ramnon were from AHCA.

ISSUE

At issue is whether the respondent was correct in reducing private duty nursing (PDN) hours from 22 hours per day Monday through Friday to 21 hours per day Monday through Friday. The 16 hours per day Saturday and Sunday would remain the same. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is a ten year old (C 111 111 111) recipient of Medicaid services through the SSI-Related Medically Needy Program. This is due to the income of the mother.
2. The petitioner is a medically fragile child that requires constant attention for her trach, GT tube, seizures, cardiac monitoring, and ventilator. She takes various medications to include. Lamictal, Topamax, Valium, Valproic Acid, and Klonopin.
3. As part of the eligibility determination process for PDN, medical progress reports are forwarded to KePro for review. KePro is the organization contracted by AHCA to perform these reviews.
4. Because the petitioner is on a Medically Needy Program, monthly reports are sent for review.
5. KePro reviewed a June report and sought to reduce the hours of PDN by more than the one hour as noted above. A request was submitted for reconsideration and the final change was for the one hour reduction during the weekdays only. This was noted June 16, 2009.

6. The respondent explains that ultimately the parent(s) is responsible for caring for their child to the fullest extent possible. In this case there is only the mother and no other sibling in the home. The mother is employed full time.
7. KePro will base their decisions on the information supplied to them from the petitioner's home health agency being used to supply the nurses at her home. The parent(s) is to supply as much information as possible.
8. The mother explains that she works full time, takes care of her home, and helps with her child as much as she can. She cites various times when the nurses allow the ventilator alarm to go off more than once before being shut off. This means that she will go to her child's room even though a nurse is there. This disturbs the mother's sleep.
9. When the petitioner moves sometimes her trach will dislodge and she will be there to assist the nurses. She also spends time getting supplies that her child needs such as diapers and prescriptions.
10. Dr. Mittal notes that KePro does not pick the nursing agency and if the nurses do not meet the mother's standards she can look elsewhere. The nurses should be addressing the trach and feeding tube situations.
11. Also, if the mother becomes ill and needs additional nursing help, the health agency should request those additional hours for KePro's approval. Addressing the ventilator alarm, it should not go off more

than once before its shut off. The nurse on duty should see to that to avoid having the mother wake up to check.

12. Lastly, the AHCA nurses note that the home health nurses assigned to care for the petitioner should be allowed to do their work and the mother should give them that opportunity to relieve her of the stress she feels.

13. The mother explains that this is her child and she will do whatever is necessary for her care and well being.

CONCLUSIONS OF LAW

Fla. Stat. s. 409.905 Mandatory Medicaid Services states in part:

(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. An entity that provides services pursuant to this subsection shall be licensed under part III of chapter 400. These services, equipment, and supplies, or reimbursement therefore, may be limited as provided in the General Appropriations Act and do not include services, equipment, or supplies provided to a person residing in a hospital or nursing facility.

(a) In providing home health care services, the agency may require prior authorization of care based on diagnosis, utilization rates, or billing rates. The agency shall require prior authorization for visits for home health services that are not associated with a skilled nursing visit when the home health agency billing rates exceed the state average by 50 percent or more. The home health agency must submit the recipient's plan of care and documentation that supports the recipient's diagnosis to the agency when requesting prior authorization.

(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.

Fla. Admin. Code 59G-1.010 Definitions 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.

(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.

Home Health Services Coverage and Limitations Handbook July 2008

Covered Services, Limitations, and Exclusions states in part:

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.

Who Can Receive Private Duty Nursing

Medicaid reimburses private duty nursing services for recipients under the age of 21 who:

Have complex medical problems; and

Require more individual care than can be provided through a home health nurse visit.

Note: See the Glossary in the Florida Medicaid Provider General Handbook for the definition of medically complex.

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

Prior authorized before services are provided.

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.

Medicaid does not reimburse private duty nursing for respite care. Examples are parent or caregiver recreation, socialization, and volunteer activities.

Authorization Process

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.

Prior Authorization

All private duty nursing services must be prior authorized by the Medicaid peer review organization prior to the delivery of services.

In this instant case and pursuant to the requirements of Statute and policy as described in the Handbook, the parent(s) is responsible to the greatest degree in the care of their child. The mother is capable of providing a great deal of this support even though she does work full time and cares for the needs of her child and the home.

As noted in the authorization process, "private duty nursing will be decreased over time". Now, KePro is seeking to reduce the PDN by only one hour during the week and leaving the weekend hours the same.

This may initially be difficult for the mother but it is within the parameters of the parental responsibility. Here the mother must allow the nurses to do their jobs and if she is not happy with them to seek other nursing agencies where their work is more to her satisfaction.

DECISION


The appeal is denied. The respondent'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 13th day of August, 2009,
in Tallahassee, Florida.


Melvyn Littman
Hearing Officer
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850-488-1429

Copies Furnished To