

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

FILED  
SEP 08 2009  
OFFICE OF APPEAL HEARING  
DEPT. OF CHILDREN & FAMILIE

APPEAL NO. 09F-04193

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 10:00 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented by his mother, \_\_\_\_\_, and his father, \_\_\_\_\_. Also present was \_\_\_\_\_ Administrator from \_\_\_\_\_. 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 27, 2009 action of denying the petitioner 1303 hours of home health aide services from April 8, 2009 to October 4, 2009. The petitioner has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner's is 15 years old, date of birth . Home health aide services were requested for him for 3:00 p.m. to 9:00 p.m. on Mondays through Fridays, and 12:00 p.m. to 8:00 p.m. on Saturdays and Sundays.
2. Included in the evidence is a copy of a Recipient Denial Letter dated May 27, 2009, stating that home health aide services of 1303 hours was denied, and zero hours was approved for the petitioner from April 8, 2009 to October 24, 2009.
3. Included in the evidence is a copy of a Recipient Reconsideration Denial Upheld notice dated June 11, 2009, stating that upon reconsideration, home health aide services of 1303 hours was denied, and zero hours was approved for the petitioner from April 8, 2009 through October 24, 2009.
4. The notices explains that it was determined by Kepro that based on the information received, it was determined that it is not medically necessary for home health aide services for the petitioner, therefore the request for these services was denied.
5. Included in the evidence is a copy of an Internal Focus Review Findings report dated May 13, 2009, stating that the petitioner's father works, and his mother does not work. The petitioner has autism, and he has a 12 year old sister, who is in the household.
6. Included in the evidence is a copy of a Synopsis Of Case dated May 13, 2009, stating that the petitioner has episodes of disruptive behavior, and he is agitated easily. He requires assistance with activities of daily living, and he needs constant supervision to prevent self injury.

7. Included in the evidence is a copy of a letter dated August 11, 2007, from Dr. \_\_\_\_\_ stating that the petitioner has a genetic disorder accompanied by developmental delay, and severe behavioral abnormalities.
8. Included in the evidence is a copy of a letter dated July 29, 2008 from Dr. \_\_\_\_\_, stating that the petitioner has been diagnosed with autism, and bipolar disorder. He has had repeated hospitalizations for out of control, violent, aggressive, and assaultive behavior.
9. Dr. Mittan agreed at the hearing to provide the petitioner with home health aide services of two hours daily, which is 10 hours per week from 6:00 p.m. to 8: 00 p.m. on Mondays through Fridays.
10. According to the petitioner's father at the hearing, he works every Saturday instead of every other Saturday, as reported to Kepro by \_\_\_\_\_

### **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 at 59G-4.130 explains home health services. The Home Health Services Coverage and Limitations Handbook explains on page 2-14 that home health services must be ordered by the attending physician and medically necessary. The petitioner was denied home health aide services for 3:00 p.m. to 9:00 p.m. on Mondays through Fridays, and 12:00 p.m. to 8:00 p.m. on Saturdays and Sundays, which was 1303 hours from April 8, 2009 to October 24, 2009.

The respondent agreed at the hearing to provide the petitioner with home health aide services of two hours daily, which is ten hours per week from 6:00 p.m. to 8:00 p.m. on Mondays through Fridays. The petitioner's parents requested more hours than this, asserting that his father works every Saturday instead of every other Saturday, as reported to Kepro from the petitioner's home health care agency.

Dr. Mittan requested \_\_\_\_\_, which was the petitioner's home health care agency, to submit to Kepro a modification request reflecting the change in the petitioner's father's work hours. This is so that his new work hours can be evaluated, and then the request for more home health aide hours for the petitioner would be determined.

According to \_\_\_\_\_ at the hearing, she agreed to have the modification request sent to Kepro. After careful consideration, it is concluded that the Agency's action to provide the petitioner with ten hours per week of home health aide services, is upheld.

### **DECISION**

The appeal is partially granted. The respondent's action to deny the petitioner for home health aide services from 3:00 p.m. to 9:00 p.m. on Mondays through Fridays, and 12:00 p.m. to 8:00 p.m. on Saturdays and Sundays, which was 1303 hours from April 8, 2009 to October 24, 2009, is not upheld. The respondent's action to approve the petitioner for home health aide services for two hours daily, which is ten hours per week from 6:00 p.m. to 8:00 p.m. on Mondays through Fridays, from April 8, 2009 to October 24, 2009, 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 8<sup>th</sup> day of September, 2009,

in Tallahassee, Florida.

Stuart Imberman

Stuart Imberman  
Hearing Officer  
Building 5, Room 255  
1317 Winewood Boulevard  
Tallahassee, FL 32399-0700  
850-488-1429

Copies Furnished To