

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

FILED

SEP 08 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04194

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 9:15 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented by his mother. Also present was _____, registered nurse 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 June 12, 2009 action of approving the petitioner's skilled home nursing services for 2826 hours, and denying 834 hours from June 10, 2009 to December 6, 2009. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth [REDACTED], is 13 years old, and he is a Medicaid benefits recipient in Broward County Florida.
2. Included in the evidence is a copy of a Recipient Denial Letter dated June 12, 2009, stating that 2826 hours of skilled home nursing services were approved, and 834 hours were denied for the petitioner from June 10, 2009 to December 6, 2009.
3. Included in the evidence is a copy of a Reconsideration Denial Upheld Letter dated June 24, 2009. This states that upon reconsideration, the 2826 hours of skilled home nursing services that were approved, and 834 hours that were denied for the petitioner from June 10, 2009 to December 6, 2009, was upheld.
4. The notices sent to the petitioner explained that it was determined by Kepro that the medical care of the private duty nursing services of 2826 hours was determined to be medically necessary. This was determined by two physicians board certified in pediatrics.
5. Included in the evidence is a copy of a Kepro Internal Focus Review Finding Report on the petitioner dated June 9, 2009, stating that his parents both work, and that they also have an 11 year old son. The petitioner's mother is a registered nurse, trained in taking care of him.
6. The petitioner's diagnosis is asthma, laryngotrach anomaly, abdominal wall anomalies, abdominal hernia, he has a tracheostomy, and he is ventilator dependent.
7. Included in the evidence is a copy of a Kepro Synopsis Of Case Report on the petitioner dated June 9, 2009, stating that his father is an owner of a security firm working irregular hours. According to the petitioner's mother at the hearing, he does not participate in the physical care of the petitioner.

8. The petitioner's mother works Mondays through Fridays from 8:00 a.m. to 4:30 p.m. The petitioner's mother requested that when there is no school, to receive skilled home nursing services 24 hours per day 7 days per week, and when he goes to school, she requested the hours of 3:00 p.m. to 7:00 a.m. Mondays through Fridays, and 24 hours per day on Saturdays and Sundays.
9. According to the Synopsis Of Case, the denied nursing hours for the petitioner are from 7:00 p.m. to 11:00 p.m. on Mondays through Fridays, and 10:00 a.m. through 4:00 p.m. on Saturdays and Sundays.
10. It was determined by Kepro that since the petitioner's mother is home for the denied nursing hours, she can care for him during these time periods.

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 2826 hours were approved, and 834 hours were denied for the petitioner from the time period of June 10,

2009 to December 6, 2009. This determination took into account the petitioner's condition, and his mother's work hours, as reported by the nursing service to Kepro.

The skilled home nursing service hours that were denied are from 7:00 p.m. to 11:00 p.m. on Mondays through Fridays, and 10:00 a.m. through 4:00 p.m. on Saturdays and Sundays. The physician that testified at the hearing agrees with this determination. After careful consideration, it is determined that the Agency's action to approve skilled home nursing services of 2826 hours, and deny 834 hours for the petitioner from June 10, 2009 to December 6, 2009, 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 8th day of September 2009,

in Tallahassee, Florida.

Stuart Imberman

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Copies Furnished T