

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

FILED

OCT 08 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04924

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on August 27, 2009, at 9:52 a.m., at the Opa Locka Service Center, in Opa Locka, Florida. The petitioner was not present, but was represented at the hearing by the petitioner's mother, _____ and the petitioner's father,

The Agency was represented by Sandra Moss, program administrator, from the Agency For Health Care Administration (AHCA). Present as witness for the Agency, via the telephone, was Dr. Rakesh Mittal, physician reviewer, from KePRO South. Also present via the telephone, as a witness for the Agency was Melanie Clyatt, registered nurse operations review supervisor from KePRO. KePRO is located in Tampa, Florida.

_____ was present as an observer. The hearing was left open for seven additional days in order for the petitioner to submit additional information. Additional information was submitted within the time frame allotted.

ISSUE

At issue is the Agency's action of July 23, 2009 to reduce the petitioner's request for continued private duty nursing services by a total of 824 hours, for the period of July 23, 2009 through January 18, 2010. The petitioner was approved for 2,264 hours of the above service for the above time period. The Agency has the burden of proof.

FINDINGS OF FACT

1. The petitioner, who is approximately seven years of age, has severe and numerous medical problems that require medical services as provided through the Agency For Health Care Administration's (AHCA) Medicaid State Plan. The petitioner's condition(s) are outlined in Respondent Composite Exhibit 1. The petitioner is ventilator dependent and has a Tracheotomy. AHCA as noted above, will be further addressed as the "Agency".

2. KePRO has been authorized to make Prior (service) Authorization Process decisions for the Agency. The Prior Authorization Process was completed for the petitioner by KePRO. KePRO determined on July 23, 2009, that the petitioner's request for about 824 hours of continued private duty nursing was going to be denied/reduced for the period of July 23, 2009 through January 18, 2010. They approved 2,264 hours of the service.

3. The petitioner's representative requested a hearing and benefits were restored. A reconsideration was also requested, but the Agency upheld the original decision.

4. KePRO's decision was based on the information provided by the petitioner's provider or home health agency as part of the request for the service. KePRO determined that petitioner's father, though employed, is quite capable of caring for the petitioner for

the time he is not at work or at school. The hours of reduction would be for both the weekdays and Saturdays and Sundays.

5. The petitioner's representative submitted into evidence, Petitioner Exhibit 1, which are letters from the petitioner's treating physician(s), attesting to need of home nursing care. The petitioner's representative also submitted Petitioner Exhibit 2, which was submitted while the hearing was left open. This Exhibit contains copies of hospital information and other medical records for the petitioner. This Exhibit indicates the petitioner received hospital treatment in June 2009. The Exhibit also reflected that the last hospital visit for the petitioner was in June 2008.

6. The respondent submitted into evidence, Respondent Exhibit 1, which contains copies of Notices from KePRO and request information for the nursing service.

CONCLUSIONS OF LAW

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 Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2). The Home Health Services Coverage and Limitation Handbook under Private Duty Nursing, on page 2-17 "Parental Responsibility", states:

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... (emphasis added)

The Home Health Services Coverage and Limitations Handbook also explains on page 2-17 that private duty nursing services must be ordered by the attending physician and documented as medically necessary. Also, the same page handbook explains that private duty nursing services must be; "prior authorized before services are authorized."

The Agency, through KePRO, took action first on July 23, 2009 to reduce the petitioner's request for continued private duty nursing services by a total of 824 hours, for the period of July 23, 2009 through January 18, 2010. This decision was based (partly) on the information as provided by the petitioner's nursing service, the petitioner's father's work time and the petitioner's medical necessity need of the request for the service.

The petitioner's representative argued that based on the petitioner's severe medical condition or disease; he needs a medical professional to handle all of the petitioner's ongoing medical situations. The petitioner's representatives argued that they are unable to understand the medical monitoring equipment for the petitioner, nor how to install or reinstall a "trache" on the petitioner. They argued that they must take off from work a lot to either take the petitioner to the doctor appointments or to the hospital when he gets severely sick. They argued that the petitioner could die as the result of the lack of a medical professional's help.

The respondent argued that according the pertinent rules for the nursing service; the parent(s) must provide care for the petitioner as the nursing service acts to supplement their care. The respondent argued that the parents have received training on how to take care of the petitioner. The respondent argued that the nursing care service as approved by the "Agency" will be sufficient for the care of the petitioner.

After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer finds that the Agency has met its burden of proof and that the Agency's action of July 23, 2009, to reduce the petitioner's request for continued private duty nursing services by 814 hours of the service for the period of July 23, 2009 to January 18, 2010, is correct.

DECISION

This appeal is denied and the Agency's action 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.

DONE and ORDERED this 8th day of October, 2009,

in Tallahassee, Florida.



Robert Akel
Hearing Officer
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Copies Furnished To