

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

FILED

SEP 24 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04929

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 August 20, 2009, at 8:35 a.m., in Fort Lauderdale, Florida. The petitioner was not present. She was represented by her mother, _____ on the telephone. The respondent was represented by Ken Hamblin, program operations administrator. Present on the telephone from Kepro was Dr. Robert Buzzeo, medical director of private duty nursing, and Melanie Clyatt, review operations supervisor.

ISSUE

At issue is the Agency's July 16, 2009 action of approving the petitioner's skilled home nursing services for 1800 hours, and denying 360 hours from May 30, 2009 through November 25, 2009. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth _____, is 18 years old, and she is a Medicaid recipient in Broward County, Florida.
2. Included in the evidence is a copy of a Recipient Denial Letter dated July 16, 2009, stating that 1800 hours of skilled home nursing services were approved, and 360 hours were denied for the petitioner from May 30, 2009 through November 25, 2009.
3. Included in the evidence is a copy of a Recipient Reconsideration Denial Upheld Letter dated July 24, 2009. This notice informs the petitioner that upon reconsideration, the approval of 1800 hours of skilled home nursing services, and the denial of 360 hours from May 30, 2009 to November 25, 2009, was upheld.
4. The denial notice explains that it was determined by Kepro that the 1800 hours of skilled home nursing care from May 30, 2009 to November 25, 2009, is medically necessary for the petitioner.
5. Included in the evidence is a copy of an Internal Focus Review Findings form dated July 14, 2009, stating that the petitioner's diagnosis is a traumatic brain injury, encephalopathy, and cranioplasty.
6. Included in the evidence is a copy of a Synopsis of Case form dated July 14, 2009, stating that the requested nursing hours are from 7:00 p.m. to 7:00 a.m. seven days per week. The nursing hours approved was from 9:00 p.m. to 7:00 a.m. seven days per week.
7. According to the petitioner at the hearing, she takes care of the petitioner, and her husband, even though he lives in the home, does not help in caring for her.

8. Dr. Buzzeo agreed at the hearing to approve the petitioner for nursing hours from 7:00 p.m. to 7:00 a.m. seven days per week, thereby rescinding the denial of the nursing hours for the petitioner.

CONCLUSIONS OF LAW

Fla. Admin. Code at 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. The Agency's approved the petitioner's skilled home nursing services for 1800 hours, and denied 360 hours from May 30, 2009 through November 25, 2009.

The requested nursing hours are from 7:00 p.m. to 7:00 a.m. seven days per week. The nursing hours approved was from 9:00 p.m. to 7:00 a.m. seven days per week. Dr. Buzzeo agreed at the hearing to approve the petitioner for nursing hours from 7:00 p.m. to 7:00 a.m. seven days per week, thereby rescinding the denial of the nursing hours for the petitioner. Since the issue is resolved in favor of the petitioner, the appeal is granted.

DECISION

This appeal is granted, as explained in the Conclusions Of Law.

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

FINAL ORDER (Cont.)

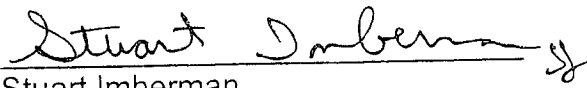
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Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date 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 24th day of September, 2009,

in Tallahassee, Florida.



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

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