

FILED

OCT 21 2009

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-05407

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 17 Broward  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on September 21, 2009, at 8:30 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented by his parents, \_\_\_\_\_ and \_\_\_\_\_. The respondent was represented by Ken Hamlin, \_\_\_\_\_, program operations administrator. Present on the telephone from Kepro was Dr. Robert Buzzeo, and Melanie Clyatt, review operations supervisor.

**ISSUE**

At issue is the Agency's August 10, 2009 action of approving the petitioner's skilled home nursing services for 2,988 hours, and denying 308 hours for August 11, 2009 to February 6, 2010. The petitioner has the burden of proof.

8. According to the Internal Focus Review Findings Report, one of the services provided by the nurse is teaching. This is training for the petitioner's caregivers, who are his parents.

9. Included in the evidence is a copy of a Kepro Synopsis Of Case Report that is dated July 27, 2009, stating that the petitioner's parents both work. It states that his mother works Monday through Friday 9:00 a.m. to 2:00 p.m., and 4:00 p.m. to 8:00 p.m. It states that his father works Monday through Friday 7:00 a.m. to 6:00 p.m., Saturday 5:00 a.m. to 5:00 p.m., and he is on call on Sunday.

10. According to Dr. Buzzeo at the hearing, he did the reconsideration that resulted in more nursing hours for the petitioner than the original denial of the services. He explained that the petitioner's condition, and his parents work hours were taken into consideration when making the determination for the number of nursing hours.

### **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 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 2,988 hours were approved, and 308 hours were denied for the petitioner for August 11, 2009 to February 6, 2010. This determination took into account the petitioner's condition, and his parent's

work hours, as reported by the nursing service to Kepro. The physician that testified at the hearing agrees with this determination.

The denied nursing hours are from Monday through Friday 8:00 p.m. to 9:00 p.m., Saturday from 7:00 p.m. to 11:00 p.m., and Sunday from 7:00 p.m. to 10:00 p.m. This is a denial of nursing services of 1 hour on Monday through Friday, 4 hours on Saturday, and 3 hours on Sunday. At the hearing, the petitioner's parents contended that they do not have the knowledge to take care of the petitioner for the denied hours, in case of an emergency.

The findings show that one of the services performed by the nurse, is teaching, which is training for the petitioner's caregivers, his parents. The doctor that testified at the hearing explained the petitioner's caregivers, who are his parents can care for him for the denied hours of skilled home nursing care. After careful consideration, it is determined that this is correct. It is determined that the Agency's action to approve skilled home nursing services of 2,988 hours, and deny 308 hours for the petitioner for August 11, 2009 to February 6, 2010, 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.

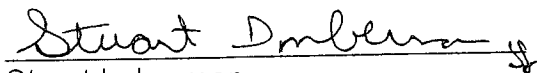
FINAL ORDER (Cont.)

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DONE and ORDERED this 21<sup>st</sup> day of October, 2009,

in Tallahassee, Florida.

Stuart Imberman 

Stuart Imberman

Hearing Officer

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Copies Furnished T.