

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

FILED  
OCT 20 2009  
OFFICE OF APPEAL HEARINGS  
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 09F-05408

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 September 21, 2009, at 10:05 a.m., in Fort Lauderdale, Florida. The petitioner was not present. She was represented by her mother,

Also present was \_\_\_\_\_ The respondent was represented by Ken Hamblin, program operations administrator. Present on the telephone from Kepro was Dr. David Portee, physician consultant, and Teresa Ashley, review operations supervisor.

The record was held open through September 21, 2009, which was the date of the hearing, to allow the respondent an opportunity to submit information into evidence. The respondent submitted information into evidence within the deadline.

**ISSUE**

At issue is the Agency's July 22, 2009 action of denying the petitioner's request for rehabilitation services, due to not meeting medical necessity. The petitioner has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner, date of birth \_\_\_\_\_, is 28 years old. According to \_\_\_\_\_ the petitioner is enrolled in the Medically Needy Program with a share of cost. She lives with her mother. She is completely dependent on her mother for her care.
2. Included in the evidence is a copy of a Recipient Denial Letter dated July 22, 2009, stating that rehabilitation services was denied for the petitioner.
3. Included in the evidence is a copy of an Internal Focus Review Findings report stating that on July 21, 2009, there was a request for rehabilitation services for the petitioner. It states that the petitioner sustained a closed head injury from a motor vehicle accident in July 2008.
4. According to the Internal Focus Review Findings, the petitioner is wheelchair dependant, mute, and requires peg tube feedings. She does not appear to be alert, but her eyes are open, she blinks frequently, she does not follow commands, there is no verbalization, her mouth is open most of the time, and she has spontaneous movement of her upper extremities.
5. Included in the evidence is a copy of a Synopsis Of Case dated July 22, 2009. It states that upon a screening review for medical necessity, a registered nurse reviewer determined that the request does not meet rehabilitation policy criteria.

6. According to the Synopsis Of Case, the request was reviewed by a physician consultant who is board certified in rehabilitation services, and the request was denied because there is no indication that the petitioner will be able to participate in a rehabilitation program.

7. According to the Synopsis Of Case, the request was reviewed by a second physician consultant who is board certified in rehabilitation services, and the request was denied because the petitioner does not appear to have the capacity to benefit from an intensive multidisciplinary inpatient rehabilitation admission. Her cognitive deficits are severe, and perhaps static.

8. According to Dr. Portee at the hearing, he was the second physician who agrees with the denial of the rehabilitation services for the petitioner. At the hearing, Dr. Portee explained the denial decision, asserting that the petitioner's condition is too severe for rehabilitation services. The petitioner's mother is appealing the denial of the rehabilitation services, asserting that the petitioner can benefit from it.

### CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Families and Children, 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 59G-4.160, addresses outpatient hospital services, and the Hospital Services Coverage and Limitations Handbook explains medical necessity. The petitioner was denied rehabilitation services, due to not meeting medical necessity. The physician that testified at the hearing agreed that the petitioner does not appear to have the capacity to benefit from an intensive multidisciplinary inpatient rehabilitation admission. Her cognitive deficits are severe, and perhaps static. At the hearing, the doctor explained the denial decision, asserting that the petitioner's condition is too severe for rehabilitation services.

In addition to the physician that testified at the hearing, another physician from Kepro agrees that the denial of the rehabilitation services for the petitioner was correct. Based upon the evidence, including the petitioner's diagnosis and medical condition, and

appropriate authorities, it is concluded that the Agency's action to deny rehabilitation services for the petitioner, is upheld.

**DECISION**

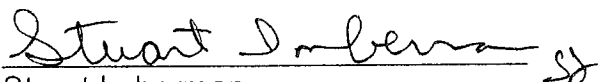
The appeal is denied, and the Agency's action is affirmed.

**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.

DONE and ORDERED this 20<sup>th</sup> day of October, 2009,

in Tallahassee, Florida.



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

Copies Furnished To

|  
|  
|