

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

FILED

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OFFICE OF APPEAL HEARINGS
DEPT OF CHILDREN & FAMILIES

APPEAL NO. 09F-05409

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 October 13, 2009, at 10:15 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented by his mother

The respondent was represented by Ken Hamblin, program operations administrator, and on the telephone Hazel Greenberg, program administrator; Diane LoCastro, registered nurse consultant; and Tobi Goodman, managed care unit director. Present from Children's Medical Services was Dr. Joselyn Matao, medical director; Mary Hooshmand, executive health nursing director; Carolyn Nall, registered nurse medical operations director; Kathy Sandy, nursing supervisor; Nicole Griffin, project manager; Anita Medina, social worker; and Jodie Wayne, care coordinator.

ISSUE

At issue is the Agency's August 4, 2009 action of reducing the petitioner's home health services from 20 hours daily 7 days per week to 19 hours daily effective August 23, 2009, then to 18 hours daily effective September 23, 2009, then to 17 hours daily effective October 23, 2009, and then to 16 hours daily effective November 23, 2009. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth _____ is nine years old. He receives home health services through the Medicaid Program.
2. Included in the evidence is a copy of a Children's Medical Services (CMS) notice dated August 4, 2009, stating that home health services for the petitioner has been reduced from 20 hours daily 7 days per week to 19 hours daily effective August 23, 2009, then to 18 hours daily effective September 23, 2009, then to 17 hours daily effective October 23, 2009, and then to 16 hours daily effective November 23, 2009.
3. Included in the evidence is a copy of a CMS Child Assessment & Plan Care Coordination Assessment form dated October 16, 2006. According to this assessment form, the petitioner has a diagnosis of convulsions, a mixed development disorder, and other congenital anomalies of the larynx, trachea, and bronchus.
4. The petitioner receives G-Tube feedings, and he takes nothing by mouth. He is incontinent of bladder and bowel, and wears diapers. He has a wheelchair, and in addition to receiving services through CMS, he receives Medicaid benefits, SSI benefits, and WIC benefits.

5. According to the individuals at the hearing from Children's Medical Services (CMS), including Dr. Medina, they agree with the reduction of the number of hours of the petitioner's home health care for the petitioner. According to Dr. Medina, the petitioner's mother has the ability to take care of him with the reduced home health care hours.

6. The petitioner's mother works part time in the evening selling flowers. It is the opinion of the individuals from CSM including Dr. Medina, that the petitioner's mother can care for him, in considering her working hours.

7. Also according to the individuals at the hearing from CMS, the petitioner can attend PPEC, which is a day care facility. The petitioner's mother's position is that he should not go to a PPEC facility.

8. Included in the evidence is a copy of a statement from Dr. Jose Birriel. It does not have a date on it, however according to the petitioner at the hearing, this statement was written on October 12, 2009. The doctor's recommendation is to provide the petitioner with 23 hours of daily home health care.

9. Included in the evidence from CMS is a statement dated August 31, 2009, stating that the petitioner was last seen by Dr. Birriel in October 2008.

10. Included in the evidence is a copy of a statement from Dr. Allen Furia, dated October 9, 2009. According to the doctor, the petitioner should receive 23 hours per day of home health care.

11. Included in the evidence is a copy of a statement from Dr. Edwin Liu, dated October 8, 2009, stating that the petitioner needs to maintain 23 hours of home health care. Included in the evidence is a copy of a statement faxed from Dr. Liu's office on

October 14, 2009, requesting to retract the letter from him dated October 8, 2009. He was last seen in that office on January 6, 2009.

12. The petitioner was receiving, and it was doctor ordered that he receive 20 hours daily 7 days per week of home health care. Previously in 2008, he was receiving 23 hours daily 7 days per week of home health care.

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.

Federal Regulations at 42 C.F.R. §440.230 states in part:

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

The Florida Medicaid Home Health Services Coverage and Limitation Handbook has been promulgated into rule in the Fla. Adm. Code 59G-4.130(2). Page 2-15 explains parental responsibility, and states in part:

Parental Responsibility. 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.

The Florida Medicaid Home Health Services Coverage and Limitations Handbook, July 2008, discusses the authorization process on page 2-19, and states in part:

Private duty nursing services are authorized by the Medicaid peer review organization if the services are determined to be medically necessary. Private duty nursing services will be decreased over time as parents and caregivers are taught skills to care for their child and are capable of safely providing that care or as the child's condition improves.

The petitioner's home health services was reduced from 20 hours daily 7 days per week to 19 hours daily effective August 23, 2009, then to 18 hours daily effective September 23, 2009, then to 17 hours daily effective October 23, 2009, and then to 16 hours daily effective November 23, 2009. According to the doctor from CMS that testified at the hearing, this action was correct.

The basis for the reduction by the respondent was essentially that while there is a demonstrated need for 24 hour home health care daily, the hours should be reduced to allow the parent to provide care to the fullest extent possible. As parents are taught skills necessary to provide for the care of their child, the home health care hours are reduced

over time. The evidence supports that the petitioner requires 24 hour home health care, and the treating physicians recommends that he receive 23 hour of daily care.

For the Medicaid Program to authorize and pay for the home health care, the required nursing care must meet the rule definition of medical necessity. The analysis must continue to determine if there are other parties that may be responsible for providing this care. Both the statute and the Florida Medicaid Handbook sets forth that the home health services are authorized to supplement care provided by parents, and the parent must participate in providing care to the fullest extent possible. The issue then rests on whether the parent can provide the care during the time period that the respondent has determined that they can.

To make that determination, the undersigned would look at the skill of the parent and the impact of other responsibilities in the household along with the services provided by both a skilled nursing service and a home health aide service. The rule sets forth that the request must be reflective of the level of service that can be safely furnished, and for which no equally effective more conservative or less costly treatment is available.

According to the individuals at the hearing from Children's Medical Services (CMS), including Dr. Medina, they agree with the reduction of the number of hours of the petitioner's home health care for the petitioner. According to Dr. Medina, the petitioner's mother has the ability to take care of him with the reduced home health care hours. The petitioner's mother works part time in the evening selling flowers, and as it was discussed at the hearing, it is the opinion of the individuals from CSM including Dr. Medina, that the petitioner's mother can care for him, in considering her working hours. The petitioner can also attend PPEC, which is a day care facility.

After careful consideration of the proper authorities and evidence, including the petitioner's diagnosis and condition, it is therefore determined that the action to decrease the petitioner's home health services from 20 hours daily 7 days per week to 19 hours daily effective August 23, 2009, then to 18 hours daily effective September 23, 2009, then to 17 hours daily effective October 23, 2009, and then to 16 hours daily effective November 23, 2009, is upheld.

DECISION

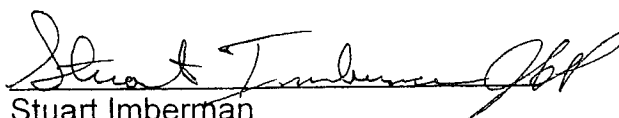
The appeal is denied, and the Agency's action is affirmed.

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.

DONE and ORDERED this 23rd day of November, 2009,

in Tallahassee, Florida.



Stuart Imberman
Hearing Officer
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Copies Furnished