

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

FILED

OCT 22 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-05758

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 October 1, 2009, at 1:55 p.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, . The Agency was represented by Jeffrey Douglas, operations program administrator, from the Agency For Health Care Administration (AHCA). Present as witness for the Agency, via the telephone, was Dr. Robert Anthony Buzzio, 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.

ISSUE

At issue is the Agency's action of September 2, 2009 to reduce or stop the petitioner's request for continued private duty nursing services to a total of 0 hours, for the

period of August 27, 2009 through February 22, 2010. The Agency has the burden of proof.

FINDINGS OF FACT

1. The petitioner, who is approximately two 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. 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 September 2, 2009, that the petitioner's request for continued private duty nursing was going to be denied/reduced for the period of August 27, 2009 through February 22, 2010 to 0 hours. The petitioner was previously receiving 24 hours a day of private duty nursing service. The petitioner requested a hearing and private duty nursing service benefits were restore to 24 hours a day.

3. 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; however, did not go through their previous reconsideration process, but reviewed this case prior to and during this hearing. After this review, the KePRO or Agency witness agreed and stipulated to restore all of the private duty nursing service for the petitioner except for four hours on Sundays. The petitioner agreed with this "stipulation".

CONCLUSIONS OF LAW

Fla. Admin. Code 59G-1.010 sets forth in part, the medical necessity definition that affects private duty nursing:

As shown in the Findings of Fact, initially, the Agency had determined on September 2, 2009, that the petitioner's request for continued private duty nursing was going to be denied/reduced for the period of August 27, 2009 through February 22, 2010 to 0 hours. The petitioner was receiving 24 hours a day of the private duty nursing previously. The Agency (KePRO); however, stipulated on record that the Agency will approve all of the private duty nursing except for four hours of this service on Sundays. The Agency also indicated that the petitioner's representative can "work out" a time with the home health agency (nursing provider) to schedule the nursing hours for Sundays. The petitioner's representative agreed with the above noted stipulation.

After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer orders the Agency, as per Agency stipulation and as per the petitioner's representative agreement, to provide the petitioner with 24 hours of private duty nursing for every day of the week except Sunday, which the hours will be 20 hours of the service, for the period of August 27, 2009 through February 22, 2010.

DECISION

This appeal is granted as stated 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.)

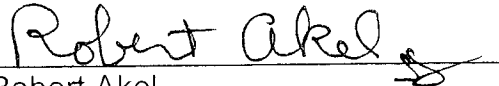
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Health Care Administration, 2727 Mahan Drive, Tallahassee, FL 32308-5403. The petitioner must also file another copy of the "Notice of Appeal" with the appropriate District Court of Appeal. The Notices must be filed within thirty (30) days of the date 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 22nd day of October, 2009,

in Tallahassee, Florida.



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

Copies Furnished To