

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

FILED

JAN 15 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-06566

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 December 16, 2009, at 11:05 a.m., in Miami, Florida. The petitioner was not present but was represented by her father,

Monica Otalora, senior human services program specialist, Agency for Health Care Administration (AHCA), represented the respondent. Witnesses for the respondent from Keystone Peer Review Organization (KePRO) were Dr. Rakesh Mittal, consulting physician, and Bonnie Wallington, nurse review supervisor. Denis Torrez from AHCA was present as an observer. This hearing was originally scheduled for November 12, 2009, but was continued at the request of the respondent. The hearing was rescheduled for November 18, 2009 and was also continued at the request of the petitioner.

ISSUE

At issue is the respondent's action of September 8, 2009, to deny the petitioner 100 hours of Home Health Aid (HHA) services, for the period of July 1, 2009 to December 27, 2009. The petitioner had the burden of proof.

FINDINGS OF FACT

1. The petitioner was 16 years old at the time of the review and is a Medicaid beneficiary in the state of Florida. The petitioner's diagnosis as reported to the agency is cerebral palsy. She needs assistance with her activities of daily living.
2. The petitioner lives with and receives care from her father, . He is in the Workforce program from 8:00 a.m. to 5:00 p.m. Monday to Friday.
3. KePRO is the Peer Review Organization contracted by AHCA to perform medical review for the private nursing and personal care prior authorization program for Medicaid beneficiaries in the state of Florida.
4. On June 26, 2009, Maxim Healthcare Services Inc., as the provider, submitted a request for 1,118 hours of HHA services from 8:00 a.m. to 8:00 p.m. Monday to Friday school holidays, from 3:00 p.m. to 8:00 p.m. Monday to Friday school days and four hours each Saturday and Sunday.
5. The petitioner was approved to receive 1,018 hours of HHA services from 8:00 a.m. to 8:00 p.m. school holidays, from 3:00 p.m. to 8:00 p.m. Monday to Friday school days and four hours either Saturday or Sunday for the

certification period July 1, 2009 to December 27, 2009. KePRO only approved four hours a week, on either Saturday or Sunday, but not both.

6. At the hearing the [redacted] stated that he is satisfied with the hours that have been approved. However, he proposed reducing the weekly hours by half hour every day so he could have HHA on both weekend days to assist his daughter with personal care and feminine hygiene.

7. Dr. Mittal explained to [redacted] that he can use the approved hours in any which way he wants, so he agrees with that proposal.

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 Florida Statute, Chapter 120.80.

Fla. Admin. Code 59G-1.010 *definitions* 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.

The Home Health Services Coverage and Limitations Handbook (July 2008), page 2-2 states in part:

The recipient must meet the following requirements:
Require services that are medically necessary and reasonable for the treatment of the documented illness, injury or condition...

In the case at hand, the provider requested 1,118 hours of HHA from 8:00 a.m. to 8:00 p.m. Monday to Friday school holidays, from 3:00 p.m. to 8:00 p.m. Monday to Friday school days and four hours each Saturday and Sunday. KePRO approved 1,018 hours of HHA, from 8:00 a.m. to 8:00 p.m. school holidays, from 3:00 p.m. to 8:00 p.m. Monday to Friday school days and 4 hrs either Saturday or Sunday, for the certification period July 1, 2009 to December 27, 2009. KePRO only approved four hours a week, on either Saturday or Sunday, but not both. The petitioner's representative is not disputing KePRO's decision, but he proposed a reduction of half an hour during the week days to receive HHA services on Saturdays and Sundays. The respondent agrees with this proposal, so does the hearing officer.

DECISION

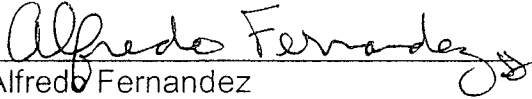
The appeal is denied and the respondent's action is affirmed.

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 15th day of January 2010,
in Tallahassee, Florida.


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

Copies Furnished To