

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-06773

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 20 Lee
UNIT: AHCA

RESPONDENT.

_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on December 18, 2009, at 1:20 p.m., in Ft. Myers, Florida. The petitioner was not present. He was represented by his mother,

Witnesses for the petitioner were _____, home health aide; _____, social worker, and _____ social worker. The respondent was represented by Pat Brooks, Program Operations Administrator. Witnesses for the respondent from Keystone Peer Review Organization (KePRO) were Robert Buzzeo, M.D., physician reviewer, and Bonnie Wallington, registered nurse review operations specialist.

ISSUE

The petitioner is appealing the respondent's action to deny 368 hours of home health aide services for the period of September 27, 2009 through March 25, 2010. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is twelve years old. The petitioner diagnosis is autism, severe constipation and attention deficit disorder. The petitioner has a cognitive deficit. The petitioner is non-verbal and incontinent. When he is in pain, he hits himself. The petitioner will eat anything, including non-food items and is at risk for choking and aspiration. The petitioner will wander off if he is not constantly watched. He had a tracking bracelet but he chewed it off. He does not sleep for more than two hours at a time. Due to his incontinence, he requires diaper changes and extra bathing. The petitioner attends school. On the days he attends school, he leaves at 6:30 a.m. and returns between 2:30 p.m. and 3:30 p.m. The petitioner resides with his mother, two siblings and the mother's fiancé. His siblings are ages nine and six years old.

2. The petitioner's mother is trained in the petitioner's care and is the petitioner's primary caregiver. The nursing agency reported that the mother works from 8:00 a.m. to 4:30 p.m. The mother attested that she leaves at 6:30 a.m., works from 8:00 a.m. to 3:00 p.m. and returns at 4:00 p.m. The petitioner's nine year old sibling has asthma and spastic bladder. The six year old sibling has a brain cyst, asthma, allergies, hip displacement and sleep apnea with inability to sleep. The fiancé will give the children medications. Occasionally, he will provide primary care for the petitioner's siblings when the mother is not home. The mother's fiancé is not trained in the petitioner's care. He attends school full-time at night. He does participate in the petitioner's care.

3. Prior authorization for home health aid services is reviewed every 180 days. KePRO is the contract provider for the respondent for the prior authorization decisions for home health aid services. The request for home health aid services is reviewed by a nurse reviewer and a physician consultant.

4. The petitioner was receiving home health aid services in the previous certification. The nursing agency requested home health aid services for the petitioner for the period of September 27, 2009 through March 25, 2010. The hours requested were 2:00 p.m. to 6:30 a.m. Mondays through Fridays, 7:00 a.m. to 5:30 p.m. on non-school days and thirteen hours a day on Saturdays and Sundays. The petitioner's home health agency submitted the information pertaining to the petitioner to KePRO through an internet program. This information is generated to the computer for review by KePRO from the information entered by the petitioner's home health agency via computer. This exchange of computer information is referred to as I-Exchange. The information provided by the home health agency is converted into a document called the Internal Focus Finding. The nursing agency submitted information of the petitioner's diagnoses, services provided, family situation and synopsis of care.

5. The initial nurse reviewer screened the petitioner's request for home health aide services using the Internal Focus Finding. The Internal Focus Finding provides information to KePRO of case identifiers and additional information regarding the petitioner. This information is generated to the computer for review by KePRO from the information entered by the petitioner's home health agency via computer.

6. The initial physician consultant determination was based on the information received from the nursing agency. The initial physician consultant approved the hours 2:00 p.m. to 7:30 p.m. and 11:00 p.m. to 6:30 a.m. Mondays through Fridays, 7:00 a.m. to 5:30 p.m. on non-school days and 8:00 a.m. to 1:00 p.m. on Saturdays and Sundays. A PDN/PC Recipient Denial Letter was sent to the petitioner on September 23, 2009. The notice informed the petitioner that for the requested 2,270 hours of home health aid services for the period of September 27, 2009 through March 25, 2010, 1,882 hours were approved and 388 hours were denied.

7. The nursing agency requested a reconsideration. The nursing agency provided additional information. The nursing agency requested a modification to add 32 additional hours on Saturdays on the basis that one of the petitioner's siblings is in need of nebulizer treatments and antibiotics for an illness for a two week period.

8. The reconsideration was reviewed by a second physician consultant. The second physician consultant recommended the hours of 2:00 p.m. to 7:30 p.m. and 11:00 p.m. to 6:30 a.m. Mondays through Fridays, 7:00 a.m. to 5:30 p.m. on non-school days and 8:00 a.m. to 1:00 p.m. on Saturdays and Sundays. Also approved was an additional 32 hours on Saturdays and Sundays from 8:00 a.m. to 9:00 p.m. from September 28, 2009 through October 11, 2009. The respondent sent a PDN/PC Recipient Reconsideration - Denial Upheld notice on October 1, 2009. The notice informed the petitioner that for the requested 2,282

hours of home health aid services for the period of September 27, 2009 through March 25, 2010, 1,914 hours were approved and 368 hours were denied.

9. The petitioner's mother, social services worker and home health aide all attested that the home health aid services are necessary to prevent injury to the petitioner and are for his safety. The petitioner must be constantly watched for choking, aspiration and elopement risks. As the petitioner is incontinent, he needs changing and bathing. The home health aide attested that she bathes him every day in the afternoon, dresses, cooks and feeds him lunch, dinner and snacks and does his laundry. The mother is requesting home health aid services from 2:00 p.m. to 10 p.m. and 11:00 p.m. to 6:30 a.m. Mondays through Fridays and 7:00 a.m. to 7:00 p.m. and 11:00 p.m. to 7:00 a.m. on Saturdays and Sundays.

10. KePRO stated that home health aid services cannot be provided as baby-sitting services. KePRO recommended that the petitioner apply for other services. The recommended behavioral health services or community mental health programs and application with Agency for Persons with Disabilities. The petitioner has applied and is on the waiting list with Agency for Persons with Disabilities.

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. The Florida Medicaid Program is authorized by

Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code.

The Program is administered by the Agency for Health Care Administration.

Although the term medically necessary may be used in a variety of context, at issue is whether or not medical necessity as defined in Medicaid rules was demonstrated for the requested home health aide services. Florida

Administrative Code 59.G-1.010, "Definitions", states for medical necessity:

(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; and
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.

The Home Health Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2). The

Home Health Services Coverage and Limitation Handbook on page 2-15

"Parental Responsibility", states:

...services are authorized to *supplement* care provided by parents and caregivers. Parents and caregivers must participate in providing care to the fullest extent possible... (emphasis added)

The handbook on page 2-19 states:

...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 Home Health Services Coverage and Limitation Handbook under Licensed Nurse and Home Health Aide Visit Services, on page 2-15 "Home Health Aide Services", states:

Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury...

For certification of September 27, 2009 through March 25, 2010:

For Mondays through Fridays

The mother requested
2:00 p.m. to 10 p.m.
and 11:00 p.m. to 6:30 a.m.

The respondent authorized
2:00 p.m. to 7:30 p.m.(school)
and 11:00 p.m. to 6:30 a.m.
7:00 a.m. to 5:30 p.m.(no school)

For Saturdays and Sundays

The mother requested
7:00 a.m. to 7:00 p.m.
and 11:00 p.m. to 7:00 a.m.

The respondent authorized
8:00 a.m. to 1:00 p.m.

The basis for the reduction by the respondent was essentially that while there is a demonstrated need for home health aide services, the hours should be reduced to allow for the mother to provide care to the fullest extent possible. The hearing officer considered all evidence submitted at the hearing and reviewed all conditions for medical necessity as set forth the rules of the Program.

The petitioner requires close monitoring and supervision to prevent aspiration and elopement and provide care for the petitioner with changing diapers, bathing and dressing. The evidence demonstrates that the petitioner is in need of services. The evidence clearly supports that the mother needs assistance with providing care for the petitioner. For the Medicaid Program to authorize and pay for home health aid services to meet this need, the required home health aid services 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 benefit other than paid for by the State. The handbook sets forth services are authorized to *supplement* care provided by parents and parents must participate in providing care to the fullest extent possible. The mother would be responsible to provide care to the petitioner to the fullest extent possible. The issue then rests on whether the mother can provide the services during the time period that the respondent has determined that they should. We must look at the skill of the mother and the impact of other responsibilities in the household.

The hearing officer considered the mother's ability to provide care to the petitioner. The mother is trained in the petitioner's care. The mother has the responsibility of the petitioner's two younger siblings. The two siblings have medical issues that require the mother's assistance. The hearing officer concludes that the mother would need to have assistance to care for the petitioner so she could attend to the medical issues of the petitioner's siblings.

The mother works. The petitioner does not sleep through the night and is up every two hours. The hearing officer concludes that the mother should be allowed assistance to care for the petitioner so that the mother can go work and get eight hours of rest time. The petitioner attends school. He leaves at 6:30 a.m. and returns between 2:30 p.m. and 3:30 p.m. This indicates that home health aide services would be needed from at least 2:30 p.m. on school days Mondays through Fridays when the mother is working. The hours as requested by the mother are in excess of medical necessity. The hours approved by the respondent do not provide for the mother to attend to the needs of the petitioner's sick siblings or allow the mother eight hours for rest. The hearing officer concludes that the mother could provide care for the petitioner

For Mondays through Fridays
7:30 p.m. to 10:30 p.m.

For Saturdays and Sundays
2:30 p.m. to 10:30 p.m.

The hearing officer concludes that the hours that would be approved for home health aide services would be:

For Mondays through Fridays when the petitioner is in school:
2:30 p.m. to 7:30 p.m.
and 10:30 p.m. to 6:30 a.m.

For Mondays through Fridays when the petitioner is not in school
and the mother is working:
6:30 a.m. to 7:30 p.m.
and 10:30 p.m. to 6:30 a.m.

For Saturdays and Sundays
06:30 a.m. to 2:30 p.m.
and 10:30 p.m. to 6:30 a.m.

DECISION

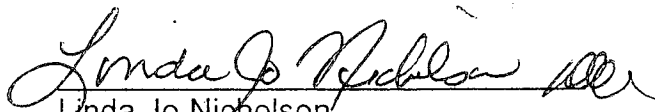
This appeal is found as set forth in the Conclusions of Law.

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 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 3rd day of February 2010,

in Tallahassee, Florida.



Linda Jo Nicholson
Hearing Officer
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Copies Furnished To