

FILED

JAN 05 2010

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-06854

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 November 17, 2009, at 10:05 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented on the telephone by his grandmother. The respondent was represented by Ken Hamblin, program operations administrator. Present from Kepro on the telephone was Dr. Robert Buzzio medical director, and Bonnie Wallington, nurse review supervisor.

ISSUE

At issue is the Agency's September 30, 2009 action of approving the petitioner's skilled home nursing services for 2,784 hours, and denying 312 hours from September 10, 2009 to March 8, 2010. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth .', is 16 years old, and he receives skilled home nursing services through the Medicaid Program.
2. Included in the evidence is a copy of a Recipient Denial Letter that is dated September 17, 2009, stating that skilled home nursing services for the petitioner was approved for 2,476 hours, and denied for 620 hours from September 10, 2009 to March 8, 2010.
3. Included in the evidence is a copy of a Recipient Reconsideration Denial Overturned notice dated September 30, 2009, stating that upon reconsideration skilled home nursing services for the petitioner was approved for 2,784 hours, and denied for 312 hours from September 10, 2009 to March 8, 2010.
4. The petitioner was originally approved for skilled home nursing services for Mondays through Wednesdays from 11:00 p.m. to 7:00 a.m., Thursdays 7:00 p.m. to 7:00 a.m., and Fridays through Sundays 18 hours per day. He was denied for 12 hours per day on Mondays through Thursdays, and 24 hours per day for Fridays through Sundays.
5. The petitioner was approved for skilled home nursing services upon reconsideration for 12 hours from 7:00 p.m. to 7:00 a.m. on Mondays through Thursdays, and 20 hours per day on Fridays through Sundays. He was denied for 4 hours per day on Fridays through Sundays.
6. Included in the evidence is a copy of a Kepro Internal Focus Review Findings Report on the petitioner dated September 11, 2009, stating that he was diagnosed with birth asphyxia, cerebral palsy, and seizures.

7. Included in the evidence is a copy of a Synopsis of Case on the petitioner dated September 11, 2009, stating that a physician consultant, board certified in pediatrics, determined that the approval of skilled home nursing services 12 hours from 7:00 p.m. to 7:00 a.m. on Mondays through Thursdays, and 20 hours per day on Fridays through Sundays, and the denial for 4 hours per day on Fridays through Sundays, is correct. This takes into account the petitioner's caretaker's ability and availability to take care of him.

8. According to Dr. Buzzeo at the hearing, the petitioner's work hours were taken into consideration. He agrees with the approval of skilled home nursing services for 12 hours per day on Mondays through Thursdays, and 20 hours per day on Fridays through Sundays, and the denial for 4 hours per day on Fridays through Sundays.

9. The petitioner's grandmother works as an entertainer on nights and weekends, and there is one other minor child, the petitioner's grandson, in the household.

10. According to the petitioner's grandmother at the hearing, as his caretaker, she has taken care of him by changing his tracheotomy and gastrostomy tube for as long as nine months without the help of any nurses.

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 Limitations Handbook has been promulgated into rule in the Fla. Admin. Code 59G-4.130(2). Page 2-15 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.

Skilled home nursing services of 2,784 hours were approved, and 312 hours were denied for the petitioner for September 10, 2009 to March 8, 2010. This is an approval of 12 hours per day from Mondays through Thursdays, and 20 hours per day on Fridays through Sundays, and a denial of 4 hours per day on Fridays through Sundays, of skilled home nursing services for the petitioner.

The basis for the denial by the respondent was essentially that while there is a demonstrated need for 24 hour home health care daily, the hours were denied to allow the caretaker to provide care to the fullest extent possible. As caretakers are taught skills necessary to provide for the care of the child, the skilled home nursing care hours are reduced over time. The evidence supports that the petitioner requires 24 hour home health 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 caretaker, and the caretaker must participate in providing care to the fullest extent possible. The issue then rests on whether the caretaker 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 caretaker and the impact of other responsibilities in the household along with the services provided

by a skilled nursing 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 doctor that testified at the hearing, he agrees with the denial of 4 hours per day on Fridays through Sundays, of the petitioner's home skilled nursing care. According to the doctor, the petitioner's caretaker has the ability to take care of him with the denied home skilled nursing hours. After careful consideration of the proper authorities and evidence, including the petitioner's diagnosis and condition, it is determined that the action to approve the petitioner for skilled home nursing services for 2,784 hours, which is 12 hours per day on Mondays through Thursdays, and 20 hours per day on Fridays through Sundays, and denying him for 312, which is 4 hours per day on Fridays through Sundays from September 10, 2009 to March 8, 2010, is upheld.

DECISION

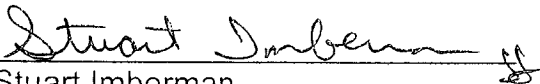
The appeal is denied, and the Agency's action is affirmed.

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 5th day of January, 2010,

in Tallahassee, Florida.



Stuart Imberman

Hearing Officer

Building 5, Room 255

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Tallahassee, FL 32399-0700

850-488-1429

Copies Furnished To