

FILED

JAN 06 2010

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07168
09F-07169

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 9, 2009, at 2:30 p.m., by telephone conference. The petitioners were not present. Representing the petitioners was _____, petitioners' mother. The agency was represented by Monica Otalora, senior human services program analyst, Agency for Health Care Administration (AHCA). Also present as witnesses for the agency from Keystone Peer Review Organization (KePRO), were Dr. Robert A. Buzzeo, physician reviewer, and Melanie Clyatt, registered nurse review operations supervisor.

ISSUE

At issue are the agency's actions of October 15, 2009, to deny the petitioners' request for Home Health Aid (HHA) services for period of July 8,

2009 through January 3, 2010, because the medical care as described to them is not medically necessary. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioners _____, age five, and _____, age six, are siblings who have been diagnosed with bilateral deafness since birth. Both received a cochlear implant in May 2004.

2. The petitioner's mother is the sole provider for the two children. Her husband is incarcerated. She currently works at a restaurant on the weekends from 6 am to 9 pm. She also works as a security guard from 3 pm to 11 pm Monday to Friday. The children go to school from 7 am to 2:15 pm. The children's paternal grand aunt helps her with the children.

3. In July 2009, Maxim Healthcare Services, as the provider, submitted a request on behalf of the petitioners for 1,750 hours of HHA hrs. Mon-Fri 2:30 to 11:30 pm, Sat/Sun 7 am to 7:30 pm., for the period of July 8, 2009 to January 3, 2010.

4. 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.

5. On or about August 13, 2009 KePRO approved 1,750 hours of HHA for _____ but during a reconsideration review on October 13, 2009, a correction was made.

6. KePRO concluded that the clinical and social information submitted by the provider on both siblings does not support the use of a HHA as stated in the Home Services Coverage and Limitations Handbook.

7. On October 15, 2009, notices were sent to the petitioners. The notices denied all hours of HHA because KePRO determined that the medical care as described to them is not medically necessary.

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 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 2-22 states in part:

Personal Care Services Definition

Person care services are to provide medically necessary assistance with activities of daily living that support a recipient's medical care needs.

Personal Care Services Requirements

Personal care services must be:

- Documented as medically necessary;
- Prescribed by the attending physician;
- Supervised by a registered nurse;
- Provided by a home health aide;
- Consistent with the physician approved plan of care; and
- Prior authorized prior to providing services.

The agency, through KePRO, took action on October 15, 2009 to deny all hours of HHA services for the period of July 8, 2009 through January 3, 2010.

The agency argues that the previous approval of HHA hours for both petitioners was incorrect. The agency argues that there is no indication on both of these cases on any medical necessity need for HHA services and that basically what the children need is some one to watch them at home.

The petitioners' representative stated that she understood the agency's explanation and is not longer disputing their actions.

After considering the evidence, the Florida Administrative Code Rules and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the agency's action of October 15, 2009, to deny all hours of HHA services for the period of July 8, 2009 through January 3, 2010

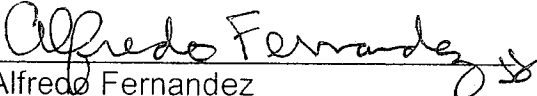
DECISION

The appeal is denied 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 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 6th 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