

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

FILED

FEB 16 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07175

PETITIONER,

Vs.

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

RESPONDENT.

FINAL ORDER

Per notice, a hearing was held before the undersigned hearing officer on January 7, 2010, at 9:41 a.m. All the parties were present by telephone. The minor petitioner was not present. The petitioner's mother, represented the petitioner and testified. Pat Brooks, program operations administrator with the Agency For Health Care Administration (AHCA), represented the respondent and testified. Two persons with KePRO appeared as witnesses: Bonnie Wallington, nursing review supervisor, and Dr. Robert A. Buzzeo, physician reviewer.

The hearing record was held open for an additional ten-day period to permit an opportunity for the respondent to submit an excerpt from page 10 of a Respondent handbook. On January 8, 2010, this excerpt was received and labeled Respondent Exhibit 3. On the day after the hearing, January 8, 2010, the

petitioner called this hearing office to request to hold the hearing in person. The petitioner did not make this request for an in-person hearing during the hearing held on January 7, 2010 and all testimony was entered into the record. The petitioner's later request for an in-person hearing is denied as the record was only left open for the submission of agency rules.

ISSUE

At issue is the respondent's decision of October 9, 2009 to terminate Home Health Aide (HHA) hours paid by Medicaid. The respondent previously paid for 2710 quarter hours of HHA care. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is 11 years old and has a primary diagnosis of autism. The petitioner also has aggressive behaviors, mental retardation, and is non-verbal. There is no sibling or father in the home. The petitioner's mother is his primary caregiver.
2. The petitioner's mother was employed at McDonald's restaurant until November 15, 2009. The petitioner's mother was not employed from November 15, 2009 until at least the time of the hearing.
3. The respondent received and reviewed a request to approve HHA hours from 3:00 p.m. to 7:00 a.m., Monday through Friday, 24 hours daily on non-school days, and 12:00 p.m. to 7:00 a.m. on half-day school days. The respondent also received a request for HHA services from 12:00 p.m. to 7:00 a.m. on Saturdays. On September

16, 2009, the respondent sent notice to petitioner that all requested HHA hours for the petitioner had terminated based on the respondent conclusion of no medical necessity. The termination action was upheld by the respondent upon later request for reconsideration per notice dated October 9, 2009.

4. The respondent KePRO reviewing physician decided to terminate continued HHA hours in the belief that the petitioner's mother and caregiver was working. The petitioner's mother is no longer employed. The petitioner's mother understood from the nursing agency that she had to be either employed or in school to justify the need for HHA hours.
5. A treating neurologist, Dr. _____, believes the petitioner needs the assistance of a HHA due to his difficult behaviors, when his mother is with him. Dr. _____ believes the petitioner is totally dependent on his caretaker for all aspects of daily living to include meals, medication administration, bathing and constant supervision.
6. The reviewing KePRO physician, Dr. Robert A Buzzeo, assumes that Dr. _____ is not aware of the rules and regulations on the defined medical necessity of HHA services. Dr. Buzzeo does not believe that the petitioner's condition meets the definition of medically necessary HHA services. Dr. Buzzeo believes that it is not the function of an HHA for child sitting, observation, and prevention of problem behaviors. He believes that the petitioner's need for help

with bathing and bathroom functions may be provided by another agency. For these reasons, Dr. Buzzeo does not believe that the petitioner needs for care meets medical necessity criteria to receive continued HHA services.

7. The petitioner's mother is generally able to provide care for the petitioner when she is not working, per her testimony. His mother expressed concern with his problem behaviors. The respondent refers the petitioner to State of Florida Agency For Persons with Disabilities (APD) or other community mental health sources, if any, to help with problem behaviors. The petitioner's mother believes that her child will be placed in a mental hospital if help with his behaviors can not be found.
8. At the hearing, the respondent asserts that the intended termination of HHA hours is to occur by a sequence of reductions. This evaluation of the need for the HHA hours at issue is for the certification period of September 9, 2009 through March 7, 2010. KePRO intends to reduce prior approved HHA hours by 5 hours per week during the first 30 days of the certification period, then again by another 5 hours during the second 30 day period until the hours are terminated at the end of the current certification period.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Children and Families, 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.

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 respondent disputes the assertion that the petitioner's condition and need for services meets the above definition of medically

necessary HHA services. Florida Medicaid Home Health Services

Coverage and Limitations Handbook, July 2008 at 2-15 states:

Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

Assisting with the change of a colostomy bag;

Assisting with transfer or ambulation;

Reinforcing a dressing;

Assisting the individual with prescribed range of motion exercises that have been taught by the RN;

Assisting with an ice cap or collar;

Conducting urine test for sugar, acetone or albumin;

Measuring and preparing special diets;

Providing oral hygiene;

Bathing and skin care; and

Assisting with self-administered medication.

Home health aides must not perform any services that require the direct care skills of a licensed nurse.

The petitioner's mother is able to provide care for the petitioner except when she is working. The petitioner's mother seeks HHA services to primarily address problem behaviors. Behavioral services are not included under the function of HHA services. The respondent is correct to refer the petitioner to the Agency For Persons with disabilities for any available assistance with problem behaviors.

The petitioner's treating neurologist believes that the petitioner needs the assistance of HHA services. This opinion of the treating neurologist is given considerable and substantial weight to evaluate the medical necessity of the requested HHA services. The neurologist was requesting HHA services because he believes the petitioner needs assistance with activities of daily living (ADL's) due to behavioral problems. However, HHA services are not provided to assist

with problem behaviors. Further, the petitioner's mother testified that she is able to provide care to the petitioner when she is available. The petitioner's mother testified that she needs help to address the problem behaviors. Thus, there is good cause to conclude that the reviewing KePRO physician's testimony on the proper function of HHA services overcomes the customary weight given the treating physician's opinion on the need for HHA hours.

The petitioner's mother and caregiver is able to provide needed care to the petitioner. The language of the cited "Home Health Services Coverage and Limitations Handbook," on page 2-15, shows that parents and caregivers must participate in care "to the fullest extent possible," as in the following excerpt:

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. Training can be offered to parents and caregivers to enable them to provide care they can safely render.

In sum, it is concluded that the respondent decision to decrease HHA services by five hours a day per month is correct. This gradual decrease will allow for the petitioner's caregiver to take on her responsibility as caregiver. The respondent has agreed to review any future need for care, if the petitioner later requests such. The respondent has met its burden to justify the termination of HHA hours for the petitioner.

DECISION

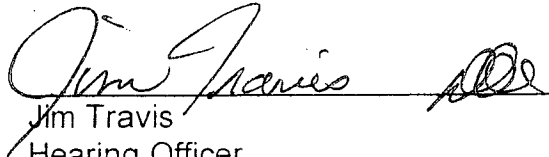
This appeal is denied.

NOTICE OF RIGHT TO APPEAL

This decision is final and binding on the part of the Department. 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 First District Court of Appeal in Tallahassee, Florida, or with the District Court of Appeal in the district where the party resides. 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 Department has no funds to assist in this review, and any financial obligations incurred will be the petitioner's responsibility.

DONE AND ORDERED this 16th day of February, 2010,

in Tallahassee, Florida.



Jim Travis
Hearing Officer
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Tallahassee, FL 32399-0700
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Copies Furnished T