

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

FILED
JAN 20 2010
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07293

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 13 Hillsborough
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Per notice, a hearing was held by telephone before the undersigned hearing officer on December 18, 2009, at 9:35 a.m., in Tampa, Florida. All the parties appeared by telephone. The petitioner was represented by his mother, who also testified. Alfreda J. Grady, support coordinator for the Agency For Persons with Disabilities (APD), appeared as a witness for the petitioner. David Beaven, program analyst with the Agency For Health Care Administration (AHCA), represented the respondent and testified.

Two persons with KePRO appeared as witnesses for the respondent by telephone: Bonnie Wallington, nursing review supervisor, and Dr. Robert A. Buzzeo, physician reviewer. The hearing record was held open for a ten-day period to allow for the submission of additional evidence from the petitioner's

support coordinator. This evidence was received on December 18, 2009 and labeled Petitioner Exhibit 1.

ISSUE

At issue is the respondent's decision of October 19, 2009 to reduce the amount of private duty nursing (PDN) hours paid by Medicaid to 22 hours daily, 7 days weekly. The petitioner was previously approved for PDN hours 24 hours daily, seven days (24/7) weekly. The respondent requests continued 24/7 PDN hours. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is 17 years old. The petitioner lives with and receives care from his mother. His mother is a single parent. There are two other siblings in the home, ages 5 and 6.
2. The petitioner has diagnoses to include respiratory failure, urinary retention, seizures, scoliosis, and quadriplegia. Services performed by private duty nursing have included medication administration, teaching, performing wound care, tube feedings and care, bowel program, aspiration precautions, seizure precautions, and tracheostomy care.
3. The current certification period for PDN hours is October 5, 2009 to April 2, 2010. In the prior certification period, the petitioner received approved 24/7 weekly PDN hours. On October 1, 2009, the contracted KePRO reviewer sent notice to reduce PDN hours for the current certification period. Upon request for reconsideration on October 19, 2009, KePRO reduced approved PDN hours to 22 hours daily, seven

- days weekly. This reduction was to occur after a thirty-day period to allow for additional training to the caregiver. The petitioner seeks continued 24/7 weekly PDN hours.
4. The nursing provider provides information to the KePRO reviewer on the petitioner's care needs through a computer internet exchange. It is not disputed that the petitioner is in need of constant nursing care in view of his medical condition. In the request for reconsideration dated October 8, 2009, the nursing provider indicates that the petitioner's care is rendered following an ongoing nursing process of assessment, analysis, planning, implementation, and evaluation. The nursing provider believes that the only safe and effective way to provide for the petitioner's complex care needs is by a skilled nurse. The nursing provider believes that the skills needed to provide care to the petitioner are outside the caregiver's abilities.
 5. Upon reconsideration on October 17, 2009, KePRO approved continuation of 24/7 PDN for a thirty-day period to allow time for a comprehensive teaching and training effort on the petitioner's care needs. The petitioner has received 24/7 PDN hours for the last approximate 9 years. The petitioner's mother believes it is too hard to provide care to the petitioner, but she has provided care to the petitioner when nurses were not available. The petitioner's mother provided care to the petitioner at the time of the hearing until the nurse was expected to arrive at 7:00 p.m.

6. Petitioner's mother asserted that she is unable to administer some of the medication due to need to monitor blood pressure after the medication has been given. However, the nighttime medication can be given by the evening nurses. Upon review of the cumulative evidence, the petitioner's mother is capable to provide needed care for the petitioner for limited periods, even though she is more comfortable with continued 24/7 nursing care.
7. The petitioner's mother works full-time at . She works five days weekly, but her hours and two days off vary during the week. She begins work no earlier than 7:00 a.m., and leaves from work no later than 7:30 p.m on each day she is assigned to work.

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.

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.

There is no dispute that the petitioner's care needs are complex and continuously needed. It was established that the petitioner requires 24 hour daily nursing services. Although there is a need for 24 hour a day nursing services, the statute does not require for this service to be provided by private duty nursing services.

Determination of the number of hours of private duty nursing must also include an assessment of family needs and family supports. Florida Statute 409.905 states in pertinent parts:

(4) HOME HEALTH CARE SERVICES

b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services, an individualized treatment plan that includes information about

medication and treatment orders, treatment goals, methods of care to be used, and plans for care coordination by nurses and other health professionals. The utilization management program shall also include a process for periodically reviewing the ongoing use of private duty nursing services. The assessment of need shall be based on a child's condition, family support and care supplements, a family's ability to provide care, and a family's and child's schedule regarding work, school, sleep, and care for other family dependents...

The statute language was implemented in the "Home Health Services Coverage and Limitations Handbook," on page 2-15. This section requires parents and caregivers to participate in care "to the fullest extent possible".

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.

The basis for the reduction by the respondent was while medical necessity was demonstrated for skilled nursing services 24 hours daily, the hours should be reduced to allow for the caregiver to provide care to the fullest extent possible. The respondent determined that the reduction should only be for two hours daily at the petitioner's choice. The mother has been trained in the care. Those duties that she stated that she is unable to do are done during the times the nurse is in the home.

In sum, the evidence shows that the petitioner's medical needs do require constant care. The petitioner's mother is capable of safely providing this care for the two hours a day. The mother is available to provide this care after work hours and on the two days when she is off work. Based on a review of the cumulative evidence, the respondent's action to reduce approved PDN hours by

the two hour daily amount at issue is correct. If the petitioner's and/or his caregiver's circumstances change to warrant a request for an increase in PDN hours, the petitioner may request such hours at a future time.

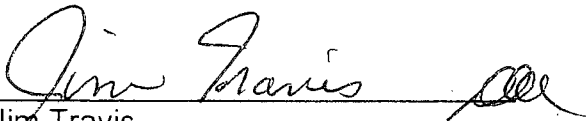
DECISION

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

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 20th day of January, 2010,
in Tallahassee, Florida.



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

Copies Furnished To