

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

FILED

JAN 06 2010

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07360

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 December 23, 2009, at 12:50 p.m., in Fort Lauderdale, Florida. The petitioner was not present. She was represented by her mother

The respondent was represented by Ken Hamblin, program operations administrator. Present from Kepro on the telephone was Dr. Robert Buzzeo, medical director, and Bonnie Wallington, nurse review operations supervisor.

**ISSUE**

At issue is the Agency's October 5, 2009 action of denying the petitioner's skilled home nursing services for 1,560 hours from September 21, 2009 to March 19, 2010. The petitioner has the burden of proof.

**FINDINGS OF FACT**

1. The petitioner, date of birth November 26, 2008, is one year old, and included in the evidence is a copy of a Recipient Denial Letter dated October 5, 2009, stating that skilled home nursing services for her was denied for 1,560 hours from September 21, 2009 to March 19, 2010.
2. Included in the evidence is a copy of a Recipient Reconsideration Denial Upheld notice dated October 20, 2009, stating that upon reconsideration, the skilled home nursing services that was denied for the petitioner for 1,560 hours from September 21, 2009 to March 19, 2010, was upheld.
3. The petitioner was denied for skilled home nursing services for 12 hours per day 5 times per week on Mondays through Fridays from September 21, 2009 to March 19, 2009.
4. Included in the evidence is a copy of a Kepro Internal Focus Review Findings Report on the petitioner dated September 25, 2009, stating that he was born prematurely, and he was diagnosed with anemia, alkalosis, and electrolyte imbalance.
5. Included in the evidence is a copy of a Synopsis of Case on the petitioner dated September 25, 2009, stating that a physician consultant, board certified in pediatrics, determined that the denial of skilled home nursing services for 12 hours per day 5 times per week on Mondays through Fridays, is correct. This takes into account the petitioner's caretaker's ability and availability to take care of her.
6. Included in the evidence is a copy of a Synopsis of Case on the petitioner dated September 25, 2009, stating that a second physician consultant, board certified in pediatrics, determined that the denial of skilled home nursing services for 12 hours per day 5 times per week on Mondays through Fridays, was upheld.

7. According to the Synopsis of Case, the petitioner's father works Mondays through Fridays from 7:00 a.m. to 7:00 p.m., and his mother is not employed. Also in the household is the petitioner's four year old sibling.
8. According to Dr. Buzzeo at the hearing, the petitioner's parent's availability was taken into consideration. He agrees with the Kepro determination of the denial of the skilled home nursing services for the petitioner, because it is not medically necessary.
9. According to the petitioner's mother at the hearing, she needs the help of skilled nursing services to due to the petitioner's condition.

#### **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 1,560 hours were denied for the petitioner from September 21, 2009 to March 19, 2010. This is a denial of skilled home nursing services of 12 hours per day 5 times per week on Mondays through Fridays. The basis for the denial by the respondent was essentially that while there is a demonstrated need for

home care, the skilled home nursing services were denied to allow the caretaker to provide care to the fullest extent possible.

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 the caretakers, and the caretakers must participate in providing care to the fullest extent possible. The issue then rests on whether the caretakers can provide the care for the petitioner.

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 skilled home nursing services for the petitioner, because it is not medically necessary. According to the doctor, the petitioner's caretakers has the ability to take care of her 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 deny the skilled home nursing services for 1,560 hours from September 21, 2009 to March 19, 2010, is upheld.

#### **DECISION**

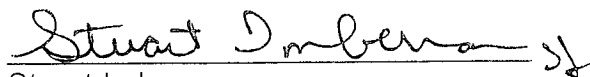
The appeal is denied, and the Agency's action is affirmed.

**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 6<sup>th</sup> day of January 2010,

in Tallahassee, Florida.



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Copies Furnished To