

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

FILED

JAN 29 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07610

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 December 8, 2009, at 9:51 a.m., in Tampa, Florida. All the parties appeared by phone. The petitioner was not present but was represented by his mother, _____, who also 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 for the respondent: Bonnie Wallington, nursing review supervisor, and Dr. Robert A. Buzzeo, physician reviewer.

ISSUE

At issue is the respondent's decision of November 2, 2009 to reduce the amount of night time private duty nursing (PDN) hours paid by Medicaid. The respondent previously approved 10 PDN hours daily between the hours of 9:00 p.m. to 7:00 a.m. The respondent's action is to reduce PDN hours by two hours daily during night-time hours to 8 PDN hours daily. The petitioner requests restoration of the prior approved 10 hours daily PDN. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is 20 years old and lives with his parents. There is one other 13 year-old sibling in the home.
2. The petitioner was injured in an all terrain vehicle (ATV) accident in March 2004 with resulting paralysis and trachea. Complications include sepsis and pancreatitis, kidney stones, VP shunt placement, and IVC filter placement. The petitioner has a ventricular peritoneal shunt, is blind in one eye and impaired in the other. The shunt is assessed daily for signs and symptoms of infection or malfunction, and changes in neurological status.
3. Services performed by private duty nursing include medication administration, tube feedings/care, and aspiration and fall precautions. The petitioner has bowel and bladder incontinence and is in a wheelchair.

4. The current certification period for PDN hours is October 15, 2009 to April 12, 2010. In the prior certification period, the petitioner received approved PDN hours at night ten hours daily from 9:00 p.m. to 7:00 a.m. On October 14, 2009, the contracted KePRO reviewer sent notice to reduce PDN hours for the current certification period. Upon request for reconsideration on October 14, 2009, KePRO approved reduced night time PDN hours to 8 hours at night, from 11:00 p.m. to 7:00 a.m. The petitioner seeks restoration of the prior approved 10 hours daily night time PDN hours.
5. The petitioner's medical needs require continuous medical care. The petitioner's mother is his primary caregiver. She is capable to provide needed care for the petitioner. The petitioner's father's work hours and travel schedule do not permit him to participate in the petitioner's care.
6. The petitioner's caregiver does not believe that she can provide simultaneous care for the petitioner, care for the needs of her 13 year-old daughter, and provide rest for herself. The respondent proposes to provide 8 hours daily PDN sleep hours. The 13 year-old daughter's need for care between 9:00 p.m. and 11:00 p.m. is not evident.
7. The petitioner questions why hours have been reduced by two hours daily from the prior certification period. Based on the information provided by the nursing agency through internet exchange, the contracted KePRO determines the need for PDN hours at each certification period.

8. The petitioner's caregiver may begin school in January 2010. The respondent advises the petitioner to report this possible school attendance to the nursing provider, if such occurs.

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.

It is undisputed that nursing services are required due to the petitioner's medical needs. The petitioner's mother is capable to provide needed care to the petitioner, when she is available to provide this care. However, application of paragraph (a)5 of the above described rule shows that defined medically necessary private duty nursing services must not be primarily provided for the convenience of the recipient or the caregiver. 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," to provide care 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 dispute is the amount of night time PDN hours needed. The respondent previously provided 10 PDN hours at night, from 9:00 p.m. to 7:00 a.m. The respondent reduced the amount of these night time PDN hours based on the assertion that the petitioner's mother can provide care to the petitioner for two of these hours, from 9:00 p.m. to 11:00 p.m. The respondent determined that the petitioner needs a total of 8 hours PDN during the night for sleep time.

The petitioner seeks continued provision of 10 hours PDN at night in view of the need for rest and the asserted need to provide care for her 13 year-old child.

The evidence demonstrates that the petitioner does need constant care. The issue rests on whether or not the approval of eight hours at night is enough to permit the mother's reasonable sleep time and performance of other necessary duties. Based on the evidence, it can not be concluded why specific time is needed to by the caregiver to provide care for the 13 year-old at night between 9:00 p.m. and 11:00 p.m. The respondent has allocated eight hours at night to provide for adequate sleep time. The Home Health Care Services Handbook does not have a provision that allows for additional PDN hours for respite care.

In sum, the evidence as applied to the applicable authorities shows that the respondent is correct to reduce authorized PDN hours by the two hours daily (at night) at issue. If the petitioner were to begin school in January 2010, the petitioner should inform the nursing provider so the need for PDN hours could then be re-evaluated.

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 29th day of January, 2010,

in Tallahassee, Florida.



Jim Travis
Hearing Officer
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Copies Furnished T