

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-07673

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on December 28, 2009, at 10:47 a.m. The petitioner was not present. Representing the petitioner was his mother. Representing the respondent was David King, management analyst, Agency for Health Care Administration (AHCA). Appearing telephonically as witnesses were Melanie Clyatt, registered nurse, reviewer for the Keystone Peer Review Organization (KePro), and Dr. Rakesh Mittal, physician reviewer, KePro.

ISSUE

At issue is whether the Agency was correct in reducing private duty nursing (PDN) hours from 24 hours per day Monday through Saturday to 22 hours per day and reducing Sunday hours from 16 hours per day to 14 hours per day. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is a nineteen year old (DOB _____), recipient of Medicaid services. He is diagnosed with hereditary progressive muscular dystrophy, unspecified heart failure, chronic airway obstruction, and scoliosis.
2. He has a tracheostomy and is fed through a g-tube. He requires assistance with his activities of daily living (ADL). His medications include morphine, Enalapril, Lorazepam, Spironolactone, Plumericort, and Haloperidol.
3. He is presently on home hospice care.
4. As part of the eligibility determination process for services, medical progress reports are forwarded by the petitioner's home health agency to KePro for review by the Medicaid provider. KePro is the organization contracted by AHCA to perform these reviews.
5. KePro reviewed the submitted reports received for the certification period September 2009 through March 2010. On October 21, 2009, KePro recommended the hourly reduction as noted in the issues.
6. The petitioner requested a reconsideration and a second review was done. On October 29, 2009, KePro modified their initial determination and offered to keep the 24 hours of PDN for the first 60 days of the certification (through October) and then the reduction would take place.

The 60 days were given as an opportunity for the mother to take over the two hours that were being denied.

7. Lastly it is noted that the two hour reduction can be any two hours that the mother would deem most appropriate.
8. The mother is single and is employed as a hairdresser. She works all day Saturday. She also cares for a 6 and 15 year old.
9. The 15 year old is in therapy for abandonment by the father and both children do not get the total attention that the petitioner receives.
10. The mother explains that she cannot be the complete mother to her other children who need to be taken to school, their doctor appointments, and other general issues.
11. She explains that the petitioner is not getting better but worse. The hospice care is for pain management, medications, and suctioning.
12. The mother notes that there are problems with her home health agency because the nurses do not always appear on time. She would like to keep the hours that she presently has, that is, 24 hours per day Monday through Saturday and 16 hours per day Sunday.
13. Lastly, there is a possibility that AHCA could provide a home health aide rather than a registered nurse during some of the reduced hours.

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 and its website explains:

Medicaid is the state and federal partnership that provides health coverage for selected categories of people with low incomes. Its purpose is to improve the health of people who might otherwise go without medical care for themselves and their children. Medicaid is different in every state. Florida implemented the Medicaid Program on January 1, 1970, to provide medical services to indigent people. Over the years, the Florida Legislature has authorized Medicaid reimbursement for additional services. A major expansion occurred in 1989, when the United States Congress mandated that states provide all Medicaid services allowable under the Social Security Act to children under the age of 21.

42 C.F.R. § 440.230 Sufficiency of amount, duration, and scope,
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.

Florida Administrative Code 58G-1.010 Definitions 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; 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.

Home Health Services Coverage and Limitations Handbook July 2008

Covered Services, Limitations, and Exclusions states in part:

Private Duty Nursing Definition

Private duty nursing services are medically-necessary skilled nursing services that may be provided in a child's home or other authorized settings to support the care required by the child's complex medical condition.

Who Can Receive Private Duty Nursing

Medicaid reimburses private duty nursing services for recipients under the age of 21 who:

Have complex medical problems; and

Require more individual care than can be provided through a home health nurse visit.

Note: See the Glossary in the Florida Medicaid Provider General Handbook for the definition of medically complex.:

Private Duty Nursing Requirements

Private duty nursing services must be:

Ordered by the attending physician;

Documented as medically necessary;

Provided by a registered nurse or a licensed practical nurse;

Consistent with the physician approved plan of care; and

Prior authorized before services are provided.

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

Medicaid does not reimburse private duty nursing services provided solely for the convenience of the child, the parents or the caregiver.

Medicaid does not reimburse private duty nursing for respite care. Examples are parent or caregiver recreation, socialization, and volunteer activities.

Authorization Process

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.

Prior Authorization

All private duty nursing services must be prior authorized by the Medicaid peer review organization prior to the delivery of services.

In this instant case and pursuant to the requirements of the Handbook, the parent is responsible to the greatest degree in the care of her child. The mother testified that she is capable of caring for her son but requires assistance because of her two other children.

The mother is employed and KePro has suggested that the first 60 days of the new plan be kept at the current rate with the reduction taking place thereafter.

KePro has also suggested that any new information be sent to them that might modify this decision. Also, they have suggested a home health aide.

This may initially be difficult but it is within parameters of the parental responsibility and guidelines established.

DECISION

The appeal is denied. The Agency's action is affirmed. The mother, with cooperation of her home health agency, should resubmit any new data including medical conditions for KePro to reconsider. The home health agency might also consider the use of a home health aide that would allow the mother some "breathing space" for herself, particularly on Sunday, her day off from work.

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.



Melvyn Littman
Hearing Officer
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Copies Furnished