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

APPEAL NO. 09F-3169

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.

_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on June 3, 2009, at 12:14 p.m., in Miami, Florida. The petitioner was present and was represented by his mother, Present as observers were , director of nursing and , licensed practical nurse both employed by . Present, on behalf of the respondent was Jeffrey Douglas, program administrator with the Agency for Health Care Administration (AHCA). Appearing telephonically as witnesses for the agency was Dr. Rakth Mittal, physician reviewer and Theresa Ashey, nurse reviewer supervisor, both with Keystone Peer Review Organization (KēPRO) South. Dennis Torres with AHCA was present as an observer.

ISSUE

At issue is the agency's action of April 28, 2009 and May 7, 2009, denying a request for 2,160 hours of private duty nursing (PDN), during the certification period of April 27, 2009 through October 23, 2009. The agency has the burden of proof.

FINDINGS OF FACT

1. The petitioner is ten years old and a Medicaid beneficiary in the state of Florida. The petitioner's diagnosis as reported to the agency, "kidney transplant, ESRD, learning disability, failure to thrive." The petitioner has been receiving PDN services at its prior level throughout the hearing process.
2. On April 24, 2009, the provider) requested 2,160 hours (12 hours daily [7am-7pm]) of skilled nursing for the petitioner for the certification period of April 27, 2009 through October 23, 2009.
3. The agency has contracted Keystone Peer Review Organization (KēPRO South) to perform medical reviews for Private Duty Nursing and the Personal Care Prior Authorization Program for Medicaid beneficiaries. This prior authorization review determines medical necessity of the hours requested, under the terms of the Florida Medicaid Program.
4. The request for service is submitted by the provider, along with all information/documentation required in order for KēPRO to make a determination on medical necessity for the level of service being requested. This service is reviewed every 180 days (6 months) and a request for modification can be requested by the petitioner.

5. On April 27, 2009 an initial screening of the request was completed by a registered nurse reviewer. At this level of review, the amount of hours being requested was not approved by the nurse reviewer. The request was referred to a board certified pediatric specialty physician consultant, for review of the level of care (hours) being requested.
6. The physician consultant reviewed the information submitted and denied the request for PDN documenting, "No details of clinical condition are given. Pt is ESRD; meds are mentioned; pt has behavior problems. Grandmother needs help. Ages of siblings are not given and also not clear whether all the siblings are in school. Not clear why LPN is reqd. If the pt is stable then the meds could be given by the grandmother and rest of care could be provided by HHA also. I would request the provider for all the details. For now I would deny this request." On April 28, 2009, a PDN/PC Recipient Denial Letter was issued to the petitioner denying 2,160 hours.
7. On April 28, 2009, the provider then submitted a reconsideration request and provided additional information stating, "...child is unable to tolerate immunizations and cannot attend school due to immune system. Meds changed frequently (per labs) and LPN gives meds, coordinates labs and changes, monitors weight and diet, I&O. Grandmother is elderly and is responsible for 2 other grandchildren with asthma and neb tx, meds/does not have any nursing for them. Total 5 children in her home to care for. [redacted] had transplant after

severe ESRD and 2/09 had an elevated creatinine and biopsy performed. We attempted decrease nursing last fall and child ended up in hospital."

8. A different board certified physician consultant reviewed the entire case, including the petitioner's medical condition as reported and social needs. The reviewing physician concluded that the petitioner did not need care at the level (skilled nursing) that was requested.
9. On May 7, 2009, a PDN/PC Recipient Reconsideration-Denial Upheld notice was issued to the petitioner and provider informing them of the denial of service. The petitioner appealed the decision on May 12, 2009.

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 Florida Statute, Chapter 120.80.

Florida Statute 409.905 addresses Mandatory Medicaid services and states as follows:

> The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

(4)(b) The agency shall implement a comprehensive utilization management program that requires prior authorization of all private duty nursing services...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...

Fla. Admin. Code 59G-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;
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

(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.

Fla. Admin. Code 59G-4.130 Home Health Services states in part:

(1) This rule applies to all home health agencies licensed under Chapter 400, Part III, F.S., and certified by the Agency for Health Care Administration for participation in the Medicaid program for home health care.

(2) All home health agency providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Home Health Services Coverage and Limitations Handbook, July 2008, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. ...

The Home Health Services Coverage and Limitations Handbook (July 2008), pages 2-17 and 2-19 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.

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.

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.

The petitioner's representative states that her grandson receives one injection a week and she does not give injections and take numerous medications. The nurse also coordinates the appointment for the lab work. She states that he does not go to school

and has other children in the home. The representative states that the nurse monitors him and stays with him while she runs errands.

The physician consultant responded by informing the representative that skilled nursing was not the appropriate service needed in this case. He states that requesting home health visits for the once a week injection is the appropriate service and that arrangements for lab work is done by the family.

The hearing officer finds that according to the above-mentioned rules, evidence and testimony received from both parties, the both physician reviewers action to deny 12 hours daily, 7 days a week, of skilled nursing service was correct. Medical necessity was not demonstrated for the level (skilled nursing) of services and the requesting of a lesser level of service is appropriate.

DECISION

The appeal is denied as stated in the Conclusions of Law.

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 15th day of July, 2009, in Tallahassee, Florida.

A. G. Littman

A. G. Littman
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To: