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

APPEAL NO. 07F-1226

PETITIONER,

Vs.

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

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on April 25, 2007, at 12:10 p.m., in Miami, Florida. The petitioner was not present but was represented by his mother, provider was present. Representing the agency was Erica Woodard, registered nurse specialist with the Agency for Health Care Administration (AHCA). Appearing telephonically as witnesses for the agency was Teresa Ashey, reviewer with KēPRO South; Dr. Robert Buzzio, KēPRO physician reviewer; and George Smith, KēPRO reviewer. Present telephonically, only at the beginning of the hearing, was Brevin Brown, attorney for AHCA. Carlos Rodriguez served as translator. was present as an observer. The hearing was previously scheduled for March 27, 2007, but was continued at the request of both parties.

ISSUE

At issue is the agency's action of February 8, 2007, in approving 868 hours and denying 196 hours of private duty nursing instead of the requested 1,064 hours. The certification period is for January 7, 2007 through March 7, 2007. The agency has the burden of proof.

FINDINGS OF FACT

The petitioner is four years old and a Medicaid beneficiary in the state of Florida. The petitioner's medical condition as reported to the agency was of "disorders relating to extreme immaturity of infant; 500-749 grams, obstructive hydrocephalus, other convulsions, and attention to gastrostomy." The provider requested on January 12, 2007 1,064 skilled nursing hours for the petitioner, for the certification period of January 7, 2007 through March 7, 2007.

The agency has contracted Keystone Peer Review Organization (KēPRO South) to perform medical reviews for Private Duty Nursing and 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. The request for service is submitted by the provider as well as the information, in order for KēPRO to make a determination on medical necessity.

On January 15, 2007, a preliminary screening of the request was completed by the registered nurse reviewer. The provider was requested to submit additional information and clarification, which were ultimately provided.

On February 7, 2007, a second physician consultant (board-certified pediatrician) reviewed the request, as part of the reconsideration process for a previous (February 6, 2007) denial. The physician considered among other information, "4 yr. old with VP shunt; gtube, nebs, suction, CPT, 02, attends PPEC, mother works FT m-f, has a 3 year old... trach has been removed, and ...mother is apprehensive on being alone with child." The provider informed KēPRO, "This child has been hospitalized 6 times since 01/2006. He deteriorates rapidly, had apnea and had to be taken 911 during one episode..." and they provided the petitioner's medical history.

The physician consultant determined, "Requested hours for cert period, 1-7-07 – 3-7-07 is 1064 hours, 4p-8a for 16 hour shifts, 20 hours 8a-10pm and 12a-6a on Saturdays and 24 on Sundays. Patient also attends PPEC. Patients trach was removed. It would seem reasonable after other sibling goes to sleep early in the evening that mother (PCG) could provide more independent care for this patient. Suggest that PCG should be responsible for four (4) hours each evening between 8pm and 12 am this would reduce PDN service to only 16 hour shifts. There is no indication why there are 20 hour shifts, and no indication on what particular days that is needed..." The petitioner attends PPEC from 7 a.m. to 4 p.m.

It was then determined by the physician consultant based on the information provided, that 868 skilled nursing hours were approved for certification period of 1/7/07 through 3/7/07, and 196 hours were denied out of the 1,064 requested. The petitioner and provider were notified.

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.

(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.

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 IV, 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, October 2003, 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 (October 2003), pages 2-15 and 2-16 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.

CMAT Referrals
A recipient who is medically able to attend a PPEC and whose needs can be met by the PPEC, should have PPEC services recommended by the CMAT. Private duty nursing may be provided as a wraparound alternative for an individual needing additional services when PPEC is not available.

Limitations
Private duty nursing services are limited to a minimum of two continuous hours and a maximum of 16 continuous hours per day.

Exception Authorization, 16 Hours Per Day, Greater Than 30 Days
When the plan of care indicates that private duty nursing services will exceed the maximum of 16 hours per day for more than 30 consecutive days, Medicaid may reimburse those services only if they are recommended by the Children's Multidisciplinary Assessment Team (CMAT).

Private duty nursing services must be reviewed at each staffing to determine continued medical necessity.

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. ...

The petitioner's mother states that she does not want the hours reduced, as she has another child, will start working at night and she will start going to school and cannot do it all. She also confirmed that the petitioner attends the Prescribed Pediatric Extended Care (PPEC) Center from 7 am through 4 pm.

The Findings of Fact shows that the petitioner requested private duty nursing service in the amount of 1064 hours, for the certification period of January 7, 2007 through March 7, 2007. This would equal to 20 hours daily of private duty nursing service. The request was reviewed by the contracted agency that conducts the reviews of medical necessity. The physician consult (reviewed by two separate consultants) determined that according to the information provided, 686 or 16 hours daily of private duty nursing would be approved for the certification period. The physician consultant concluded that it was "reasonable for mom to be responsible" for four hours daily of care. After careful consideration, it is determined that the agency's action to reduce the private duty nursing services, is upheld.

DECISION

The appeal is denied and the agency's action 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 13th day of June, 2007,

in Tallahassee, Florida.

A. G. Ramos
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To:

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

APPEAL NO. 07F-2425

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
DISTRICT: 11 Dade
UNIT: AHCA
RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on May 22, 2007, at 10:50 a.m. in Miami, Florida. The petitioner, represented herself at the hearing. The respondent was represented by Donna Pollins, program specialist with Agency for Health Care Administration (AHCA). Appearing telephonically was Dr. Frank Castrina, medical director with KePRO; Debbie Parthemore, RN, operations manager with KePRO; and Katharine Peters, RN, team leader with KePRO. Dora Rawlins served as translator.

ISSUE

At issue was whether or not the agency's action of March 16, 2007, to deny home health aide services due to medical necessity was correct. The respondent has the burden of proof.

FINDINGS OF FACT

The petitioner (sixty years-old) is a Medicaid recipient in the state of Florida and has a diagnosis of osteorthrosis, osteoporosis, other anxiety and abnormality of gait. On behalf of the petitioner , a home health care provider requested authorization for home health aide visits one time a day. The certification period was for March 1, 2007 through April 29, 2007.

The review of this request is performed by KePRO (Keystone Peer Review Organization) an organization contracted by AHCA to perform prior authorization reviews, of private duty nursing and personal care services for home health care. The review determines if under Medicaid criteria, medical necessity has been demonstrated according to the information submitted by the provider.

On March 9, 2007 a physician consultant reviewed the petitioner's request. The agency stated that the request for daily service was made by the provider in order to assist with meals, dressing, shower and general activities. The petitioner's limitations as described by the provider, was pain and rigid left leg (previous tumor removed one year ago) with a diagnosis of severe generalized pain. The only medication listed was ibuprofen every eight hours for pain. The physician consultant denied the request for service as medical necessity had not been demonstrated.

The provider requested a reconsideration and submitted additional medical information, which included a diagnosis of "osteochondroma (tumor) 12 yrs ago on the left leg" and medication for pain and other medical information.

On March 15, 2007, a different physician consultant reviewed the information and denied the request stating: "There is little in this application, the patient's diagnoses or medication list that would support the need for HHA visits. This is a relatively young, alert, ambulatory female with minimal medications. Medical necessity is not supported in this case." The agency denied the request and issued a Notification of Denial on March 16, 2007 stating: "...because documentation submitted by the agency (provider) does not support the medical necessity for the visit frequency of the services requested." A hearing request was received by the Officer of Appeal Hearings on April 13, 2007.

CONCLUSIONS OF LAW

Pursuant to the Florida Administrative Code at 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; 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."

The Home Health Services Coverage and Limitations Handbook (October 2003) explains service requirements for Home Health Aide Visit Service on page 2-14, stating in part:

Home health aide services may be reimbursed only when they are:

- Ordered by the attending physician;
- Documented as medically necessary; ...

Home Health Aide Services

Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

- Assisting with the change of a colostomy bag;
- Assisting with transfer or ambulation;
- Reinforcing a dressing;
- Assisting the individual with prescribed range of motion exercises that have been taught by the RN;
- Assisting with an ice cap or collar;
- Conducting urine test for sugar, acetone or albumin;
- Measuring and preparing special diets;
- Providing oral hygiene;
- Bathing and skin care; and

- Assisting with self-administered medication.

The petitioner states that she takes medication for pain, but for her other conditions as well. She states that the doctor recommended the service because of her back problem (spine deterioration); her osteoarthritis; her osteochondoma; severe pain; circulatory problem and a kidney problem. The petitioner states that she lives in an apartment with her adult son that is disabled. She states that she does what she can around the apartment and only has the assistance of a sister that works and sometimes does house work for her. The petitioner provided no medical evidence or testimony on her physical limitations.

The agency argued that the information submitted by the provider, did not include all of the conditions mentioned. The agency was aware of all medications being taken and noted that the petitioner had not been hospitalized (within last 60 days), had not been seen in the emergency room and they still have no information on her limitations. Therefore, medical necessity for the service was not demonstrated.

After considering the evidence and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the agency's action of March 16, 2007, to deny the request for home health aide of one time a day for the period of March 1, 2007 through April 29, 2007.

DECISION

The appeal is denied and the agency's action 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 15th day of June, 2007,

in Tallahassee, Florida.

A. G. Ramos
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To:

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

APPEAL NO. 07F-01981

PETITIONER,

Vs.

AGENCY FOR HEALTH
CARE ADMINISTRATION
DISTRICT: 02 Leon
UNIT: AHCA

RESPONDENT.
_____/

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on May 23, 2007, at 9:30 a.m., in Tallahassee, Florida. The petitioner was present and was represented by her mother. Testifying on behalf of the petitioner was Medicaid Waiver Support coordinator, Present was

The respondent was represented by Deborah Jamski, RNS, Agency for Health Care Administration (AHCA) Medicaid, Area 2B. Testifying on behalf of the agency, by telephone, was Dr. Robert Buzzeo, physician reviewer, KePRO, Teresa Ashey, review operations supervisor, KePRO, and George Smith, review operations specialist, KePRO. Observing the proceeding was Vern Hamilton, program administrator, AHCA Medicaid, Area 2B.

ISSUE

The petitioner is appealing AHCA's action of February 28, 2007 to reduce Private Duty Nursing and Personal Care Services from a request of 720 hours to 648 for the months of March 10 through May 8, 2007 based on the contention that the intensity or level of medical care requested was not medically necessary. The respondent bears the burden of proof.

FINDINGS OF FACT

The petitioner (date of birth is a Medicaid recipient. The petitioner is also receiving Home and Community Based Care Services of waiver support coordination and respite services. The petitioner's care is medically complex. The petitioner has been receiving private duty nursing services under Medicaid. A request for 720 hours of private duty nursing was submitted by the provider, Interim Healthcare of NW Florida, for the period of March10, 2007 through May 8, 2007.

The petitioner is residing with her mother and father and 14 year old brother. Prior to the action under appeal, the parents were authorized to receive 12 hours/7 days a week private duty nursing care (PDN). The parents work 12 hours/day, Monday through Friday from 7 a.m. to 7 p.m. The father is on 24/7 call. The parents provide for the remaining 12 hours/day, 7 days/week.

The mother is employed full time Monday through Friday and the father works as a coach/manager for persons with disabilities Monday through Saturday, 9 a.m. to

9 p.m. He is on call 24 hours per day/7 days per week and needs to leave if called.

Requests for private duty nursing are reviewed with a contract provider who completes prior authorization for the requested service. That contract provider is KePRO. The request for services is submitted by the home health care provider, in this case, Interim Health Care of Northwest Florida. The requests are for 60 day time periods. All communication is sent between KePRO and the provider until a decision is reached. KePRO reviews the written request for services to determine if the number of hours requested are medically necessary. If additional information is needed, KePRO contacts the provider. Once services, as in this case, were rejected or modified, a notice is sent to the recipient's family.

KePRO received the request for 720 hours of private duty nursing submitted by the provider . A KePRO Registered Nurse Reviewer (RNR) completed a screening of the Plan of Care submitted in February 2007. At AHCA's direction, the RNR used modified InterQual Criteria and a Pediatric Home Care Guide for Private Duty Nursing (PDN) Hourly Utilization to review the request for PDN services. Using that documentation, a Utilization Form was developed. The Utilization Form assigns point values to physical conditions of the petitioner and level of care that is anticipated. KePRO concluded that based on the points the petitioner was scored, a physician's review was required.

The case was then referred to a Board Certified Pediatric Specialty Physician Consultant. A Board Certified Pediatrician reviewed the case and made the following

determination: "Underlying diagnosis not described. ?GT tube feeds. Mother works 12 hour/day, Monday-Friday. Father on call 24 hours/7 days a week but not clear how many hours spent or how often on average father called to work... Will approve 12hr/day Monday through Friday but parents could cover more weekend hours. Approve 8 hours/day Saturday and Sunday. Approve 648 hours" (Respondent's Composite Exhibit 2, Section C). The determination of the physician consultant was sent to Interim Healthcare of Northwest Florida on February 28, 2007. Based on the documentation, the pediatric consultant denied 72 hours and approved 648 hours of the 720 requested hours of private duty nursing.

The documentation indicated a request for the petitioner with convulsions, cerebral degeneration, unspecified delay in development, closed fracture of lower end of femur, unspecified part, congenital quadriplegia, and neuromuscular scoliosis. She has cerebral palsy, cannot walk or talk and has minimal muscle tone requiring total support physically requiring lifting and moving throughout the day. The petitioner requires oral suctioning as needed to clear secretions. She requires medication administration, tube feedings, and monitoring for seizure activity as well as oxygen as indicated applied via nasal cannula. The petitioner often requires oxygen, especially at night.

The petitioner's physician submitted correspondence to KePRO dated March 1, 2007 indicating the "petitioner has chronic lung disease, reactive airway disease, severe gastro esophageal reflux, severe developmental delay, severe seizure disorder that is

intractable and scoliosis. She is subject to frequent pneumonias unless her pulmonary toilette and airway maintenance are immaculate." The treating physician urged continuation of the 12 hours a day, 7 days a week as essential in order to keep the petitioner out of hospital and/or institutional care.

A request for a Reconsideration review was submitted to KePRO by Interim Healthcare of Northwest Florida. For the Reconsideration, a second, different Board Certified pediatrician, Dr. Robert Buzzeo, reviewed the request on March 14, 2007. The determination by the second physician consultant was based both on the patient's clinical medical state as well as the level of intensity needed to provide for her care. The program is operated with the understanding that parents or caregivers will be able to participate in providing care as they are trained in providing for the child's care.

In addition, the second physician consultant's decision took into consideration the parents' work schedule Monday through Friday. "Dad as an counselor and is on call 24 hours, 7 days/week. Location of Private Duty Nursing services, Home and School. Taking into account that father may be called any time... for his work would not factor in, since this could occur as well when mother is providing independent care Monday through Friday, so eight hours on weekends, is a reasonable proposal by physician consultant." KePRO determined it to be reasonable that the caregivers could provide at least eight hours of independent care especially on the weekends. Eight hours on Saturday and on Sunday was approved to allow some coverage during the evening so that the caregivers could sleep. On March 15, 2007,

the second physician reviewer upheld the initial decision and authorized 12 hours per day 5 days per week Monday through Friday and 8 hours per day Saturday and Sunday for the 60 day certification period at issue.

A hearing request was received by KePRO on March 23, 2007. As the request for Fair Hearing was submitted within the 10 day time frame from the date of the Reconsideration letter, administrative approval of 72 hours for the certification period for a total of 720 hours was approved for the certification period.

The petitioner's parents do not agree with the decision by KePRO. At the hearing, the mother stated that her daughter weighed approximately 51 pounds. The mother indicated that both parents have medical issues which limit their ability to lift any significant weight. The father had recent quadruple heart bypass surgery in November 2006 and has continuing coronary disease. She has four herniated cervical discs with degenerative arthritis in her back and neck. The mother presented correspondence from her physician stating that "she is medically prohibited from lifting anything over twenty pounds. The father has severe coronary artery disease with recent bypass graft and multiple complications including diabetes and intermittent heart failure. He is prohibited from strenuous physical activities" (Petitioner's composite exhibit 1).

The mother is concerned with the petitioner's medical needs and their medical limitations which impact their ability to lift or move the petitioner should an emergency occur. Currently, the parent administers medication to the petitioner which allows her to sleep through the night. The petitioner's representative indicated the nursing hours on

Saturday and Sunday are 9 a.m. to 9 p.m. "This gets her through her developmental day with constant support. The time at night without a nurse from 9 p.m. until the petitioner goes to sleep for the evening is manageable" for the caregivers (Petitioner's Composite Exhibit 1). The mother is concerned that she will not be able to assist the petitioner if she is in crisis. The primary caregiver is also concerned that her husband cannot help her when he is called away on his job.

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 Statutes § 409.919 Rules (2006) states:

> The agency shall adopt any rules necessary to comply with or administer ss. 409.901-409.920 and all rules necessary to comply with federal requirements. In addition, the Department of Children and Family Services shall adopt and accept transfer of any rules necessary to carry out its responsibilities for receiving and processing Medicaid applications and determining Medicaid eligibility, and for assuring compliance with and administering ss. 409.901-409.906, as they relate to these responsibilities, and any other provisions related to responsibility for the determination of Medicaid eligibility.

Florida Statute 409.905 addresses Mandatory Medicaid services with section (4) informing that Home Health Care Services can be covered. Under subsection (b) the following information is relevant:

> 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...

It is concluded that the agency needed to review need for nursing service.

Florida Statute 409.913 addresses **Oversight of the integrity of the Medicaid program,** with (1)(d) describing "medical necessity or medically necessary" standards and says in relevant part: "...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity..." Consistent with statute, Fla. Admin. 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.

The Home Health Services Coverage and Limitations Handbook defines private duty nursing (at page 2-15):

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.

The Home Health Services Coverage and Limitations Handbook , Chapter 2, p.2-16, 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. Training can be offered to parents and caregivers to enable them to provide care that 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.

The Home Health Services Coverage and Limitations Handbook , Chapter 2, p.2-16, states in part:

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.

The Home Health Services Coverage and Limitations Handbook provide that for private duty nursing, prior authorization must be received (at page 2-17):

> **Service Authorization:** All private duty nursing services must be prior authorized by a Medicaid service authorization nurse prior to the delivery of services.

In accordance with the provider manual (CMS 1500) prior authorization requests must be submitted by the provider (at 2-2):

> **Who Submits the Request** The request for prior authorization must be submitted by the provider who plans to furnish a service, except for out-of-state prior authorization.

As a result of the reduction in private duty nursing services paid for by Medicaid, the petitioner, through her representatives, appeal this action, asserting that 12 hours per day, seven days per week of private duty nursing services are necessary. In weighing the evidence, the following conclusion is reached by the undersigned: AHCA presented evidence from the pediatric physician consultant of the number of hours deemed medically necessary. This is a medical expert who routinely determines medical necessity for Medicaid services. The physician's statement submitted by the petitioner did not show that the petitioner's condition would deteriorate as a result of the current plan. The petitioner's physician does not routinely determine medical necessity for Medicaid services and is not as familiar with the term as used in the governing authorities, therefore, greater weight was given to the agency's expert witness.

In addition, the agency's Registered Nurse Specialist and two Board Certified Pediatric physicians who are considered medical experts, determined that the reduction

of private duty nursing care is appropriate for the petitioner. The decision was based upon a review of the petitioner's clinical medical state and the needs of the family. The respondent acknowledges that the petitioner is medically complex. However, according to the above authorities, 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. In addition, according to the above authorities, 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.

The representative's statement that she and her husband have medical issues that make it difficult for the family to provide for the child's care was considered. The mother stated that the hours she worked and the petitioner's father needed to be on call, required 12 hours seven days per week PDN. The mother indicated that she provides the remaining 12 hours care per day/ seven days per week. The evidence sets forth that the parents provide care 12 hours per day, seven days per week.

According to the above authorities, the agency is the final arbiter of medical necessity. In making the determination of medical necessity, the agency followed its procedure to have a professional registered nurse practitioners and the opinion of a physician as the reviewing physician. Such determination was based upon the information available at the time the goods or services were provided.

The petitioner's caretakers, who are her parents, play an important role and according to the above authorities, their involvement is strongly encouraged in taking care of her. The evidence submitted indicated that the caretakers have been providing care for the petitioner when private duty nurses were unavailable 12 hours per day, seven days per week. In addition, the evidence indicated that the mother has been able to provide for the petitioner's care during times when the father was called away. After careful consideration, it is determined that the action to reduce the private duty nursing hours from 720 to 648 hours or from 12 hours per day, seven days per week to 12 hours per day, Monday through Friday and 8 hours per day on Saturday and Sunday, is in accordance with the above authorities.

The evidence did not support a greater amount of nursing hours under the circumstances. Continuing the additional hours would help to achieve parental relief on a daily basis, but the additional hours cannot accurately be described as medically necessary. Based on the above cited authorities, the respondent's action to deny 72 hours of private duty nursing for the period of March 10, 2007 to May 8, 2007 was within the rules of the Program.

DECISION

The appeal is denied. 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 20th day of June, 2007,

in Tallahassee, Florida.

Linda Garton
Hearing Officer
Building 5, Room 203
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

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