

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

FILED

SEP 15 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-03498

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 09 Orange
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing on July 22, 2009, at 10:54 a.m., in Orlando, Florida. The petitioner did not appear. The petitioner did not appear. The petitioner's mother and authorized representative _____ appeared for the petitioner.

Lissette Knott, human services program specialist with the Agency for Health Care Administration, appeared and represented the Agency-respondent. Dr. Rakesh Mittal, M.D., board certified pediatrician physician reviewer with KePRO, and Theresa Ashe, review operations supervisor with KePRO, appeared as witnesses via telephone for the Agency.

ISSUE

At issue is the respondent's action of May 18, 2009, reducing the petitioner's number of home health aide hours from ten hours per day seven

days per week to four hours per day four days per week based on reduced level of medical necessity and household social situation.

FINDINGS OF FACT

1. The petitioner is an 18-year old developmentally disabled woman. Her diagnoses include: autism, mentally challenged (limited cognitive ability), migraine headaches, generalized pain, diabetes, and limited communication ability.
2. The petitioner requires the following medical services: medications, physical therapy, safety monitoring, and constant supervision. Safety monitoring and constant supervision is needed because her autism causes her to have episodes of violent behavior and outbursts. She also needs assistance with activities of daily living including dressing, feeding, bathing, etc.
3. The household includes only the petitioner and her mother. The mother does not work and is not in school. She provides a majority of the petitioner's care. The petitioner is homebound for school purposes and has a home tutor.
4. The petitioner had been receiving home health aide services of six hours per day, seven days per week. The home health agency submitted request for services at the time of recertification. The home health agency requested that the petitioner receive ten hours per day, seven days per week of home health aide services. Due to mother's health conditions,

including chronic shoulder pain and arthritis, the home health agency requested the increase in hours.

5. The request was submitted to the respondent's contracted prior service authorization agent, KePRO. KePRO assigned the request to one of its physician reviewers. Upon initial review, the physician found that based on the household situation and the petitioner's medical conditions, the requested hours exceeded the level of medical necessity. The request was denied and the hours were reduced to four hours per day, four days per week. The respondent issued a notice to the petitioner dated May 4, 2009, informing of the reduction.
6. The petitioner requested a reconsideration of this decision. KePRO had a second physician reviewer look at the request again. This physician found that the household situation, petitioner's need for home health aide services, along with the mother's ability to provide the majority of care, supported the initial reduction. The reduction was upheld. A second notice, dated May 18, 2009, was issued to the petitioner informing of the decision.
7. The petitioner appeals.
8. At the hearing, the petitioner's mother stated that she and her daughter have frequent medical and other appointments that they attend on a regular basis and she needs extra coverage for those hours. Upon review of new information provided by the petitioner at the hearing, the respondent modified the home health aide hours from four hours per day,

four days per week (16 hours) to four hours per day to seven days per week (28 hours). The petitioner's mother asserted this increase remains insufficient to meet her daughter's needs.

9. Dr. Mittal stated that medical necessity and the mother's availability and capability to provide most of the care in the home, did not support a full 40 hours weekly of home health aide service. He did state that the mother has the option to request modified hours on an "as-needed" basis for extra coverage for doctor's appointments for both herself and daughter.

CONCLUSIONS OF LAW

Fla. Admin. Code 59G-4.130 states:

Home Health Services [emphasis original] (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, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent. ...

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 states in relevant part at p. 2-15:

Home Health Aide Service Requirements...

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

- Ordered by the attending physician;
- Documented as medically necessary;
- Provided by an appropriately trained aide;
- Consistent with the physician approved plan of care; and
- Delegated in writing and provided under the supervision of a registered nurse.

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.

Home health aides must not perform any services that require the direct care skills of a licensed nurse.

The petitioner is seeking an increase in the amount of her home health aide hours. In order to receive services, they must be medically necessary. The respondent determined that the number of hours that met medical necessity is four hours per day, seven days per week. The petitioner argues that due to her medical diagnoses the home health aide may not be able to accomplish the needed tasks within four hours per day. However, there was no medical documentation or other evidence submitted to support her concerns.

Based on the evidence presented including the respondent's own testimony, the hearing officer concludes that the respondent's reduction to four hours per day, seven days per week is correct. However, if medical emergencies, doctors' appointments, or other situations should arise, the petitioner has the option of requesting additional hours in home health aide hours. The petitioner is directed to contact her home health agency to request any additional hours.

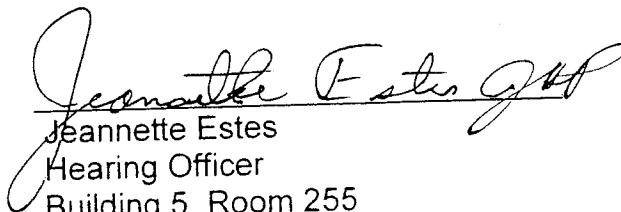
DECISION

The appeal is denied. The respondent's action to decrease home health aide service to four hours, seven days per week 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 15th day of September, 2009,
in Tallahassee, Florida.


Jeannette Estes
Hearing Officer
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850-488-1429

Copies Furnished To