

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

FILED

SEP 08 2009

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04028

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 10 Polk  
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter on July 21, 2009, at 3:45 p.m., in Orlando, Florida. The petitioner did not appear.

petitioner's mother and authorized representative, appeared on his behalf.

petitioner's father, and licensed practical nurse, appeared as witnesses for the petitioner.

David Beaven, medical healthcare program analyst for the Agency for Health Care Administration, appeared and represented the Agency-respondent. Theresa Ashley, review operations supervisor with KePRO, and Dr. Rakesh Mittal, board certified pediatrician physician reviewer with KePRO, appeared as witnesses for the Agency. Gary Erickson, nurse reviewer with KePRO, appeared as an observer only. The parties and their witnesses all appeared telephonically.

### ISSUE

At issue is the respondent's action of June 8, 2009, reducing the petitioner's number of private duty nursing hours from twenty four hours per day to nineteen hours per day, five days per week (Monday through Friday) and from twenty four hours per day on Saturday and Sunday to eight hours per day on those days due to reduced level of medical necessity. The respondent bears the burden of proof in this appeal.

### FINDINGS OF FACT

1. The petitioner is a two-year old medically complex child. His diagnoses include: birth trauma, pyloric stenosis, asthma, and convulsions. His level of care includes: repositioning every two hours, G tube feedings/care, aspiration precautions, seizure precautions, tracheostomy care (constant suctioning), and medication administration including receiving oxygen. He is totally dependent on others.
2. The petitioner lives in the home with his father, his mother, and a younger, infant sibling age eight months with no medical issues. The father works outside the home full-time and occasionally overtime including one or two Saturdays a month on an on-call basis. His work schedule including rising for work, and travel time 4:30 a.m. to 5:30 p.m. Monday through Friday. The mother is not working nor is she in school. She is home full-time with the children.
3. The Agency certifies recipients for nursing services in six-month periods. A recipient can request changes in hours during a certification period.

4. The home health agency which provides the nursing staff for the petitioner's needs submitted a service request to KePRO. KePRO is the Agency's contracted prior service authorization agent.
5. On June 4, 2009, KePRO received a request from the home health agency requesting continued nursing services of twenty-four hours per day, seven days per week. KePRO assigned the case to one of its registered nurse reviewers for initial screening. The case was then forwarded to one of KePRO's pediatric physician reviewers. The physician decided that because the child had no seizures, hospitalizations, or emergency room visits in the prior certification period (last six months) and the mother and father are trained and able to provide certain hours of the care. Because of these conclusions, it was decided that twenty-four hours per day, seven days per week of care was no longer medically necessary. He reduced the nursing hours to nineteen hours per day, five days per week (Monday through Friday) and from twenty four hours per day on Saturday and Sunday to eight hours per day.
6. A notice informing of this reduction was issued to the petitioner. The petitioner's mother requested reconsideration of this decision. A second physician reviewer looked at the request for twenty-four hours of care per day. The second physician upheld the initial physician's decision and for the same reasons.
7. The petitioner appeals.

8. At the hearing, the petitioner's father informed that he has another child outside the home that he has recently started getting visitation with every other weekend. The respondent had not been given this information at the time of the review. The parents could submit the schedule and ask for additional hours of nursing to cover those weekends when visitation would be held on an "as needed" basis.
9. The respondent's physician reviewer informed that the reduction in hours is only for the hours when both parents are home and able to provide the care. He stated that although the petitioner does require constant care, he is stable and his parents are trained and able to provide care for him.

#### **CONCLUSIONS OF LAW**

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.

The Home Health Services Coverage and Limitation Handbook under Licensed Nurse and Home Health Aide Visit Services, on pages 2-14 and 2-15

"Skilled Nursing Services", states:

The following are examples of services that require the direct care skills of a licensed nurse:

- Administration of intravenous medication;
- Administration of intramuscular injections, hypodermoclysis, and subcutaneous injections only when not able to be self administered appropriately.
- Insertion, replacement and sterile irrigation of catheters;
- Colostomy and ileostomy care; excluding care performed by recipients;
- Treatment of decubitus ulcers when:  
deep or wide without necrotic center;  
deep or wide with layers of necrotic tissue; or  
infected and draining;
- Treatment of widespread infected or draining skin disorders;
- Administration of prescribed heat treatment that requires observation by licensed nursing personnel to adequately evaluate the individual's progress;
- Restorative nursing procedures, including related teaching and adaptive aspects of nursing, which are a part of active treatment and require the presence of licensed nurses at the time of performance;
- Nasopharyngeal, tracheotomy aspiration, ventilator care; Levin tube and gastrostomy feedings, excluding feedings performed by the recipient, family or caregiver; and
- Complex wound care requiring packing, irrigation, and application of an agent prescribed by the physician.

The petitioner is medically complex. It is undisputed that nursing services are required. The petitioner medical needs include constant monitoring, positioning, venting and numerous other medical procedures. The evidence clearly supports that this petitioner requires 24 hour nursing care.

Simply because medical necessity is found for the petitioner to require 24 hour private duty nursing does not mandate the granting of this benefit. The analysis must continue to determine if there are other parties that may be responsible for providing this benefit.

The Home Health Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2). The Home Health Services Coverage and Limitation Handbook under Private Duty Nursing, on page 2-15 "Parental Responsibility", states:

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...  
(emphasis added)

The basis for the reduction by the respondent was essentially that while the petitioner does demonstrate the medical need for skilled nursing services for a majority of the day and evening, the hours could safely be reduced to allow for the parents to provide care to the fullest extent possible. The respondent determined that the reduction should be from twenty four hours per day to nineteen hours per day, five days per week (Monday through Friday) and from twenty four hours per day on Saturday and Sunday to eight hours per day.

The hearing officer considered all evidence submitted at the hearing and reviewed all conditions as set forth in the rules of the Program. The evidence demonstrates that the petitioner is in need of services. The issue then rests on whether the parents can provide the nursing services five hours a day during the week and 16 hours on the weekends. We must look at the skill of the parents and the impact of other responsibilities in the household.

The services provided by the current skilled nurse for the petitioner include G-tube venting, repositioning, monitoring for aspiration, monitors for gagging, keeps records of the petitioner's seizures, monitors oxygen, monitors heart rate issues and provides suctioning as needed. The mother and father are both trained to provide all of these services and it is uncontested that they are capable of caring for the petitioner. Since the parents can safely provide care to the petitioner, we must then determine if there are other barriers to providing this care.

The father is employed full-time. He is unable to provide care during his work and travel time hours. The petitioner receives nursing services during the daytime hours while the father is working which allows the mother to care for the other infant child in the home. The hours not covered by a nurse are those when both parents are home in the evenings. There is a nurse present during the night so that the parents may sleep. The parents must provide most of the hours of care on the weekend as they are both home except when the father is called in to work.

The parents argued at the hearing that they have no time to themselves or as a couple and it is putting a strain on their relationship. The respondent argued that nursing services are provided as a supplement to family care and are not for the purpose of providing the family time for recreation or socialization. The respondent also noted that any hours needed for the father's visitation with his other child can be requested when he knows the schedule.

Based on the above authorities, the hearing officer concludes that the reduction in services was appropriate. The parents are capable and available to provide care during the hours no longer covered by the respondent. There is no question that caring for a medically complex child is challenging, however, as the above authorities state, nursing services are approved only to supplement care provided by the child's family. The respondent has indicated that any extra hours of needed coverage can be requested on an "as-needed" basis through the home health agency for approval.

### **DECISION**

The appeal is denied. The respondent's action is upheld.

### **NOTICE OF RIGHT TO APPEAL**

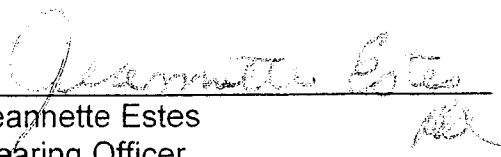
This decision is final and binding on the part of the agency. If the petitioner disagrees with this decision, the petitioner may seek a judicial review. To begin the judicial review, the petitioner must file one copy of a "Notice of Appeal" with the Agency Clerk, Agency for Health Care Administration, 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 8<sup>th</sup> day of September 2009,

in Tallahassee, Florida.

  
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