

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

FILED

OCT 01 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04667
APPEAL NO. 09F-04668

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 August 13, 2009, at 1:07 p.m., at the Opa Locka Service Center, in Opa Locka, Florida. The petitioner was not present, but was represented at the hearing by the petitioner's mother, The Agency was represented by Jeffery Douglas, program operations administrator, from the Agency For Health Care Administration (AHCA). Present as witness for the Agency, via the telephone, was Dr. Robert Buzzio, physician reviewer, from KePRO South. Also present via the telephone, as a witness for the Agency was Melanie Clyatt, registered nurse operations review supervisor from KePRO. KePRO is located in Tampa, Florida. Dennis Torres was present as an interpreter.

ISSUE

At issue is the Agency's action of April 22, 2009 and action upon reconsideration of June 2, 2009, to reduce or cancel the petitioner's request for continued private duty nursing or home health aide services a total of 1,232 hours, for the period of April 8, 2009 through October 4, 2009. The reduction or cancellation of the service is to 0 hours. The Agency has the burden of proof. The request for continuing service is for the petitioner and his twin brother, . Both Appeals will be addressed in this Order.

FINDINGS OF FACT

1. The petitioner and his brother, who is approximately three and one half years of age, has severe and numerous medical problems that require medical services as provided through the Agency For Health Care Administration's (AHCA) Medicaid State Plan. The petitioner's condition(s) are outlined in Respondent Composite Exhibit 1. AHCA as noted above, will be further addressed as the "Agency".

2. KePRO has been authorized to make Prior (service) Authorization Process decisions for the Agency. The Prior Authorization Process was completed for the petitioner by KePRO. KePRO determined on April 22, 2009, that the petitioner's request for 1,232 hours of private duty nursing or home health aide was going to be denied/reduced to 0 hours for the period of April 8, 2009 through October 4, 2009.

3. The petitioner's representative requested a hearing and benefits were restored. A reconsideration was also requested, but the Agency upheld the original decision and notified the petitioner's representative on June 2, 2009 of the decision.

4. KePRO's decision was based on the information provided by the petitioner's provider or home health agency as part of the request for the service. KePRO determined

that foremost, based on medical necessity; both petitioners are no longer in need of the home health aide services. Both of the petitioner's were born premature, but as they are now three and a half years of age; KePRO views their need for care as any other (normal) three and a half year old. Though, acknowledging that both of the petitioner's take oral medication; KePRO indicated that a parent or parents are quite capable of providing this oral medication to both children. KePRO, in turn, indicated that a professional caretaker, such as a nurse or home health aide would not be necessary to provide the petitioner's with oral medication.

5. KePRO indicated that the service as provided up until now for the petitioner's is nothing more than "babysitting". The Agency also cited the Medicaid Home Health Care "handbook" which indicates that "babysitting" is a noncovered exclusion of service for either nursing care or home health aide care.

6. The Agency also submitted into evidence, as part of Respondent Composite Exhibit 1, which contain copies of the request for service, which includes the provider's request for service statement. The provider had indicated that the petitioner; was being "weaned" off of oxygen. The petitioner's representative indicated that " " is still on oxygen all day and will be undergoing surgery in the near future.

7. The Agency or KePRO indicated that a nonprofessional, such as the petitioner's representative, can install and maintain oxygen for the petitioner

CONCLUSIONS OF LAW

Fla. Admin. Code 59G-1.010 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-4.290 discusses skilled services, and states in part:

- (f) Skilled care recipient. A Medicaid applicant or recipient who requires skilled nursing or skilled rehabilitative services.
- (3) Skilled Services Criteria.
- (a) To be classified as requiring skilled nursing or skilled rehabilitative services in the community or in a nursing facility, the recipient must require the type of medical, nursing or rehabilitative services specified in this subsection.
- (b) Skilled Nursing. To be classified as skilled nursing service, the service must meet all of the following conditions:
1. Ordered by and remain under the supervision of a physician;
 2. Sufficiently medically complex to require supervision, assessment, planning, or intervention by a registered nurse.
 3. Required to be performed by, or under the direct supervision of, a registered nurse or other health care professionals for safe and effective performance;
 4. Required on a daily basis;
 5. Reasonable and necessary to the treatment of a specific documented illness or injury;
 6. Consistent with the nature and severity of the individual's condition or the disease state or stage...

The Home Health Services Coverage and Limitations hand book page 2-10 states
in part:

Exclusions Medicaid does not reimburse for the following services under
the home health services program:

Audiology services;

Housekeeping, homemaker, and chore services, including shopping;

Meals-on-wheels;

Mental health and psychiatric services (these services are covered under
the Medicaid Community Behavioral Health Program);

Normal newborn and postpartum services, except in the event of
complications;

Respite care;

Services which can be effectively and efficiently obtained outside the
recipient's place of residence without any medical contraindications;

Baby-sitting;

The Home Health Services Coverage and Limitations Handbook explains on page
2-15 that private duty nursing and other services such as a home health aide services
must be ordered by the attending physician, and documented as medically necessary.

The Agency, through KePRO, took action first on April 22, 2009 to reduce or cancel
the petitioner's request for continued home health aide services 0 hours of the service.

This decision was based (partly) on the information as provided by the petitioner's home

health agency service and the petitioner's medical necessity need of the request for the service. The reconsideration was upheld by the Agency on June 2, 2009.

The petitioner argued that at least [redacted] is in need of the service as his medical condition is severe. She argued that he "throws" up all of his food and needs constant attention. She argued that he must go through some more surgery soon based on his medical problems.

The Agency argued that even with any of the "new" information about both of the petitioners; the Agency's decision remains correct. The Agency argued that a non professional can safely provide the petitioner's with oral medication and with oxygen. The Agency argued that the petitioner's parents would have to arrange for "babysitting" of the petitioners, as "babysitting" is not a covered service under Medicaid. The Agency also explained that the "provider" may request services from the Agency at any time a new medical need or situation arises for either petitioner. The hearing office agrees with the Agency's first argument.

After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer finds that the Agency has met its burden of proof and that the Agency's action of April 22, 2009, to cancel/reduce both of the petitioner's request for continued Health Aide services to 0 hours of the service for the period of April 8, 2009 to October 4, 2009, is correct.

DECISION

Both appeals are denied and the Agency's action(s) are 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 18th day of October, 2009,

in Tallahassee, Florida.

Robert Akel

Robert Akel
Hearing Officer
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Copies Furnished To