

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

FILED

SEP 21 2009

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-04842

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 28, 2009, at 1:05 p.m., in Miami, Florida.

The petitioner was not present. He was represented by his mother,

Sandra Moss, program administrator with the Agency for Health Care Administration (AHCA), represented the respondent. Witnesses for the respondent from Keystone Peer Review Organization (KePRO) were Robert A Buzzeo, M.D., consulting physician, and Melanie Clyatt, RN review operations supervisor. : served as an interpreter.

ISSUE

At issue is the respondent's action of July 7, 2009, to deny the petitioner 358 hours of private duty nursing (PDN) services of 4,320 requested for the

certification period July 6, 2009 to January 1, 2010. The respondent had the burden of proof.

FINDINGS OF FACT

1. The petitioner is a severely disabled child with Krabbe's Disease, Static Encephalopathy, Microcephaly, severe developmental delays, seizure disorder, Nephrolithiasis, urinary retention and chronic respiratory failure. The petitioner requires gastrostomy (G tube) feedings, bladder catheterization, and mechanical ventilation. He has a tracheotomy and requires frequent suctioning. The petitioner is bedridden and needs constant assistance with all activities of daily living

2. The petitioner lives with and receives care from his mother,

She is a single parent. There is an eight year old sibling at home who attends special school and is under medication. The petitioner's father lives out of town and is not involved with the care of the petitioner.

3. KePRO is the Peer Review Organization contracted by AHCA to perform medical reviews for the private nursing and personal care prior authorization program for Medicaid beneficiaries in the state of Florida.

4. On July 2, 2009, _____, as the provider, submitted a request on behalf of the petitioner for 24 hours seven days a week of private duty nursing for the period of July 6, 2009 to January 1, 2010.

5. On July 6, 2009, the request was reviewed by a KePRO physician consultant Board-Certified in Pediatrics who recommended reduction in hours to

those awarded by a previous hearing decision (Final Order 08F-06682) as follows: "Hours of PDN will be 24 hours on M,Tu,Th, Friday. On Sat, PDN hours will be: 8a-8p and 10p-8a. On Sunday, PDN hours will be 8a-6p and 10p-8a. On Wednesdays, PDN hours will be: 7a-11p." KePRO approved 3,962 hours of private duty nursing and denied 358 hours.

6. On July 7, 2009, the provider requested a reconsideration explaining that the petitioner's mother was in Cuba and that the petitioner's grandmother has been diagnosed with Leukemia. The provider indicated that "petitioner's mother is having a hard time with dx and is grieving."

7. Reconsideration occurred on July 20, 2009, and the original decision was upheld. Denial Letters were issued to the petitioner.

8. The KePRO physician reviewer explained that KePRO's original decision was upheld and that any form of coverage of trips to Cuba would be regarded as respite care and PDN does not support this type of service. The KePRO physician reviewer advised the petitioner's representative to request a Medicaid Waiver to make up for any additional hours. The KePRO physician reviewer explained that the PDN program is to provide supplement care and it requires the assistance of the parent or primary caregiver.

9. The mother expressed that she disagrees with the reduction of hours. She explained that her son is very sick and she does not feel capable of taking care of him at this moment. She explained that she is under lot of pressure and

does not feel well. She noted that she did not request any extra hours to go to Cuba because PDN was taking care of her son 24 hours a day.

10. The KePRO physician reviewer responded that if the mother is incapable of caring for the child, he would have to be placed in a medical home.

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.

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.

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.

In the case at hand, KePRO denied the petitioner's request for private duty nursing 24 hours seven days a week for the period of July 6, 2009 to January 1, 2010. KePRO argued that the PDN program is to provide supplemental care and it requires the assistance of the parent or primary caregiver. The hearing officer agrees with this argument. The above cited handbook clearly sets forth that parents and caregivers must participate in providing care to the fullest extent possible. It also sets forth that Medicaid does not reimburse PDN services provided solely for the convenience of the child, the parents or the caregiver.

Based on the evidence, testimony and above authorities, the hearing officer concludes that the respondent's action to approve 3,962 PDN hours and deny 358 PDN hours from the total 4,320 hours requested is within the rules of the Program.

DECISION

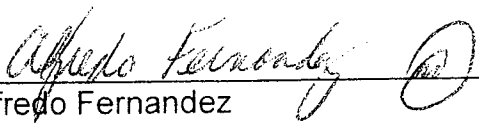
The appeal is denied and the respondent's action affirmed.

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 21st day of September 2009,

in Tallahassee, Florida.


Alfredo Fernandez
Hearing Officer
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Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To