

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

FILED

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OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-05498

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 October 13, 2008, at 8:25 a.m., in Miami, Florida.

The petitioner was not present but was represented by her mother,

– Monica Otolora, human services analyst, Agency for Health Care Administration (AHCA), represented the respondent. Witnesses for the respondent from Keystone Peer Review Organization (KePRO) were Dr. Robert A. Buzzeo, consulting physician, Bonnie Wallington, RN review operation supervisor and Melanie Clyatt, RN review operation supervisor. I interpreted for the petitioner. This hearing was originally scheduled for September 22, 2009, but was continued at the request of the respondent.

ISSUE

At issue is the respondent's action of August 28, 2009, to deny the petitioner's request of Home Health Aid (HHA) 24 hours a day 7 days per week from July 27, 2009 to September 3, 2009. The petitioner had the burden of proof.

FINDINGS OF FACT

1. The petitioner was five years old at the time of the review and a Medicaid beneficiary in the state of Florida. The petitioner's diagnosis as reported to the agency includes cerebral palsy, epilepsy and nephrocalcinosis.
2. KePRO is the Peer Review Organization contracted by AHCA to perform medical review for the private nursing and personal care prior authorization program for Medicaid beneficiaries in the state of Florida.
3. The petitioner was approved to receive HHA, 8 hours a day 7 days per week, for the certification period March 8, 2009 to September 3, 2009.
4. On July 24, 2009, Gifted Health Group Inc., as the provider, submitted a request for additional hours on behalf of the petitioner. The provider requested 24hrs/7days a week HHA services for . . . since the petitioner was not attending school and the mother would be unable to care for her, as she would undergo a major surgery.
5. The request was reviewed by a KePRO physician consultant Board-Certified in Pediatric who denied the request until surgery date and estimate of recovery time were provided.

6. On July 28, 2009, the provider notified KePRO that the petitioner's mother's surgery was going to be on July 31, 2009, and that six months to one year was the estimated time to recovery.

7. During the reconsideration process, KePRO modified the initial determination and approved 24 hours a day 7 days per week for paraprofessional services from July 31, 2009 to August 27, 2009, but approved only 8 hours a day 7 days per week for the rest of the certification period, August 28, 2009 to September 3, 2009, with the understanding that the petitioner would be attending school after August 27, 2009.

8. According to the petitioner's mother, _____ goes to a charter school, but because they live more than four miles away from the school, she does not get transportation. She explains that she called Special Service Transportation, but they cannot transport _____ because she is under 14 years old and an adult is not going with her. She explains that is why she requested additional hours until this situation was resolved.

9. According to the petitioner, she underwent an open heart surgery, they remove her pericardium and has an implant; they also removed part of her left lung. She is currently under chemotherapy.

10. The petitioner explained that according to her doctor, she cannot lift more than ten pounds for her rest of her life.

11. The petitioner explained that she has another daughter who is nine years old, but has no more family, only friends.

12. Dr. Buzzeo explained that the provider did not give KePRO accurate information on the petitioner's case. Dr. Buzzeo stipulated that now that he has additional information, he is willing to rescind the previous denial and approve 22 hours of care 7 days a week, from after the date that she was discharged from the hospital to September 3, 2009.

13. The petitioner's mother stated that she agrees with the new determination, but pointed out that this period has already passed, and she did not have anyone to take care of . during that time.

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), page 2-2 states in part:

The recipient must meet the following requirements:
Require services that are medically necessary and reasonable for the treatment of the documented illness, injury or condition...

Fla. Admin. Code 65-2.056, **Basis for Hearings**, states in part:

(3) The Hearing Officer must determine whether the department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

In the case at hand, the provider submitted a request for 24hrs/7days a week HHA services for the petitioner from July 31, 2009 to September 3, 2009, because she was not attending school and the mother would be unable to care for her, as she would undergo a major surgery. KePRO approved HHA 24 hours a day 7 days per week from July 31, 2009 to August 27, 2009, but approved only 8 hours a day 7 days per week for the rest of the certification period.

Based on new information provided by the petitioner's mother during the hearing, the respondent agreed to rescind the previous denial and approve 22 hours of care 7 days a week, from after the date that she was discharge from the hospital to September 3, 2009. The hearing officer concurs with this determination; however, since the certification period has already passed, the

hearing officer cannot provide any remedy to this case. Therefore, the appeal is denied as the issue has become moot.

DECISION

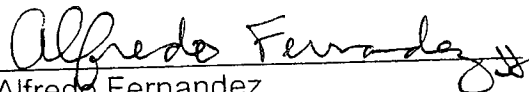
The appeal is denied as stated in the Conclusions of Law.

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 24th day of November 2009,

in Tallahassee, Florida.


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

Copies Furnished To:

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