

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

FILED
DEC 10 2009
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-06113

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 15 Palm Beach
UNIT: AHCA

RESPONDENT.
_____ /

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on December 3, 2009, at 9:32 a.m., in Lake Worth, Florida. The petitioner was present. Representing the petitioner was his mother, _____ . Representing the respondent was David King, management analyst, Agency for Health Care Administration (AHCA). Appearing as witnesses were: Marlene Ramnon, registered nurse, AHCA; Carol King, registered nurse, AHCA; Nadine Jean, registered nurse, Maxim Healthcare Services; Bonnie Wallington, nurse review supervisor, Keystone Peer Review Organization (KePro); and Dr. Rakesh Mittal, physician reviewer, KePro. Ms. Jean, Ms. Wallington, and Dr. Mittal appeared by telephone at their request.

ISSUE

At issue is whether the Agency was correct in reducing private duty nursing (PDN) hours from 12 hours per day to 10 hours per day with an additional 4 hours on the weekend for the period August 2009 through February 2010. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is a 6 year old (DOB [REDACTED]) recipient of Medicaid services. He is diagnosed with a failure to thrive, malnutrition, seizures, ADHD, and autism. He is fed through a g-tube.
2. He requires assistance with his activities of daily living (ADL). His medications include: Diastat, Keppra, Camitor, Risperdol, and Daytrana.
3. As part of the eligibility determination process for services, medical progress reports are forwarded to KePro for review by the Medicaid provider. KePro is the organization contracted by AHCA to perform these reviews.
4. KePro reviewed the submitted reports received. On September 7, 2009, KePro denied the request for PDN of 24 hours per day, seven days per week. It is noted that the request for 24/7 PDN was a follow up to a temporary approval of 24/7 due to the petitioner's hospitalization episode of July 6 through August 7.

5. A reconsideration was requested and on September 15, 2009 the final hours approved were the 10 hours per day for 7 days with an additional 4 hours on the weekend. The approved hours were based on many factors to include the fact that the mother is home and does not work. It is also noted that prior to the emergency approval of the 24/7, there was ongoing approval of 12 hours per day, seven days per week.
6. The mother explains that her child's seizures are not controlled and occur usually everyday. She is able to administer the Diastat which controls seizures.
7. Further, there are new medical conditions that were not considered in the reconsideration. For example, the child needs suctioning, oxygen, has a nebulizer and concentrator, and not just the g-tube as previously mentioned.
8. As for employment, the mother is able to work but cannot hold a job due to her son's conditions. She is presently unemployed.
9. Lastly, she cannot predict when her son will need emergency services and that is why she would need the 24/7 as her health agency requested.
10. Dr. Mittal explains that it is up to the health care agency to provide all current information for them to consider when requesting PDN. In this

instant case, KePro asked for additional information that was not forthcoming.

11. Also, Dr. Mittal explains that modifications are approved when circumstances arise that require additional PDN, for example. He also suggests the use of a home health aide, not skilled nursing, to help. A home health aide is less costly. The mother is, however, concerned if and when an emergency should arise.

12. Here Dr. Mittal explains that extra help could be given if the mother seeks to look for employment.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Children and Families, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Chapter 120.80 F.S. The Florida Medicaid Program is authorized by Chapter 409, Florida Statutes, and Chapter 59G, Florida Administrative Code. The Program is administered by the Agency for Health Care Administration and its website explains:

Medicaid is the state and federal partnership that provides health coverage for selected categories of people with low incomes. Its purpose is to improve the health of people who might otherwise go without medical care for themselves and their children. Medicaid is different in every state. Florida implemented the Medicaid program on January 1, 1970, to provide medical

services to indigent people. Over the years, the Florida Legislature has authorized Medicaid reimbursement for additional services. A major expansion occurred in 1989, when the United States Congress mandated that states provide all Medicaid services allowable under the Social Security Act to children under the age of 21.

42 C.F.R. § 440.230 Sufficiency of amount, duration, and scope,
states in part:

(d) The agency may place appropriate limits on a service based on such criteria as medical necessity or on utilization control procedures.

Florida Administrative Code 58G-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; 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.

Home Health Services Coverage and Limitations Handbook July 2008

Covered Services, Limitations, and Exclusions 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.

Who Can Receive Private Duty Nursing

Medicaid reimburses private duty nursing services for recipients under the age of 21 who:

Have complex medical problems; and

Require more individual care than can be provided through a home health nurse visit.

Note: See the Glossary in the Florida Medicaid Provider General Handbook for the definition of medically complex.:

Private Duty Nursing Requirements

Private duty nursing services must be:

Ordered by the attending physician;

Documented as medically necessary;

Provided by a registered nurse or a licensed practical nurse;

Consistent with the physician approved plan of care; and
Prior authorized before services are provided.

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.

Medicaid does not reimburse private duty nursing for respite care. Examples are parent or caregiver recreation, socialization, and volunteer activities.

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 this instant case and pursuant to the requirements of the Handbook, the parent is responsible to the greatest degree in the care of her child. The mother testified that she is capable of caring for her son but requires assistance because of her two year old.

She is not employed and she is available to administer care on the weekends. In reconsideration KePro has authorized 10 hours of PDN care 7 days and an additional 4 hours on the weekend.

KePro has also suggested new information be sent to them that might modify this decision. Also, they have suggested a home health aide.

This may initially be difficult but it is within parameters of the parental responsibility and guidelines established.

DECISION

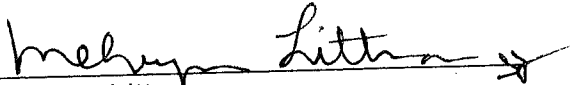
The appeal is denied. The Agency's action is affirmed. The mother, with cooperation of her home health agency, should resubmit all new data including medical conditions for KePro to reconsider.

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.

FINAL ORDER (Cont.)
09F-06113
PAGE - 9

DONE and ORDERED this 10th day of December 2009,
in Tallahassee, Florida.


Melvyn Littman
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To