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JAN 04 2010

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-06838

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on November 17, 2009, at 8:30 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented by his father

The respondent was represented by Ken Hamblin, program operations administrator. Present from Kepro on the telephone was Dr. Rakesh Mittal medical director, and Bonnie Wallington, nurse review supervisor.

ISSUE

At issue is the Agency's October 2, 2009 action of approving the petitioner's home health aide services for 1,236 hours, and denying 204 hours from July 28, 2009 to January 23, 2010. The petitioner has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth _____ is nine years old. He receives home health aide services through the Medicaid Program.
2. Included in the evidence is a copy of a Recipient Denial Letter dated October 2, 2009, stating that home health aide services for the petitioner was approved for 1,236 hours, and denied for 204 hours from July 28, 2009 to January 23, 2010.
3. Included in the evidence is a copy of a Recipient Reconsideration Denial Upheld notice dated October 22, 2009, stating that home health aide services for the petitioner was approved for 1,236 hours, and denied for 204 hours from July 28, 2009 to January 23, 2010.
4. The petitioner was approved for home health aide services for eight hours per day on Mondays through Fridays, and four hours per day on Saturdays and Sundays. A request for the home health aide services for eight hours per day on Saturdays and Sundays was denied.
5. Included in the evidence is a copy of a Kepro Internal Focus Review Findings Report on the petitioner dated August 17, 2009, stating that he was diagnosed with cerebral palsy, and seizures.
6. Included in the evidence is a copy of a Synopsis of Case on the petitioner dated August 17, 2009, stating that a physician consultant, board certified in pediatrics, determined that the approval of home health aide services for eight hours per day on Mondays through Fridays, and four hours per day on Saturdays and Sundays, is correct. This takes into account the petitioner's parent's ability and availability to take care of him.

7. The petitioner's mother and father both work full time, and there are two other minor children in the household.
8. According to the Synopsis of Case, a second physician consultant, board certified in pediatrics, also determined that the approval of home health aide services for eight hours per day on Mondays through Fridays, and four hours per day on Saturdays and Sundays, is correct for the petitioner.
9. According to Dr. Mittal at the hearing, the petitioner's work hours were taken into consideration, and he agrees with the approval of home health aide services for eight hours per day on Mondays through Fridays, and four hours per day on Saturdays and Sundays,
10. Included in the evidence is a copy of a statement from Dr. _____ dated October 28, 2009, stating that the petitioner has encephalopathy cerebral palsy, seizure disorder, microcephaly, asthma, and developmental delays. He requires around the clock attention, needing timed feeding, frequent suctioning, aerosol treatments and administering of medications during the entire day. She requests the he continues to receive home care services.
11. Included in the evidence a copy of a statement from Dr. _____ dated October 29, 2009, stating that the petitioner has a history of prematurity, intraventricular hemorrhage, substantial cerebral palsy manifesting as a spastic quadriparesis, global delay, and a seizure disorder. He requires complete assistance at all times, and it is medically necessary for him to continue receiving nursing care seven days per week.

12. Included in the evidence is a copy of a statement from Dr. _____ dated November 2, 2009, stating that the petitioner's father should not lift more than 20 pounds, due to his back problems.

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 Chapter 120.80 F.S.

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.

Federal Regulations at 42 C.F.R. §440.230 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.

The Home Health Services Coverage and Limitations Handbook on page 1-2 states in part:

A home health aide visit is not limited to a specific length of time, but is defined as an entry into the recipient's place of residence, for the length of time needed, to provide the medically-necessary nursing or home health aide service(s).

The petitioner's home health aide services was approved for 1,236 hours, and denied for 204 hours from July 28, 2009 to January 23, 2010. This is an approval of home health aide services for eight hours per day on Mondays through Fridays, and four hours per day on Saturdays and Sundays. A request for the home health aide services for eight hours per day on Saturdays and Sundays was denied. According to the doctor from CMS that testified at the hearing, this action was correct.

The basis for the denial by the respondent was essentially that while there is a demonstrated need for 24 hour home health care daily, the hours should be denied to allow the parents to provide care to the fullest extent possible. As parents are taught skills necessary to provide for the care of their child, the home health aide hours are reduced over time. The evidence supports that the petitioner requires 24 hour home health care.

For the Medicaid Program to authorize and pay for the home health aide care, the required care must meet the rule definition of medical necessity. The analysis must continue to determine if there are other parties that may be responsible for providing this care. Both the statute and the Florida Medicaid Handbook sets forth that the home health aide services are authorized to supplement care provided by parents, and the parents must participate in providing care to the fullest extent possible. The issue then rests on

whether the parents can provide the care during the time period that the respondent has determined that they can.

To make that determination, the undersigned would look at the skills of the parents and the impact of other responsibilities in the household along with the services provided by a home health aide. The rule sets forth that the request must be reflective of the level of service that can be safely furnished, and for which no equally effective more conservative or less costly treatment is available.

According to the doctor at the hearing, he agrees with the denial of the number of hours of the petitioner's home health aide care, and that his parents have the ability to take care of him with the denied home health care hours. The petitioner's parents work full time, and as it was discussed at the hearing, according to the doctors from Kepro the petitioner's parents can care for him, in considering their working hours. After careful consideration of the proper authorities and evidence, including the petitioner's diagnosis and condition, it is determined that the action to approve home health aide services for 1,236 hours, and deny 204 hours from July 28, 2009 to January 23, 2010, is upheld.

DECISION

The appeal is denied, and the Agency's action is 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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 4th day of January, 2010,
in Tallahassee, Florida.

Stuart Imberman

Stuart Imberman

Hearing Officer

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Copies Furnished To