

FILED

JAN 06 2010

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

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-06850

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 November 19, 2009, at 1:21 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 Jeffrey Douglas, program operations administrator, from the Agency For Health Care Administration (AHCA). Present as witness for the Agency, via the telephone, was Dr. Rakesh Mittal, physician reviewer, from KePRO South. Also present via the telephone, as a witness for the Agency was Bonnie Wallington, registered nurse operations review supervisor from KePRO. KePRO is located in Tampa, Florida. A continuance was granted on behalf of the petitioner for a hearing previously scheduled on November 10, 2009.

### ISSUE

At issue is the Agency's action of September 29, 2009 to reduce the petitioner's request for continued private duty nursing services by a total of 950 hours, for the period of September 10, 2009 through March 8, 2010. The petitioner was approved for 2,506 hours of the above service for the above time period. The Agency has the burden of proof.

### FINDINGS OF FACT

1. The petitioner, who is approximately twelve 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. The petitioner has a G tube for ventilation. AHCA as noted above, will be further addressed as the "Agency". The petitioner also has a brother who receives PDN services.

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 September 29, 2009, that the petitioner's request for about 950 hours of continued private duty nursing (PDN) was going to be denied/reduced for the period of September 10, 2009 through March 8, 2010. They approved 2,506 hours of the service. The hours denied for PDN are from 8:00 p.m. to 11:00 p.m., seven days a week.

3. The petitioner's representative requested a hearing and benefits were restored. A reconsideration was also requested, but the Agency upheld the original 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 petitioner's mother, though employed and attending classes, is capable of caring for the petitioner for the time period noted above.

5. KePRO also took into consideration the petitioner's increasing weight and offered the petitioner's representative the option of a home health aide as replacement for the denied PDN service for the petitioner.

6. The petitioner submitted into evidence, Petitioner Exhibit 1, which contains copies and originals of doctor statement about the petitioner and a copy of the petitioner class schedule. This information is known to the Agency.

#### **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...

Federal Regulations at 42 C.F.R. § 440.230, Sufficiency of amount, duration, and scope, informs:

(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 Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2). The Home Health Services Coverage and Limitation Handbook under Private Duty Nursing, on page 2-17 "Parental Responsibility", states:

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... (emphasis added)

The Home Health Services Coverage and Limitations Handbook also explains on page 2-17 that private duty nursing services must be ordered by the attending physician and documented as medically necessary. Also, the same page handbook explains that private duty nursing services must be; "prior authorized before services are authorized."

The Florida Medicaid Home Health Services Coverage and Limitations Handbook, July 2008, discusses the authorization process for private duty nursing services as follows at page 2-19:

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.

The Agency, through KePRO, took action on September 29, 2009 to reduce the petitioner's request for continued private duty nursing services by a total of 950 hours, for the period of September 10, 2009 through March 8, 2010. This decision was based (partly) on the information as provided by the petitioner's nursing service, the petitioner's mother's work and class times and medical necessity need of the request for the service.

The petitioner's representative argued she needs the time to study during the evening hours. She argued that she will have to drop out of her classes if she has to take care of the petitioner during the evening hours.

The Agency argued that the decision by the Agency took into account the petitioner's representative's free time to study while the petitioner was either in PPEC or

the nursing coverage occurred. The Agency also explained that if at any time in the future the petitioner's representative's school times changed; a request can be made to KePRO for PDN coverage change. The Agency also offered a home health aide as replacement for the PDN denial times, based on the petitioner's increase in weight.

The Agency argued that the petitioner's mother has been sufficiently trained to care for the petitioner and that the Agency's decision remains correct. The hearing officer agrees with the Agency's arguments.

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 September 29, 2009, to reduce the petitioner's request for continued private duty nursing services by 950 hours of the service for the period of September 10, 2009 to March 8, 2010, is correct.

### **DECISION**

This appeal is denied and the Agency'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.

FINAL ORDER (Cont.)

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DONE and ORDERED this 16<sup>th</sup> day of January 2010,  
in Tallahassee, Florida.

Robert Akel

Robert Akel

Hearing Officer

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Copies Furnished To