

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

FILED
FEB 11 2010
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-06937

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 January 21, 2010, at 10:06 a.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 Jeffery Douglas, program 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 Melanie Clyatt, RN operations review supervisor from KePRO. KePRO is located in Tampa, Florida. Continuances were granted on behalf of the petitioner for hearings previously scheduled on December 3, 2009; December 10, 2009 and January 14, 2010.

ISSUE

At issue is the Agency's action of September 25, 2009 to deny/cancel the petitioner's request for continued private duty nursing services by a total of 768 hours, for the period of September 5, 2009 through March 3, 2010. The petitioner was approved for 0 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 two 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. AHCA as noted above will be further addressed as the "Agency".

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 25, 2009, that the petitioner's request for about 768 hours of continued private duty nursing (PDN) was going to be denied/reduced for the period of September 5, 2009 through March 3, 2010. They approved 0 hours of the service. The denial is for either PDN or a Home Health Aide. The Agency witness is a Board Certified Pediatric Physician.

3. The petitioner's representative requested a hearing and benefits were restored. A reconsideration of the above decision was also requested, but the Agency upheld the original decision.

4. The petitioner receives all of his medication by hand and is provided by the petitioner's mother. None of the petitioner's medications require a professional to dispense them to the petitioner. The petitioner receives a variety of therapy; but none is provided by an AHCA provided PDN. The KePRO witness indicated that the petitioner's care provided by the Agency amounts to "babysitting" and that as per the Home Health Coverage and Limitations Handbook, page 2-10 "babysitting" is not a covered service.

5. The petitioner's representative submitted into evidence, Petitioner Exhibit 1, which among other items contains a copy of a letter from the petitioner's treating physician. This letter is signed by Dr. [REDACTED] and dated December 17, 2009. Its states in part: [REDACTED] requires nursing care for 6 hours a day, 5 days a week, Monday through Friday due to his health condition and is medically needed." There is no indication; however, that the treating physician is aware of the Agency requirements concerning nursing care.

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 hand book page 2-10 states in part:

Exclusions Medicaid does not reimburse for the following services under the home health services program:

Audiology services;

Housekeeping, homemaker, and chore services, including shopping;

Meals-on-wheels;

Mental health and psychiatric services (these services are covered under the Medicaid Community Behavioral Health Program);

Normal newborn and postpartum services, except in the event of complications;

Respite care;

Services which can be effectively and efficiently obtained outside the recipient's place of residence without any medical contraindications;

Baby-sitting;

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 25, 2009 to cancel/deny the petitioner's request for continued private duty nursing services from 768 hours to 0 hours, for the period of September 5, 2009 through March 3, 2010. This decision was based (partly) on the information as provided by the petitioner's nursing service, and the medical necessity need of the request for the service. The petitioner does not require the professional (nursing) services as provided by the Agency.

The petitioner's representative argued that the petitioner has progressed with the help of the services provided and stopping the services will be a detriment to the petitioner. She argued that she is a single mother and that she alone would not be able to assist the petitioner.

The Agency argued that as the petitioner does not need a nurse or other medical professional to assist the petitioner in providing medical attention. The Agency argued that the petitioner needs only oral medication and any adult can provide this to the

petitioner. The Agency argued that the service provided acts as only babysitting for the petitioner, which is not a covered service as provided by Medicaid. 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 25, 2009, to cancel/deny the petitioner's request for continued private duty nursing services from 768 hours of the service to 0 hours for the period of September 5, 2009 to March 3, 2010, is correct.

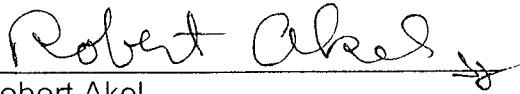
DECISION

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.

DONE and ORDERED this 15th day of February, 2010,
in Tallahassee, Florida.


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

Copies Furnished To