

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

FILED

JAN 14 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07504

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 10 Polk
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, the undersigned hearing officer convened an administrative hearing in the above-referenced matter on November 25, 2009, at 1:20 p.m. The parties appeared telephonically. _____, petitioner's mother and representative, appeared for the petitioner. _____ petitioner's home health aide with Maxim Health Care, and _____ administrator for Maxim Health Care, appeared as witnesses for the petitioner. David Beaven, medical health care program analyst, appeared and represented the respondent-Agency. Bonnie Wallington, nurse review supervisor with KePRO, and Dr. Rakesh Mittal, board certified pediatrician physician reviewer with KePRO, appeared as witnesses for the respondent.

ISSUE

At issue is the respondent's action of October 16, 2009, terminating the petitioner's home health aide service due to provision of the service no longer

being medically necessary. The respondent bears the burden of proof in this appeal.

FINDINGS OF FACT

1. The petitioner, a seven-year old girl, is a recipient of home health aide services in the amount of forty hours per week (eight hours per day, Monday through Friday).
2. The petitioner's household consists of her father, her mother, and four siblings ages 15, 11, 10, and 6. Her father works full-time during the week and occasionally works on Saturday. He is not available to provide care for Olivia until the evenings after work. Her mother provides her care during the day as she is not employed or in school. Her mother home-schools her as best as she is able.
3. The petitioner is blind, unable to walk, talk, allergic to sunlight, and is fed by a feeding ("G") tube. She weighs 30-35 pounds. The family has no type of equipment to assist with transferring the petitioner to and from places. The home health aide provides assistance with lifting the child, changing her diaper, bathing her, and supervising her while the mother runs errands (paying bills, etc). The child meets medical necessity for these services.
4. The home health agency, Maxim Health Care requested that she be recertified for continuation of home health aide services eight hours a day, Monday through Friday.

5. The home health agency forwarded the request to the respondent. The respondent submitted the request to KePRO, its contracted agent which conducts prior service authorizations. KePRO had its physician review the documentation submitted and found that the request was not medically necessary. It denied the request and issued a notice that the services would be terminated. A notice was issued September 25, 2009, informing of this decision.
6. The petitioner's mother requested a reconsideration of the termination. KePRO had a second physician review the request. This physician upheld the termination for the same reasons. A second notice, dated October 16, 2009, was issued informing of the decision.
7. The petitioner appeals. At the hearing, the petitioner's mother informed that she recently had a medical emergency when she pulled a muscle in her back caused by repeated stress from picking up and transferring

Also, she needs an aide in place to cover the care for her daughter while she goes to run errands and pay the household bills. She has to pay her bills at each creditor in person (she has no other means – no debit or credit card and no checking account) and it is very stressful to try and bring a with her.
8. After hearing this testimony from the petitioner's mother, the respondent's physician witness offered to approve eight hours per week of home health aide service. The mother refused this offer and still asserted that she

wanted the previous level of forty hours per week of eight hours per day five days per week.

CONCLUSIONS OF LAW

Fla. Admin. Code 59G-4.130 states:

Home Health Services [emphasis original] (1) This rule applies to all home health agencies licensed under Chapter 400, Part IV, F.S., and certified by the Agency for Health Care Administration for participation in the Medicaid program for home health care. (2) All home health agency providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Home Health Services Coverage and Limitations Handbook, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent. ...

Fla. Admin. Code 59.G-1.010, "Definitions", states for medical necessity:

(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.

The Home Health Services Coverage and Limitations Handbook establishes the services that can be supplied by a Home Health Aide at

2-15:

Home Health Aide Services

Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

- Assisting with the change of a colostomy bag;
- Assisting with transfer or ambulation;
- Reinforcing a dressing;
- Assisting the individual with prescribed range of motion exercises that have been taught by the RN;
- Assisting with an ice cap or collar;
- Conducting urine test for sugar, acetone or albumin;
- Measuring and preparing special diets;
- Providing oral hygiene;
- Bathing and skin care; and
- Assisting with self-administered medication.

Home health aides must not perform any services that require the direct care skills of a licensed nurse.

During the hearing, the respondent's physician reviewer reversed his determination that home health aide services were not medically necessary. He stated that the petitioner should receive a total of eight hours per week instead of nothing at all. The physician stated that because the mother is available and able to provide care, forty hours per week was not medically necessary. The petitioner's mother argued that she should still receive the original request of forty hours per week.

The evidence shows that the petitioner requires the services of a home health aide. Her medical conditions support this service being provided in the home. However, as provided in the rule stated above, just because a physician has prescribed a particular service for a certain amount of hours per week does not make that service medically necessary for those hours. The next step is to determine the correct number of hours for home health aide services.

The petitioner is in need of home health aide services for bathing, lifting, changing diapers, and supervision for the parent to conduct household errands. There was no testimony to explain the amount of time necessary to complete these daily tasks. While it is clear that 40 hours a week is in excess of the time needed to complete these tasks, there was no explanation to define what would be the correct amount of time. Since these are daily tasks (bathing, changing diapers, etc.), time blocks of less than two hours a day also appears to be insufficient to complete these tasks.

The evidence shows that some level of service is justified. However, forty hours per week is excessive and eight hours is insufficient. Based on the evidence presented including the respondent's own testimony, the hearing officer concludes that the respondent's termination of services was incorrect. The termination must be reversed. Since there is insufficient evidence to determine the correct number of hours necessary to complete the daily tasks, this matter must be remanded for a determination of number of home health care services hours. In light of the fact that the certification period has ended, the new hours

shall apply to the current certification period. The respondent shall issue a new notice with a new number of home health services hours.

DECISION

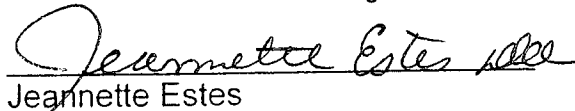
The appeal is partially granted and partially denied. The respondent's action is reversed. The respondent may not terminate the petitioner's hours to zero. The case is remanded to the respondent to re-determine the proper number of hours the petitioner should receive to meet her medical needs. The respondent should take into consideration the amount of time needed to bathe, clothe, and assist the petitioner with activities of daily living (personal care).

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 14th day of January, 2010,

in Tallahassee, Florida.



Jeannette Estes
Hearing Officer
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