

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

FILED

JAN 15 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07567

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 January 12, 2010, at 10:52 a.m., in Lake Worth, Florida. The petitioner was not present. Representing the petitioner was his mother, _____ . Appearing as witnesses were Gregg Goldenberg, administrator, and Lise Hermanson, registered nurse, both from Maxim Healthcare Services. Representing the respondent was David King, management analyst, Agency for Health Care Administration (AHCA). Appearing as witnesses were: Marlene Ramnon, registered nurse AHCA; Melanie Clyatt, registered nurse, reviewer for the Keystone Peer review Organization (KePro); and Dr. Robert Buzzeo, physician reviewer, KePro. Both Ms. Clyatt and Dr. Buzzeo appeared telephonically at their request.

ISSUE

At issue is whether the Agency was correct in reducing home health aide hours from 7 hours per day Monday through Friday and 8 hours Saturday and Sunday to 2 hours per day Monday through Thursday, no hours on Friday, and 10 hours per day every other Saturday and Sunday. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is a seventeen year old (DOB :) recipient of Medicaid services. He is diagnosed with developmental delay, seizure disorder, and aggressive behavior. He requires assistance with his some activities of daily living (ADL). His medications include Kepra and oxcarbazepine.
2. He attends high school five day a week. His mother is employed Monday though Thursday and every other Saturday and Sunday.
3. As part of the eligibility determination process for services, medical progress reports are forwarded by the petitioner's home health agency (in this instance Maxim) to KePro for review by the Medicaid provider. KePro is the organization contracted by AHCA to perform these reviews.
4. Prior to the most recent submission, the petitioner was receiving home health aide services at 7 hours per day Monday through Friday and 8 hours per day Saturday and Sunday. For the current certification

period, September 2009 through March 2010, the requested hours were 6.5 Monday through Friday and 15 hours every other Saturday and Sunday.

5. KePro reviewed the submitted reports received and on October 9, 2009 recommended the hourly reduction as noted in the issues. The petitioner requested a reconsideration and a second review was done. On December 23, 2009 KePro upheld their original decision.
6. The mother is single and is employed as a massage therapist. There is also an 11 year old daughter in the household.
7. The daughter attends church and the mother "volunteers" to work there in order to reduce her church fees.
8. The mother would like to work on Fridays when available but she cannot take the employment if there is no aide to watch the petitioner.
9. KePro explains that an aide cannot be provided during the hours that the mother volunteers because the Home Health Coverage Handbook does not allow for coverage during volunteer time.
10. Maxim explains that the 10 hours every other weekend maybe sufficient but more hours are needed weekdays. Again, the mother's work hours are not set in the sense that she could be eligible to work Fridays but cannot if there is no coverage.
11. Lastly, KePro explains that with any change in the mother's work schedule additional coverage hours are always authorized.

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. KePro reviewed the submitted documentation from Maxim concerning the mother's work hours.

Prior to Maxim's request for the September to March certification period, the mother was receiving a total of 42 hours of home health aide Monday through Friday. It is noted that Maxim indicated that the weekend reduction from 15 to 10 hours maybe sufficient.

The request by Maxim was to reduce the weekday hours from the 42 to 32.5 (excluding Friday). KePro was seeking to reduce weekday hours to a total of 8 hours (Monday through Thursday with no Friday.).

In the past this hearing officer has always determined that any reduction by the Agency should be gradual rather than drastic to allow the parent the opportunity to acclimate to the change. Maxim is seeking a reduction of two hours daily. KePro is seeking six hours daily.

For this instant case, however, the extra hours were to cover the time that the mother "volunteers" at the church. According to the handbook, this is not allowed.

DECISION

The appeal is denied. The Agency's action is affirmed. Any change in the mother's work schedule should be forwarded to KePro for evaluation.

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 15th day of January, 2010,
in Tallahassee, Florida.



Melvyn Littman
Hearing Officer
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Copies Furnished T