

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-07955

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 20, 2010, at 9:50 a.m., by telephone conference. The petitioner was not present. Representing the petitioner was _____, petitioner's mother. The agency was represented by Monica Otalora, senior human services program analyst, Agency for Health Care Administration (AHCA). Also present as witnesses for the agency from Keystone Peer Review Organization (KePRO), were Dr. Rakesh Mittal, physician reviewer, and Bonnie Wallington, registered nurse review operations supervisor.

ISSUE

At issue is the Agency's action to reduce petitioner's Private Duty Nursing (PDN) services from twenty-four hours a day seven days per week to twenty-two

hours a day seven days per week, for the period of December 5, 2009 through May 3, 2010. The respondent bears the burden of proof.

FINDINGS OF FACT

- 1) The petitioner, _____, is 15 years of age and receives private duty nursing services through the state of Florida Medicaid Program.
- 2) The petitioner's main diagnosis is a severe total brain injury. The petitioner was hit by car while riding her bike. The accident left her ventilator dependent, in a decerebrate posturing, and unresponsive to noxious stimuli. Services performed by private duty nursing have included medication administration, gastrointestinal (G-tube) feeding, aspiration precautions, tracheotomy care and repositioning to prevent skin breakdown.
- 3) The petitioner lives with her mother and three siblings. According to the provider she works Monday to Friday 9 a.m. to 5 p.m.
- 4) The Agency has contracted KēPRO South to perform medical utilization reviews for Private Duty Nursing and the Personal Care Prior Authorization Program for Medicaid beneficiaries. This prior authorization review determines medical necessity of the hours requested, under the terms of the Florida Medicaid Program.
- 5) The request for service is submitted by the provider, along with all information/documentation required in order for KēPRO to make a determination on medical necessity for the level of service being

requested. This service is reviewed every 180 days (six months) and a request for modification can be requested by the petitioner.

- 6) The petitioner had been receiving private duty nursing (PDN) services 24 hours/seven days per week for the previous certification.
- 7) On October 26, 2009, a request for 4,320 hours of PDN was submitted by the provider, RGR LLC, for the period of November 5, 2009 through May 3, 2010.
- 8) On October 29, 2009, a board certified pediatric specialty physician consultant reviewed the case and made the following determination:
"DENY 4320 hrs, RN 11/05/09-05/03/10 24/7 care. The mother could provide some independent care. If the mother has not received training would allow 24/7 care for 3 weeks only. The mother then could provide care from 9p-11p nightly (would APPROVE all other hours). If the mother has already been training would only APPROVE 22 hrs daily (with the mother providing care 9p-11p nightly).
- 9) The provider did not submit a request for reconsideration. However, a second KePRO Physician Consultant, Board-Certified in Pediatrics reviewed the case and the available information submitted and agreed with the first physician reviewer for the number of hours denied for the certification period. The second physician determined that the mother might apply the denied hours to any time during the day.

- 10) At the hearing Ms. Wallington explained that the second physician who reviewed the case approved 60 additional hours for 30 days to give the mom more time to have additional training. Ms. Welling also explained that KePRO authorized PDN 24/7 to continue through out the appeal process.
- 11) At the hearing _____ clarified that she does not work from nine to five. She explained that she had two jobs. The first one was from 6:00 a.m. to 11:00 a.m. and the second one from 1:30 p.m. to 6:00 p.m. _____ explained that she had to resign from the 6:00 a.m. to 11:00 a.m. job because of the reduction of hours.
- 12) _____ stated that she is providing care to the petitioner from 6:00 a.m. to 7:00 a.m. and from 6:00 p.m. to 7:00 p.m. _____ explained that the attending nurse advised her that due to the reduction of hours she would have to provide care to her daughter from 6:00 a.m. to 7:00 a.m. She purported that nobody told her that KePRO had authorized PDN 24/7 to continue through out the appeal process.
- 13) Dr. Mittal explained that the provider never reported to KePRO that _____ had two jobs and that her schedule was from 6:00 a.m. to 6:00 p.m. Dr. Mittal explained that they relied on the information submitted by the provider. Dr. Mittal noted that if they had known that she was employed from 6:00 a.m. to 6:00 p.m. they would have not denied the

morning hours. Dr. Mittal pointed out that there was no reason for her to resign from her first job.

CONCLUSIONS OF LAW

The Office of Appeal Hearings has subject matter jurisdiction in this proceeding, pursuant to Sections 120.569, 120.57(1), 120.80(7) and 409.285 Florida Statutes.

The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the Department in making its decision. Fla. Admin. R 65-2.060, states in part:

(3) The Hearing Officer must determine whether the department's decision on eligibility or procedural compliance was correct at the time the decision was made. The hearings are de novo hearings, in that, either party may present new or additional evidence not previously considered by the department in making its decision.

Consequently, the undersigned took into consideration all the evidence presented to him at the hearing, not solely what was made available to the Agency when it made its decision.

Florida Statutes 409.913 governs the oversight of the integrity of the Florida Medicaid Program. Section (1)(d) sets forth the "medical necessity or medically necessary" standards, and states in pertinent part as follows:

.... For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity. Determinations of medical necessity must be made by a licensed physician employed by or under contract with the agency See §409.913(d), Florida Statutes (emphasis added).

Florida's definition of medically necessary is provided at rule 59G-1.010(166), FAC" which reads as follows:

(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.

The Home Health Services Coverage and Limitations Handbook (July 2008), pages 2-17 and 2-19 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.

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.

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 the instant case, the provider requested PDN services 24 hours a day, seven days a week. The respondent denied two hours a day seven days a week. The evidence shows that the provider submitted incorrect information to the respondent; specifically that [redacted] was employed from 9:00 a.m. to 5:00 p.m. The petitioner explained that she had two jobs. The first one was from 6:00 a.m. to 11:00 a.m., the second one from 1:30 p.m. to 6:00 p.m. [redacted] argued that she had to resign from the 6:00 a.m. to 11:00 a.m. job due to the reduction of hours. The respondent appeared to first learn of this at the hearing.

However, the basis for the reduction was essentially that while the petitioner does demonstrate the medical need for 24 hour daily nursing care, the mother could provide some independent care when she is available. The petitioner, by her own admission, has been providing two hours of care a day.

Therefore, based on the above authorities and the evidence presented, the hearing officer finds the mother is available and capable to provide safe and adequate care to the petitioner during the hours she is not working. The hearing officer concludes the respondent's action to reduce/approved PDN hours to the

amount at issue is correct. If the caregiver's circumstances change to warrant a request for an increase in PDN hours, the petitioner may request a modification of the hours.

DECISION

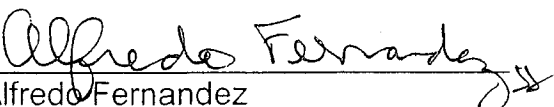
This appeal is denied and the respondent's action affirmed.

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 11th day of February 2010,

in Tallahassee, Florida.


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

Copies Furnished To