

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

FILED
APR 16 2010
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-07983

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened telephonically before the undersigned-hearing officer on April 2, 2010, at 8:35 a.m. The petitioner was not present but was represented by her mother, Tavia Smith, registered nurse specialist, Agency for Health Care Administration (AHCA), represented the respondent. Witnesses for the respondent from Keystone Peer Review Organization (KēPRO) were Dr. Rakesh Mittal, consulting physician, and Tina Herron, RN nurse reviewer. This hearing was originally scheduled for January 20, 2010, but was continued at the request of the petitioner.

ISSUE

At issue is the respondent's action of October 29, 2009, to deny the petitioner 360 hours of private duty nursing (PDN) services for the certification period October 16, 2009 through April 13, 2010. The respondent had the burden of proof.

FINDINGS OF FACT

1. The petitioner, _____, is a two year old Medicaid beneficiary in the state of Florida. She has severe and numerous medical problems that require medical services as provided through the Agency for Health Care Administration (AHCA) Medicaid State Plan.

2. The petitioner lives with her parents and one sibling. Both parents are currently working. The petitioner's mother works Monday to Wednesday from 9:00 a.m. to 7:00 p.m. and Thursday to Saturday from 11:00 a.m. to 7:00 p.m. The petitioner's father works Monday to Sunday from 8:00 a.m. to 7:00 p.m.

3. Prior to the action under appeal, the petitioner was receiving private duty nursing services through Medicaid 24 hours daily seven days a week.

4. KēPRO is the Peer Review Organization contracted by AHCA to perform medical review for the private nursing and personal care prior authorization program for Medicaid beneficiaries in the state of Florida.

5. Eligibility for PDN is evaluated every six months, for six-month certification periods. KēPRO electronically receives the review data from the care providers. KēPRO does not conduct interviews with the families or doctors.

6. On October 28, 2009, the PDN provider requested the continuation of private duty nursing services at the same level for the period of October 16, 2009 through April 13, 2010.

7. On January 5, 2010, a board certified pediatric specialty physician consultant reviewed the request and denied two hours daily, from 9:00 p.m. to 11:00 p.m. The

physician consultant approved all other hours, stating that both parents are home in the evenings and they could provide some care.

8. On October 29, 2009, a denial letter was sent to the petitioner denying 360 hours of PDN based on that the medical care as described to KēPRO is not medically necessary.

9. On October 29, 2009, the provider requested a reconsideration stating that the parents participate in the care of the patient but do not feel comfortable providing the care independently after a long day of work when they are physically and mentally exhausted.

10. A different board certified physician consultant reviewed the case and agreed with the first physician reviewer for the number of hours denied for the certification period. The reviewing physician noted that the two hour denial can be applied to any time during the day.

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.

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.

Fla. Stat. 409.905 addresses Mandatory Medicaid services under the State Medicaid Plan and informs:

Mandatory Medicaid services.--The agency may make payments for the following services, which are required of the state by Title XIX of the Social Security Act, furnished by Medicaid providers to recipients who are determined to be eligible on the dates on which the services were provided. Any service under this section shall be provided only when medically necessary and in accordance with state and federal law...

Florida Statute 409.913 addresses Oversight of the integrity of the Medicaid program, with (1)(d) describing "medical necessity or medically necessary" standards and says in relevant part: "...For purposes of determining Medicaid reimbursement, the agency is the final arbiter of medical necessity..."

Fla. Admin. Code 59G-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. ...

(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 Florida Medicaid Home Health Services Coverage and Limitation Handbook has been promulgated into rule in the Florida Administrative Code at 59G-4.130 (2).

The Florida Medicaid Home Health Services Coverage and Limitation Handbook (July 2008), under Private Duty Nursing, on page 2-17 Parental Responsibility, states:

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.

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 petitioner's mother purported that some information provided by the nursing agency was not correct. The petitioner's mother explained that her daughter is on oxygen 24 hours a day and on ventilator off and on every two hours. The petitioner's mother believe that she has not been properly trained, and feels that is not time for her to take over yet. The petitioner's mother did not know that she had the availability to pick the two hours of care.

The physician witness responded that is the petitioner's family's responsibility to make sure that all the information provided to KēPRO is correct

and up-to-date. The physician witness stated that is the provider's responsibility to train the parents in the various aspects of the care. The physician reviewer explained that KēPRO should be notified if there is a problem in providing the training. The physician also explained that if the family cannot provide any care to the patient, then the patient does not belong in the PDN program and should not be provided care at home. Lastly, the physician witness argues that since both parents and the sibling are healthy, the mother is available on Sunday, and both parents are home after 7:00 p.m., they could provide two hours daily of care seven days a week.

The above authorities require that private duty nursing services must be documented as medically necessary. 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.

The evidence did not demonstrate that the parents were incapable of providing care to the petitioners two hours daily, any time they choose. Based on the above cited authorities, the hearing officer concludes the respondent's action to deny 360 hours of PDN services for the certification period October 16, 2009 through April 13, 2010 was within the rules of the Program.

DECISION

This appeal is denied as stated in the Conclusions of Law.

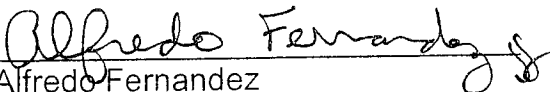
NOTICE OF RIGHT TO APPEAL

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 16th day of April, 2010,

in Tallahassee, Florida.



Alfredo Fernandez
Hearing Officer
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Copies Furnished To