

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

FILED

FEB 17 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-08271

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 February 5, 2010, at 11:05 a.m., by telephone conference. The petitioner was not present but was represented by his mother,

Monica Otalora, human services analyst, Agency for Health Care Administration (AHCA), represented the respondent. Witnesses for the respondent from Keystone Peer Review Organization (KePRO) were Dr. Robert A. Buzzeo, consulting physician and Melanie Clyatt, RN review operation supervisor. Marielisa Amador served as an interpreter. This hearing was originally scheduled for January 13, 2010, but was continued at the request of the petitioner.

ISSUE

At issue is the respondent's action of September 28, 2009, to deny the petitioner 766 hours of Home Health Aid (HHA) services of 2,004 requested for the certification period September 8, 2009 to March 6, 2010. The respondent had the burden of proof.

FINDINGS OF FACT

1. The petitioner was nine years old at the time of the review and a Medicaid beneficiary in the state of Florida. The petitioner's diagnosis as reported to the agency includes congenital spine fusion, mental retardation urinary/feces incontinence and asthma.
2. The petitioner lives with and receives care from his mother. She is a single parent and is not currently employed. She suffers from depression. There are two other siblings in the home, ages 14 and 16.
3. KePRO 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.
4. Prior to the issue under review, the petitioner was receiving HHA services ten hours a day, from 6:00 a.m. to 8:00 a.m. and from 2:00 p.m. to 10:00 p.m. Monday to Friday. Additionally, she was receiving fourteen hours a day, from 7:00 a.m. to 9:00 p.m. Saturday to Sunday.

5. On September 24, 2009, the provider, Exclusive Services Inc., submitted a request for the same frequency of HHA visits for the period of September 8, 2009 through March 6, 2010.

6. On September 28, 2009, KePRO determined that the petitioner's request for HHA services was going to be reduced to 1,238 hours. KePRO approved eight hours a day from 6:00 a.m. to 8:00 a.m. and from 2:00 p.m. to 8:00 p.m., Monday through Friday, for the mother to assist the petitioner with his daily activities. KePRO also approved two hours a day on Saturday and Sunday for sibling care and four hours a week for shore coverage.

7. KePRO noted that the allowable two hours a day on Saturday and Sunday and four hours a week can be applied to any time during the certification period.

8. On November 19, 2009, a reconsideration review was completed and the original decision was upheld.

9. During the hearing, Dr. Buzzeo explained that there is no indication that the mother was not able of providing the necessary care as the HHA did during the hours that were denied. Dr. Buzzeo pointed out that the rules and regulation of the program indicates that parents must participate in providing care to the fullest extent possible.

10. The petitioner's mother explains that she was not concerned about the fourteen hours during the weekend, but she needs the ten hours Monday through Friday. The petitioner's mother explained that she is unable to provide

care during the hours of 8:00 p.m. to 10:00 p.m. because she takes the medication for her depression around that time and it makes her feel drowsy.

11. Dr. Buzzeo, based on this information, agreed to rescind their denial for the evening coverage, from 8:00 p.m. to 10:00 p.m. Monday to Friday and maintain their denial for the weekend.

12. The petitioner agreed with this determination.

CONCLUSIONS OF LAW

By agreement between the Agency for Health Care Administration and the Department of Families and Children, the Agency for Health Care Administration has conveyed jurisdiction to the Office of Appeal Hearings to conduct this hearing pursuant to Florida Statute, Chapter 120.80.

Fla. Admin. Code 59G-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;
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), page 2-3 states in part:

The recipient must meet the following requirements:
Require services that are medically necessary and reasonable for the treatment of the documented illness, injury or condition...

Fla. Admin. Code 65-2.056, **Basis for Hearings**, 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.

In the case at hand, the provider submitted a request for ten hours daily of HHA Monday to Friday and fourteen hours daily Saturday and Sunday.

KePRO approved eight hours daily Monday through Friday and two hours daily Saturday and Sunday and four additional hours a week.

Based on information provided by the petitioner's mother during the hearing, Dr. Buzzeo agreed to rescind the previous denial and approve ten hours of care a day Monday through Friday. He also agreed to maintain the two daily hours approved for Saturday and Sunday and the four additional hours a week approved for chore coverage. The petitioner's representative agreed with the above noted stipulation.

After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer orders the respondent, as per Dr. Buzzeo stipulation, to provide the petitioner with ten

hours daily of HHA services from Monday through Friday and two daily hours for Saturday and Sunday and four additional hours a week.

DECISION

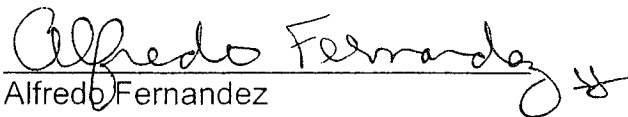
The appeal is partially granted as stated in the Conclusions of Law.

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 17th day of February 2010,

in Tallahassee, Florida.



Alfredo Fernandez
Hearing Officer
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Copies Furnished T