

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

FILED

APR 07 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-08478

Vs.
AGENCY FOR HEALTH CARE
ADMINISTRATION (AHCA)
CIRCUIT: 18 Seminole
RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned at 12:37 p.m. on March 4, 2010 in Sanford, Florida. The petitioner was not present but was represented by his parents, _____ and _____ and his twin brother, _____, was also present. The respondent was represented by Lissette Knott, AHCA human service program specialist; with telephone testimony available from KePRO (Keystone Peer Review Organization) staff members Robert Anthony Buzzeo, MD, board-certified in pediatrics and emergency pediatrics and Christina Bowling, RN KePRO nurse review specialist.

ISSUE

At issue was whether reduction in private duty nursing (PDN) hours was correct. The respondent bears the burden of proof.

FINDINGS OF FACT

1. The petitioner receives PDN services authorized by KePRO, due to extremely serious health problems. Health problems are undisputed.

2. At recertification review, for period November 13, 2009 to May 11, 2010, 4320 PDN hours were requested.

3. On December 22, 2009, the respondent issued notice denying 603 PDN hours and authorizing 3717 hours. That notice was challenged.

4. The petitioner has a twin brother toddler and another brother age 4. The petitioner's father works in the construction industry and in order to maintain his job, is expected to travel throughout the state at short notice. He would like to keep his job.

5. The petitioner's mother attends to child care for all children, home care, chores and other family responsibilities. She is capable of caring for the petitioner but also must address needs of the other active youngsters, who need almost constant attention.

6. During the hearing, more family information was developed. KePRO staff verbally affirmed approval of 22 hours daily PDN when both parents are at home. KePRO staff further affirmed PDN coverage would be 24 hours daily when only one parent is home. Upon learning more about the family situation, KePRO did not continue to stand behind the notice under challenge. KePRO staff informed that a post hearing reconsideration would be conducted to acknowledge that favorable plan.

7. The parents declared they were satisfied with that favorable PDN plan. However, the favorable plan was not put in writing and the hearing was not withdrawn.

CONCLUSIONS OF LAW

The terms of the stipulated agreement were placed on the hearing record. The agreement is that PDN coverage will be approved at 22 hours daily when both parents are at home and 24 hours daily when only one parent is at home. The arithmetic for

PDN hours was not calculated and was not presented to the record. It is noted the father has an unpredictable and nontraditional work schedule.

In view of the stipulated agreement, there is no further issue to resolve. The 603 hours reduction in PDN service is not justified as set forth in the December 22, 2009 notice. A more favorable authorization was agreed by stipulation as noted herein.

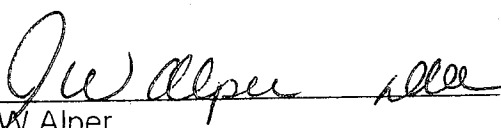
DECISION

The appeal is granted and the respondent's adverse action is not upheld.

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 7th day of April, 2010, in Tallahassee,
Florida.


J.W. Alper
Hearing Officer
Building 5, Room 255
1317 Winewood Boulevard
Tallahassee, FL 32399-0700
850-488-1429

Copies Furnished To: