

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

FILED

FEB 22 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-08727

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 February 16, 2010, at 10:15 a.m., in Lake Worth, Florida. The petitioner was not present. Representing the petitioner was his mother. Appearing as a witness was Greg Goldenberg, administrator, Maxim Healthcare. Representing the respondent was David King, management analyst, Agency for Healthcare Administration (AHCA). Appearing as witnesses were: Dr. Robert Buzzeo, physician reviewer, Keystone Peer Review Organization (KePro); Bonnie Wallington, supervisor, nurse reviewer, KePro; and Cristina Bowling, nurse reviewer, KePro. KePro representatives appeared telephonically at their request.

ISSUE

At issue is whether the Agency was correct in reducing home health aide hours from the requested 6 hours per day 7 days per week and 12 hours per day on non-school days to 2 hours per day on school days, 8 hours per day non-school days the first month, 4 hours per day the second months, and 2 hours per day for the rest of the certification period (November 2009 through May 2010). There would also be 4 hours per week to run errands. The Agency has the burden of proof.

FINDINGS OF FACT

1. The petitioner is an eight year old (DOB 12/29/01) recipient of Medicaid services. He is diagnosed with cerebral palsy, autism, intermittent explosive behavior, asthma, and toe walking. He requires assistance with his activities of daily living (ADL) such as bathing, toileting, and dressing. His medications include Adderal, Zyprexa, and Concerta. He also has nebulizer treatments.
2. The petitioner attends school five days a week. His mother is presently unemployed. There is one sibling, a two year old sister.
3. As part of the eligibility determination process for services, medical and home progress reports are forwarded by the petitioner's home health agency (in this instance Maxim Healthcare) to KePro for review by the Medicaid provider. KePro is the organization contracted by AHCA to perform these reviews.

4. For the current certification period, the petitioner is requesting Home Health Aide services as noted in the Issues.
5. KePro reviewed the submitted reports and on November 11, 2009, denied the request and offered the hours as noted. A reconsideration was requested by the petitioner and the denial was upheld December 18, 2009. The subsequent appeal was requested.
6. The respondent explains that the parent must provide care "to the fullest extent possible". Further, Medicaid will not reimburse services that are for respite care or the convenience of the parent or child.
7. The mother, as noted, is not working as she had difficulty with her immigration concerns. These have been rectified and she expects to be working soon. KePro reminds Maxim that they may submit a modification with any change in the household that would affect the services provided.
8. Lastly, Mr. Goldenberg explains that the Personal Care Services that are provided by a home health aide have been documented as medically necessary by the petitioner's physician as noted in the current care plan submitted to KePro.

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:

Personal care services are to provide medically necessary assistance with activities of daily living that support a recipient's medical care needs.

Medicaid reimburses personal care services for recipients under the age of 21 who:

Have complex medical problems; and

Require more individual and continuous care than can be provided through a home health aide visit.

Personal care services must be:

Documented as medically necessary;

Prescribed by the attending physician if provided through a home health agency;

Supervised by a registered nurse if provided through a home health agency;

Supervised by the parent or legal guardian if provided by a non-home health agency;

Provided by a home health aide or independent personal care provider;

Consistent with the physician, support coordinator, or case manager approved plan of care; and

Authorized prior to providing services.

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. Also, the care is not for respite or the convenience of the parent.

KePro reviewed the submitted documentation from Maxim. The mother is presently not working and is available to care for the petitioner when he is home from school. There is no documented service that she cannot perform.

Although the mother has another child in the home she must take responsibility for her children.

Further, a finding of medically necessary by a petitioner's physician in and of itself does not make that finding a covered service.

It is also noted that if the mother begins working again, Maxim may submit a modification that will usually be approved to accommodate the working hours. As a reminder the petitioner is cared for when he is in school.

DECISION

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

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

FINAL ORDER (Cont.)
09F-08727
PAGE - 9

responsibility.

DONE and ORDERED this 29th day of February 2010,
in Tallahassee, Florida.


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

Copies Furnished To