

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

FILED

JAN 27 2010

OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-6114

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION

CIRCUIT: 11 Dade

UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was telephonically convened before the undersigned-hearing officer on December 8, 2009, at 8:15 a.m., in Ft. Lauderdale, Florida. The petitioner was not present during the hearing however, he was represented by his mother. The respondent was represented by Monica Otorala, program specialist with the Agency for Health Care Administration (AHCA). Appearing as witnesses for the respondent were Dr. Robert Buzzeo, physician reviewer and Melanie Clyatt, registered nurse reviewer, both with Keystone Peer Review Organization (KēPRO) South. The hearing was previously scheduled for October 28, 2009, but was continued at the request of the petitioner.

ISSUE

At issue is the respondent's action of September 21, 2009 and October 6, 2009, in denying home health aide (HHA) service hours of 528 (3 hours daily) from the 3,540 hours

requested for the certification period of September 17, 2009 through March 15, 2010. The respondent has the burden of proof.

### **FINDINGS OF FACT**

1. The petitioner (age five) is a Medicaid beneficiary in the state of Florida. The petitioner's diagnosis as reported to the respondent, "Down's Syndrome, Hyperactive Airway Disease, Tracheomalacia, Dysphagia, Trach."
2. The respondent has contracted KēPRO South to perform medical reviews of 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. The request for service is only submitted by the provider, along with all information required, in order for KēPRO to make a determination and recommendation on medical necessity for the level of service being requested.
3. On September 17, 2009, the provider (Maxim Healthcare Services) requested 3,540 hours (18 hours daily) Mon-Fri. & (24 hours daily) Sat & Sun. of home health services for the certification period. The provider submitted medical and social information on the petitioner and the family in order to justify the hours being requested. The petitioner receives shared home health services with his sibling from 2pm to 8am (18 hours daily) and 24 hours daily on the weekends.
4. The petitioner's mother is a single parent with two other children ages 20 months (not disabled) and a 6 year old (receives shared HHA service with the petitioner) and does not work outside the home. The petitioner's mother

contends that the father visits the petitioner for a couple of hours a week, but is not active in his care. The petitioner's medications are administered by the mother and she is able to care for her son. The petitioner attends (Mon-Fri) school and is in bed for the night by 8:30 pm.

5. On September 19, 2009, the physician consultant, board certified in pediatrics approved the request in part, denying hours and stating "...HHA coverage request is excessive, however, would approve 8 hours/night for sleep given that the 2 5YO children have trachs, 2 hours/day for sibling care, and 4 hours/week for chore coverage, as per the FL Medicaid handbook. ...Information regarding the recipient's medical status and/or PCG availability to provide care was limited and did not support the paraprofessional services requested for this certification period. ...Parents and caregivers must participate in providing care to the fullest extent possible. Training can be offered to parents...". The respondent notified the provider and the petitioner that they approved 1904 hours and denied 1636 hours for the certification period.
6. On September 24, 2009 a reconsideration was requested by the provider with additional information.
7. On October 6, 2009 a second physician consultant, board certified in pediatrics reviewed the request and modified the denial stating "...It would seem that sometime around 8pm most if not all of these children should be in bed. I suggest to rescind the previous denial and modify the denial to deny only 3 hours from 8pm to 11pm or any other period of time if the PCG wishes, and

approve the rest of the hours requested. ...I would extend this consideration for during the days there is no school and coverage would be needed in the am before 1pm.”

8. The respondent notified the provider and petitioner that 528 hours (3 hours daily) had been denied from the 3,540 hours that were requested for the certification period. The petitioner appealed the respondent's decision.

### **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. Stat. 409.905 addresses Mandatory Medicaid services and states as follows:

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. Mandatory services rendered by providers in mobile units to Medicaid recipients may be restricted by the agency. Nothing in this section shall be construed to prevent or limit the agency from adjusting fees, reimbursement rates, lengths of stay, number of visits, number of services, or any other adjustments necessary to comply with the availability of moneys and any limitations or directions provided for in the General Appropriations Act or chapter 216.

Fla. Admin. Code 59G-4.130 Home Health Services states in part:

(1) This rule applies to all home health agencies licensed under Chapter 400, Part III, F.S., and certified by the Agency for Health Care Administration for participation in the Medicaid program for home health care.

(2) All home health agency providers enrolled in the Medicaid program must be in compliance with the Florida Medicaid Home Health Services Coverage and Limitations Handbook, July 2008, incorporated by reference, and the Florida Medicaid Provider Reimbursement Handbook, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. ...

The Home Health Services Coverage and Limitations Handbook (July 2008), page 2-10 and 2-15 states in part:

Medicaid reimburses for the following services provided to eligible recipients under age 21 years: ...Licensed nurse and home health aide visits; ...

Home Health Aide Services-Home health aide services help maintain a recipient's health or facilitate treatment of the recipient's illness or injury. The following are examples of home health aide services reimbursed by Medicaid:

Assisting with the change of a colostomy bag;

Assisting with transfer or ambulation;

Reinforcing a dressing;

Assisting the individual with prescribed range of motion exercises that have been taught by the RN;

Assisting with an ice cap or collar;

Conducting urine test for sugar, acetone or albumin;

Measuring and preparing special diets;

Providing oral hygiene;

Bathing and skin care; and

Assisting with self-administered medication.

The petitioner's mother explained of medical (seizures, tracheotomy care, respiratory monitoring) emergency situations that arise and she cannot be left alone, requiring the assistance of the HHA.

The physician consultant responded that the requested service that she was describing could not be performed by the HHA and the three hours of HHA service that were ultimately denied were appropriate, given the circumstances presented. The physician consultant did express that the provider did not request the proper level of professional care according to what the petitioner's mother was describing as being needed. The petitioner's mother will address this with the provider in order to possibly request more appropriate assistance.

Based on the above-mentioned authority the hearing officer finds that the agency's decision was correct. Therefore, the agency's decision to deny 528 hours from the 3,540 hours of home health aide services requested is upheld.

### **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.

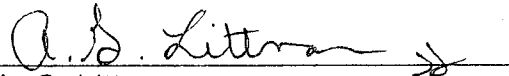
FINAL ORDER (Cont.)

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DONE and ORDERED this 27<sup>th</sup> day of January, 2010,

in Tallahassee, Florida.

A. G. Littman 

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