

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

FILED
JAN 14 2010
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 09F-7291

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 December 23, 2009, at 9:30 a.m., in Ft. Lauderdale, Florida. The petitioner (a minor) was represented by her father, The respondent was represented by Monica M. Otarola, senior specialist with the Agency for Health Care Administration. Serving as witnesses for the respondent were Dr. Robert A. Buzzeo, physician reviewer and Bonnie Wallington, registered nurse reviewer supervisor both with Keystone Peer Review Organization (KēPRO) South.

ISSUE

At issue is the respondent's action of September 23, 2009 and October 5, 2009, in denying 258 hours from the requested 873 hours of home health aide for the certification period of September 6, 2009 through March 4, 2010. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner is thirteen years old and a Medicaid beneficiary in the state of Florida. The petitioner's diagnosis as reported to the respondent, "Cerebral palsy mental retardation convulsion." "Services have continued throughout the appeals process.
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 18, 2009, the provider (New Health Care Corp.) requested 873 hours (6a-8a & 8p-10p [4 hrs daily] Mon-Fri. & 8a-3p [7 hrs daily] Sat & Sun) of home health services for the certification period. The provider submitted medical and social information on the petitioner and the parents in order to justify the hours being requested.
4. The parents working hours schedule reflected that they were not working by 8pm. The mother works until 5p or 6p Mondays-Fridays and works every other Saturday. The father works until 7p or 8p Mondays-Saturdays and is "usually" off on Sundays. The hours of service requested were 4 hours daily Monday-

Friday 6a-8a & 8p-10p and 7 hours daily on Saturdays and Sunday from 8a-3pm.

5. On September 23, 2009, the physician consultant, board certified in pediatrics approved the request in part, denying 2 hours daily from 8p-10p as the parents were home from work and able to provide care for the petitioner.
6. A reconsideration was requested by the provider and on October 2, 2009, a second physician consultant reviewed the request and upheld the original decision to deny the evening hours as both parents are not at work. 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 father explained that the hours considered were accurate however, they had other things that they needed to do and needed the 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 258 hours out of the 873 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 14th day of January, 2010,

in Tallahassee, Florida.

A. G. Littman 

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