

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

FILED  
APR 08 2010  
OFFICE OF APPEAL HEARINGS  
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 10F-00132

PETITIONER,

Vs.

CASE NO.

AGENCY FOR HEALTH CARE ADMINISTRATION  
CIRCUIT: 10 Polk  
UNIT: AHCA

RESPONDENT.

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**FINAL ORDER**

Pursuant to notice, the undersigned convened an administrative hearing in the above-referenced matter, on February 26, 2010, at 3:40 p.m. The parties appeared telephonically. The petitioner did not appear. \_\_\_\_\_, petitioner's mother and authorized representative, appeared for the petitioner. David Beaven, program analyst for the Agency for Health Care Administration (AHCA), appeared and represented the respondent-Agency. \_\_\_\_\_, nurse review supervisor with KePRO, and Dr. Rakesh Mittal, board certified pediatrician physician reviewer with KePRO, appeared as witnesses for the respondent.

**ISSUE**

At issue is the respondent's action of January 20, 2010, terminating the petitioner's receipt of sixteen hours per day, seven days per week, in personal care assistance (PCA) due to not being medically necessary. The respondent bears the burden of proof in this appeal.

**FINDINGS OF FACT**

1. The petitioner is a 19-year old young man who lives in the home with his parents. No one else resides in the home.
2. The petitioner's diagnoses include autism and mental retardation. He currently receives some services under the Home and Community-Based Services Waiver Program, specifically the Developmental Disabilities Waiver. The respondent was also providing him services under State Plan Medicaid, specifically personal care assistance (PCA) in the amount of sixteen hours per day, seven days per week. Personal care assistance is assistance with activities of daily living (ADLs): toileting, hygiene, bathing, feeding, transferring, dressing, etc.
3. The petitioner's CNA (certified nurse assistant) provided him personal care assistance (PCA) hours during the day and evening and this included while he was in school. He is no longer receiving these hours during the course of the school day. The CNA is providing ten hours of services per day, Monday through Friday and sixteen hours per day on the weekends and non-school days. The respondent conducted a review of the petitioner's file when a request for continuation of this same level of service was filed by his home health agency.
4. The respondent's prior service authorization agent, KePRO, conducted a paper review of the file based on the information provided to it by the home health agency. KePRO's board certified physician reviewer found that the petitioner's condition was behavioral (diagnosis of autism) rather than medical and therefore PCA was not medically necessary and those services should be gradually reduced and ultimately terminated by January 2010.

5. The respondent issued a notice to the petitioner on December 29, 2009, informing of the termination. Reconsideration was requested by the petitioner's family. The decision was upheld and a second termination letter was issued January 20, 2010.
6. The petitioner appeals.
7. At the hearing, the petitioner's mother stated that the combination both parents' work schedules, physical ailments (husband's prior back/wrist injury; her high blood pressure/migraine headaches), and their son's major need for assistance with activities of daily living, having the PCA hours reduced to zero would be detrimental to the petitioner and family unit. She and her husband supplement as much of the petitioner's care as possible, whenever they are home and not working. Both parents administer their son's medications when needed as well.
8. The mother expressed great concern over her son's safety and his inability to adequately perform or perform at all, activities of daily living (ADLs) including toileting, hygiene, bathing, and feeding.
9. The petitioner has to be constantly reminded to take small bites of food and how to swallow properly in order not to choke. It takes time for him to complete a meal and then afterwards get cleaned up. All of this must be done with total assistance.
10. Because the petitioner is incontinent, it takes a considerable amount of time to assist him with toileting and any cleanup from accidents he may have. He needs total assistance from start to finish upon entering the bathroom, eliminating (to whatever degree), wiping (if needed), and then washing afterward.

11. He also needs total assistance with bathing and hygiene (this includes shaving).  
Undressing, bathing, and shaving, and redressing can take up to couple of hours sometimes.
12. The petitioner also needs total assistance with oral hygiene (teeth brushing).
13. The mother stated that it would be ideal for her son to receive ten hours per day of PCA to meet her son's total care needs which includes both supervision and ADLs. However, her son needs a minimum of six hours per day of service due to the amount of time he takes for completion of just the ADLs.
14. The mother provided a written statement, dated February 8, 2010, from her son's attending physician supporting medical necessity for continuation of services due to the petitioner's trouble with ADLs.
15. The mother stated that she usually works six days per week (some day and some evening shifts). She stated that recently, her employer mandated overtime due to an anticipated staff shortage. Her husband works a minimum of six days per week, and frequently works seven days per week.
16. Upon hearing this information, Dr. Mittal stated on the record that after hearing the mother's testimony, he agreed some level of service was medically necessary since the petitioner's ADLs are affected to a degree of which KePRO was unaware. He offered to place four hours per day, five days per week, of PCA into the home. The mother indicated that this would not suffice to meet her child's needs and refused this offer.

#### **CONCLUSIONS OF LAW**

Fla. Admin. Code 59G-4.130 states:

Home Health Services [emphasis original] (1) This rule applies to all home health agencies licensed under Chapter 400, Part IV, 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, CMS-1500, which is incorporated in Rule 59G-4.001, F.A.C. Both handbooks are available from the Medicaid fiscal agent. ...

Fla. Admin. Code 59.G-1.010, "Definitions", states for medical necessity:

(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.

The Home Health Services Coverage and Limitations Handbook establish the following guidelines for personal care assistance (PCA) at 2-22, 23:

**Personal Care Services...Personal Care Services**

**Definition...**[emphasis original] Personal care services are to provide medically necessary assistance with activities of daily living that support a recipient's medical care needs.

**Who Can Receive Personal Care Services** [emphasis original]...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 Service Requirements** [emphasis original]

- 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.

**Prior Authorization...**[emphasis original] All personal care services must be authorized by the Medicaid peer review organization prior to the provision of services. ...

**Reimbursable Personal Care Services...**Services may include:

- Bathing and grooming (including hair care and shaving);
- Toileting and elimination;
- Oral hygiene;
- Range of motion and positioning; and
- Oral feedings and fluid intake.

During the hearing, the respondent's physician reviewer reversed his determination that home health aide services were not medically necessary. He stated that the petitioner should receive PCA in the amount of four hours per day, five days per week instead of nothing at all. Dr. Mittal, KePRO's reviewer, stated that because the parents are available to provide care when they are not working, any hours in excess of

this was not medically necessary. The petitioner's mother argued that sometimes she works extra shifts. Dr. Mittal stated that the parents can request a modification for additional hours any time extra coverage is needed.

Evidence presented by the petitioner through testimony of his mother and a written statement from his attending physician indicated that he needs personal care assistance to help with activities of daily living particularly focusing on toileting, bathing, eating, dressing, and hygiene. His mother stated that it takes her son a significant amount of time per day to complete these activities and that at least six hours per day are needed. She gave the example that it can take a couple of hours just to bathe him. She and her husband supplement as many hours as possible when they are not working.

Based on the evidence presented, the hearing officer concludes that the petitioner demonstrates medical necessity to support the need for personal care assistance (PCA) for six hours per day, seven days per week. Due to the parents' work schedules and their physical limitations, the hearing officer finds this level of service hours is sufficient to meet the petitioner's medical needs. Although, the petitioner's mother desired ten hours per day, the additional four hours would be for purposes of supervision and safety which are not factors used in determining medical necessity for this service. The respondent reversed its initial decision to terminate services and offered four hours per day, five days per week. This offer cannot be upheld as a higher level of service is justified.

DECISION

The appeal is granted. The respondent's action is reversed. The respondent is ordered to approve personal care assistance (PCA) for the petitioner in the amount of six hours per day, seven days per week. The respondent is to implement this order within five days of receipt.

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 8<sup>th</sup> day of April, 2010,

in Tallahassee, Florida.

  
Jeannette Estes  
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