

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

FILED
APR 12 2010
OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 10F-00629

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 17 Broward
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned hearing officer on March 19, 2010, at 10:00 a.m., in Fort Lauderdale, Florida. The petitioner was not present. He was represented by his mother. The respondent was represented by Ken Hamblin, program operations administrator. Present from Kepro on the telephone was Dr. Rakesh Mittal medical reviewer, and Tina Herron, registered nurse reviewer.

ISSUE

At issue is the Agency's January 28, 2010 action of reducing the petitioner's home health aide services up to 4 hours daily until 0 hours are reached before the end of the certification period of December 27, 2009 to June 24, 2010. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioner, date of birth July 14, 1998, is 11 years old, and he receives home health aide services through the Medicaid Program.
2. Included in the evidence is a copy of a Recipient Denial Letter dated January 8, 2010, stating that home health aide services for the petitioner was approved for 582 hours, and denied for 708 hours from December 27, 2010 to June 24, 2010.
3. Included in the evidence is a copy of a Recipient Reconsideration Denial Overturned notice dated January 28, 2010, stating that home health aide services for the petitioner was approved for 476 hours, and denied for 814 hours from December 27, 2009 to June 24, 2010.
4. The petitioner's requested home health aide services for 10 hours per day Mondays through Fridays. Included in the evidence is a copy of a Synopsis of Case on the petitioner dated December 21, 2009. It states that even though the January 28, 2010 notice states that home health aide hours of 476 hours was approved, and 814 hours were denied from December 27, 2009 to June 24, 2010, the following is actually the case. A denial of home health aide services by 4 hours per day monthly beginning February 2010, until 0 hours are reached before the end of the certification period.
5. It was determined that the home health aide services are not medically necessary for the petitioner, and instead of an abrupt denial, it was determined that the denial of these services would be gradual.
6. Included in the evidence is a copy of a Kepro Internal Focus Review Findings Report on the petitioner dated December 21, 2009, stating that he was diagnosed with autism. According to the diagnosis, this was his only condition.

7. According to the Synopsis of Case, a physician consultant, board certified in pediatrics made the determination of the denial of the home health aid services for the petitioner, and according to the doctor at the hearing, he agrees with this determination. The determination of the denial of the services takes into account the petitioner's mother's ability and availability to take care of him.

8. According to Dr. Mittal at the hearing, the petitioner's autism causes behavioral problems, which is not medically necessary for the home health aide services. According to the Synopsis of Case, the petitioner's mother, who is his only caregiver, works 8:00 a.m. to 6:00 p.m. Mondays through Fridays, and there are no other children in the home.

9. Included in the evidence is a copy of a statement from Dr. [redacted] dated March 11, 2010, stating that the petitioner has autism. He has poor attention and sensory seeking behaviors impairing his ability to function in society, and with his everyday activities. According to him, it is beneficial for the petitioner to have a home health aide to help him with his after school care.

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 Chapter 120.80 F.S.

Fla. Admin. Code 59G-1.010 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;
 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.

Federal Regulations at 42 C.F.R. §440.230 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.

The Home Health Services Coverage and Limitations Handbook on page 1-2

states in part:

A home health aide visit is not limited to a specific length of time, but is defined as an entry into the recipient's place of residence, for the length of time needed, to provide the medically-necessary nursing or home health aide service(s).

The petitioner's home health aide services are being reduced up to 4 hours daily until 0 hours are reached before the end of the certification period of December 27, 2009 to June 24, 2010. A request for the home health aide services for 10 hours per day Mondays through Fridays was denied. According to the doctor that testified at the

hearing, the action to reduce and eventually deny the home health aide services to the petitioner was correct.

The basis for the denial by the respondent was essentially that while there is a demonstrated need for daily care, the hours should be denied to allow the parent to provide care to the fullest extent possible. As parents are taught skills necessary to provide for the care of their child, the home health aide hours are reduced over time. The evidence supports that the petitioner requires daily care.

For the Medicaid Program to authorize and pay for the home health aide care, the required care must meet the rule definition of medical necessity. The analysis must continue to determine if there are other parties that may be responsible for providing this care. Both the statute and the Florida Medicaid Handbook sets forth that the home health aide services are authorized to supplement care provided by parent, and the parent must participate in providing care to the fullest extent possible. The issue then rests on whether the parent can provide the care.

To make that determination, the undersigned would look at the skills of the parent and the impact of other responsibilities in the household along with the services provided by a home health aide. The rule sets forth that the request must be reflective of the level of service that can be safely furnished, and for which no equally effective more conservative or less costly treatment is available.

According to the doctor at the hearing, he agrees with the denial of hours of the petitioner's home health aide care, and that his parent has the ability to take care of him with the denied home health care hours. The petitioner's mother works full time, and as it was discussed at the hearing, according to the doctors from Kepro the petitioner's mother

can care for him, in considering her working hours. As the doctor explained at the hearing, the petitioner's mother can use help in caring for him, but just not to the extent of using a home health aide, which is not medically necessary. After careful consideration of the proper authorities and evidence, including the petitioner's diagnosis and condition, it is determined that the Agency's action, is upheld.

DECISION

The appeal is denied, and the Agency's action is affirmed.

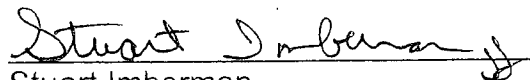
NOTICE OF RIGHT TO APPEAL

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 12th day of April, 2010,

in Tallahassee, Florida.



Stuart Imberman
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Copies Furnished To