

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

FILED

APR 09 2010

OFFICE OF APPEAL HEARINGS
DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 10F-00810

PETITIONER,

Vs.

AGENCY FOR HEALTH CARE ADMINISTRATION
CIRCUIT: 11 Dade
UNIT: AHCA

RESPONDENT.

FINAL ORDER

Pursuant to notice, an administrative hearing was convened before the undersigned-hearing officer on March 17, 2010, at 12:30 p.m. All the parties appeared by telephone. The petitioner was represented at the hearing by the petitioner's mother, _____, petitioner's grandmother, was present on behalf of the petitioner. The Agency was represented by Monica Otalora, senior human services program specialist, from the Agency For Health Care Administration (AHCA). Present as witness for the Agency was Dr. Rakesh Mittal, physician reviewer from KēPRO. Also present as witness for the Agency was Christina Bowling, RN nurse reviewer from KēPRO.

ISSUE

At issue is the respondent's action of February 8, 2010, to deny the petitioner 1,334 hours of private duty nursing (PDN) services for the certification period.

January 20, 2010 through July 18, 2010. The petitioner had the burden of proof, as it was an initial request for services.

FINDINGS OF FACT

1. The petitioner, who is approximately one year old, has severe and numerous medical problems that require medical services as provided through the Agency For Health Care Administration's (AHCA) Medicaid State Plan. The petitioner's condition(s) are outlined in Respondent Composite Exhibit 1. AHCA will be further addressed as the respondent.
2. The petitioner's mother and grandmother are the caregivers. The petitioner's mother is a full time student at _____ High school. She attends school from 7:30 a.m. to 11:00 a.m.
3. KēPRO is the Peer Review Organization contracted by the respondent to perform medical review for the private nursing and personal care prior authorization program for Medicaid beneficiaries in the state of Florida.
4. On December 29, 2009, the PDN provider requested 4,320 hours of private duty nursing services to be provided 24 hours daily seven days per week.
5. On February 5, 2010, a KēPRO board certified pediatric specialty physician consultant reviewed the case and made the following determination: "Would approve for SN coverage, but immediately would begin decreasing coverage 4 hours per month until only covering mom's school/travel and nightly sleep coverage." The physician consultant noted that information regarding the petitioner's medical status and

petitioner's caregiver availability to provide care was limited and did not support the skilled services requested for this certification period.

6. The request underwent reconsideration review by a second KēPRO physician consultant, board-certified in Pediatrics, who suggested to add four hours daily per week for errands and chores and two additional hours daily a week due to the fact that there are other children in the home.

7. At the hearing, the respondent's witness explained that he reviewed this case prior to this hearing and noted the severity of the petitioner's medical condition; thus he decided to modify the previous decision. The respondent's witness agreed and stipulated to approve 24/7 care for the initial 60 day period; then for the following 30 days to reduce the service by four hours every day, and starting from the 90 days to 120 days time period, to reduce the service by another four hours until it reaches 16 hours a day Monday through Friday and 13 hours per day on Saturdays and Sundays.

8. The PDN hours denied for the certification period of January 20, 2010 to July 18, 2010 were reduced from 1,178 to 858.

9. The petitioner agreed with this stipulation.

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. Admin. Code 59G-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;
5. Be furnished in a manner not primarily intended for the convenience of the recipient, the recipient's caretaker, or the provider.

The Home Health Services Coverage and Limitations Handbook page 2-17

states in part:

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.

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.

As shown in the Findings of Fact, initially KēPRO had determined on February 8, 2010, to approve PDN services but immediately begin decreasing coverage four hours per month until only covering petitioner's mother's school/travel and nightly sleep coverage.

The respondent's witness however stipulated on record that KēPRO will approve 24/7 care for the initial 60 day period; then for the following 30 days they will reduce the service by four hours every day, and starting from the 90 days to 120 days time period, they will reduce the service by another four hours until it reaches 16 hours a day Monday through Friday and 13 hours per day on Saturdays and Sundays. The petitioner's representative agreed with the above noted stipulation.

After considering the evidence, the Fla. Admin. Code Rule and all of the appropriate authorities set forth in the findings above, the hearing officer orders the respondent to provide the petitioner with the above stipulated hours.

DECISION

This appeal is granted 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.)
10F-00810
PAGE -6

DONE and ORDERED this 9th day of April, 2010,
in Tallahassee, Florida.

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

Copies Furnished T