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

APR 09 2010

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DEPT. OF CHILDREN & FAMILIES

APPEAL NO. 10F-00937
10F-00938

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 26, 2010, at 1:35 p.m., in Miami, Florida. The petitioner, _____, was present but was represented by her mother, _____, who was not present. The agency was represented by Monica Otolara, senior services program specialist, Agency for Health Care Administration (AHCA). Also present as witnesses for the agency from Keystone Peer Review Organization (KePRO), were Dr. Rakesh Mittal, physician reviewer, and Tina Herron, nurse reviewer. Denis Torres served as an interpreter. _____ RN, was present as an observer.

ISSUE

At issue are the agency's actions of January 18, 2010, to deny the petitioners 1,424 hours of Home Health Aid (HHA) services for period of January 3, 2010 through July 1, 2010, because the medical care as described to KePRO is not medically necessary. The respondent has the burden of proof.

FINDINGS OF FACT

1. The petitioners, _____, age 12, and _____, age 7, are Medicaid beneficiary in the state of Florida. The petitioners' diagnosis is Autism, ADHD and developmental delay. Both require assistance with all their activities of daily living (ADL) such as feeding, bathing, personal hygiene, dressing, toileting and supervision for safety. Both attend school from 8:00 a.m. to 3:00 p.m.
2. The petitioners' caregiver is their mother. She is a single parent and has been diagnosed with schizoaffective disorder and depression. There are other three siblings in the home.
3. Prior to the action under appeal, the petitioners were receiving HHA services eight hours per day Monday through Friday and 12 hours per day on Saturday and Sunday.
4. On January 7, 2010, the PDN provider, Maxim Healthcare Services, requested HHA services 11 hours per day Monday through Friday and 15 hours per day on Saturday and Sunday.

5. KePRO is the Peer Review Organization contracted by AHCA to perform medical review for the private nursing and personal care prior authorization program for Medicaid beneficiaries in the state of Florida.

6. On January 16, 2010, a KePRO Physician Consultant, Board-Certified in Pediatrics reviewed the case and decided to deny the request as follows: Deny four hours every day for initial 30 days. Then deny eight hours a day for 30 days. Then deny 12 hours per day for next 30 days. Then on deny all requested hours.

7. On January 18, 2010, the initial denial letter was sent to the petitioner.

8. On February 1, 2010, the nursing provider submitted a reconsideration request indicating that the petitioners require constant supervision for safety and assistance with their ADLs. The provider notes that the mother is medically disabled and unable to meet the needs of her two children with disabilities and her three other healthy children without some assistance. The provider also notes that denying hours will place the petitioners at risk for not having their ADLs met and may jeopardize their safety.

9. On February 13, 2010, a different KePRO Physician Consultant, Board-Certified in Pediatrics reviewed the case and suggested to rescind the previous denial and deny four hours daily per month until all hours requested for specific days and times have been denied in this certification period. The reviewer physician notes that these cases refer to conditions of behavior, sitting and monitoring, behavior management and redirecting behavior as the primary reason for utilizing paraprofessional services. The reviewer physician concludes that this is not a covered service in the PDN program

10. The petitioners' mother explained that she is disabled and need help with her children.

11. Dr. Mittal agrees that the children need help, but not the services of the paraprofessional services in the PDN program.

12. Included in the evidence are copies of recent psychological evaluations performed to both children and notices from the agency for persons with disabilities (APD) indicating that based on documentation provided or testing completed, the Agency has determined that _____ qualifies for services under the category of Autism and _____ under the category of Retardation. (Petitioner Composite Exhibit 1)

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 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 2-22

states in part:

Personal Care Services Definition

Person care services are to provide medically necessary assistance with activities of daily living that support a recipient's medical care needs.

Personal Care Services Requirements

Personal care services must be:

- Documented as medically necessary;
- Prescribed by the attending physician;
- Supervised by a registered nurse;
- Provided by a home health aide;
- Consistent with the physician approved plan of care; and
- Prior authorized prior to providing services.

In the instant case the agency, through KePRO, on January 18, 2010, took action to deny the petitioner 864 hours of HHA services for period of January 3, 2010 through July 1, 2010. This decision was based on the information as provided by the petitioner's nursing service, which did not show medical necessity for the service. The findings show that the petitioners need services for behavioral issues. Unfortunately, this is not a covered service in the PDN program.

After considering the evidence, the Florida Administrative Code Rules and all of the appropriate authorities set forth in the findings above, the hearing officer affirms the respondent's action of January 4, 2010 to deny 1,424 hours of HHA services for the period of January 3, 2010 through July 1, 2010.

DECISION

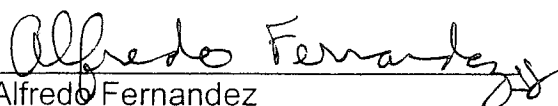
The appeal is denied as stated in the Conclusions of Law.

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.

DONE and ORDERED this 9th day of April, 2010,

in Tallahassee, Florida.


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

Copies Furnished To