STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: November 3, 2017
[redacted]
AGENCY: MAP
FH #: 7641023M

In the Matter of the Appeal of

[redacted]

from a determination by the New York City Department of Social Services

DECISION AFTER FAIR HEARING

JURISDICTION

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of Title 18 NYCRR, (hereinafter Regulations), a fair hearing was held on November 30, 2017, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[redacted]

For the Managed Long Term Care plan

Jillian Hinkson, Grievance & Appeals liaison , Fair Hearing Representative

ISSUE

Was the October 23, 2017, determination by the Managed Long Term Care plan, Centers for Healthy Living, to authorize a reduction of the Appellant's Personal Care Services authorization from seventy (70) hours per week (10 hours per day x 7 days) to forty-two (42) hours per week (6 hours per day x 7 days) correct?

FINDINGS OF FACT

An opportunity to be heard having been afforded to all interested parties and evidence having been taken and due deliberation having been had, it is hereby found that:

1. The Appellant, age forty-one (41), has been in receipt of a Medical Assistance authorization, Medicaid benefits, and is enrolled in a Managed Long Term Care plan with Centers Plan for Healthy Living.

2. The Appellant has been in receipt of an authorization for Personal Care Services in the amount of seventy (70) hours per week (10 hours per day x 7 days)

3. On August 21, 2017, the Plan's registered nurse assessor completed an aide task service plan which reports a need for Personal Care Services in the amount of 45.5 hours per week.

4. On August 25, 2017, the Plan's registered nurse assessor completed a Uniform Assessment System- New York Assessment Report of the Appellant's personal care needs based upon an in-person evaluation of the Appellant by a registered nurse assessor on August 21, 2017.

5. On October 19, 2017, the Plan's registered nurse assessor completed a Uniform Assessment System- New York Assessment Report of the Appellant's personal care needs based upon an in-person evaluation of the Appellant by a registered nurse assessor on said date.

6. The October 19, 2017, UAS report identifies "improvement" regarding the "ADL status as compared to 90 days ago." The UAS report also identifies "improvement" regarding "[o]verall self-sufficiency as compared to status 90 days ago."

7. On October 19, 2017, a registered nurse assessor completed an aide task service plan which reports a need for Personal Care Services in the amount of 42 hours per week.

8. The Appellant has been diagnosed with the following medical conditions: anxiety, depression, stroke/CVA. The Appellant has described herself to reviewing nurses as having the following medical conditions: allergies, attention-deficit hyperactivity disorder, chronic pain syndrome, dizziness, dystonia, ehlers-danlos syndrome, GERD, hyperlipidemia, hypothyroidism, insomnia, irritable bowel syndrome, asthma, fatigue, pneumothorax, ischemic attach and cerebral infarction, polyarthritis, PTSD, stress incontinence, supraventricular tachycardia, abnormalities of gait and mobility, vitamin deficiency and weakness.

9. By written notice dated October 234, 2017, the Plan determined to authorize a reduction of the Appellant's Personal Care Services from 70 hours per week to forty-two (42) hours per week (6 hours per day x 7 days).

10. The reason set forth on the Plan's October 23, 2017, determination is as follows: "[a] comparison of the UAS-NY assessments completed 8/21/2017 and 10/19/2017 showed that you have demonstrated some improvement in your abilities to perform your activities of daily living and instrumental activities of daily living….your NFLOC scores changed from 24 on 8/21/2017 to 20 on 10/19/2017. The notice advised that the current UAS found improvement, from maximal assistance to extensive assistance, with the Appellant's ability to dress her lower body, walking, locomotion, toilet transfer, toilet use and medication management.

11. On November 3, 2017, the Appellant requested a fair hearing regarding the correctness of the Plan's October 23, 2017, determination.

APPLICABLE LAW

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Medical Assistance benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

Part 438 of 42 Code of Federal Regulations (CFR) pertains to provision of Medicaid medical care, services and supplies through Managed Care Organizations (MCOs), Prepaid Inpatient Health Plans (PIHPs), Prepaid Ambulatory Health Plans (PAHPs) and Primary Care Case Managers (PCCMs), and the requirements for contracts for services so provided.

Section 438.210 of 42 CFR Subpart D provides, in pertinent part:

> (a) Coverage - Each contract with an MCO, PIHP, or PAHP must do the following:
>
> (1) Identify, define, and specify the amount, duration, and scope of each service that the MCO, PIHP, or PAHP is required to offer.
>
> (2) Require that the services identified in paragraph (a)(1) of this section be furnished in an amount, duration, and scope that is no less than the amount, duration, and scope for the same services furnished to beneficiaries under fee-for-service Medicaid, as set forth in Sec. 440.230.

NYS DEPARTMENT OF HEALTH
OFFICE OF HEALTH INSURANCE PROGRAMS

Guidelines for the Provision of Personal Care Services in Medicaid Managed Care

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III. e. Terminations and Reductions…

iii. All notices must reflect the reasons for reduction, discontinuation or denial of a reauthorization for PCS. Appropriate reasons for reducing,

discontinuing or denying a reauthorization of personal care services include but are not limited to:

1. the client's medical, mental, economic or social circumstances have changed and the MCO determines that the personal care services provided under the last authorization or reauthorization are no longer appropriate or can be provided in fewer hours than they were previously;
2. a mistake occurred in the previous personal care services authorization;
3. the member refused to cooperate with the required assessment of services;
4. a technological development renders certain services unnecessary or less time consuming;
5. the member can be more appropriately and cost-effectively served through other Medicaid programs and services;
6. the member's health and safety cannot be reasonably assured with the provision of personal care services;
7. the member's medical condition is not stable;
8. the member is not self-directing and has no one to assume those responsibilities;
9. the services the member needs exceed the personal care aide's scope of practice.

GIS 15 MA/24, published on December 31, 2015, advises of the revisions to the Personal Care Services (PCS) and Consumer Directed Personal Assistance (CDPA) regulations at 18 NYCRR section 505.14 and 18 NYCRR section 505.28, and notes the following changes:

The definitions of "some assistance" and "total assistance" are repealed in their entirety. This means, in part, that a "total assistance" need with certain activities of daily living is no longer an eligibility requirement for continuous personal care services or continuous consumer directed personal assistance.

DISCUSSION

The record in this matter that the Appellant has been in receipt of Medicaid benefits provided through a Managed Long Term Care plan, Centers Plan for Healthy Living. The record also establishes that the Plan determined to authorize a reduction of the hours of the Appellant's Personal Care Services on the grounds that the latest UAS report filed by a nurse found that the Appellant had improvement from maximal to extensive needs with regard to the Appellant's ability to dress her lower body, walking, locomotion, toilet transfer, toilet use and medication management. By written notice dated October 23,2 017, the Plan advised the Appellant of the Plan's determination to authorize the reduction of the Appellant's Personal Care Services authorization from seventy (70) hours per week to forty-two (42) hours per week.

At the hearing the Plan's representative presented the two most recent UAS reports as to the Appellant's Personal Care Service needs along with considerable documentation as to the Appellant's purported hostile behaviors toward the Plan and aides and her purported unwarranted and inappropriate demands upon her personal care aides. That issue, however, is not the basis upon which the Agency's October 23, 2017, determination to authorize a reduction of Personal Care Services is based. It is noted that, in the event that these claimed violations of the Appellant's personal care services authorization are, in fact, true and verifiable, then the Plan may take whatever course of action the Plan deems necessary, including a request that the Appellant be disenrolled from the Plan. But, again, those issues are not the basis upon which this fair hearing was requested nor the basis of the Plan's October 23, 2017, determination under review herein.

With regard to the correctness of the Plan's October 23, 2017, determination, the Plan did not present evidence which might support the reduction of the Appellant's Personal Care Service hours from 10 hours per day to 7 hours per day. The reduction of care needs from maximal to extensive, even if verifiable and unrefuted, does not, of itself, automatically transform to a reduction of three (3) hours per day. The Plan, though duly notified of the date, time and location as well as the issue(s) to addressed, did not present evidence which might establish how the documented "improvement" from maximal to extensive needs with regard to the Appellant's ability to dress her lower body, walking, locomotion, toilet transfer, toilet use and medication management resulted in a loss of three (3) hours per day of personal care services. The Plan's October 23, 2017, determination, therefore, cannot be sustained.

DECISION AND ORDER

The October 23, 2017, determination by Centers for Healthy Living, to authorize a reduction of the Appellant's Personal Care Services authorization from seventy (70) hours per week (10 hours per day x 7 days) to forty-two (42) hours per week (6 hours per day x 7 days) cannot be sustained and is reversed.

Centers Plan for Healthy Living is directed to:

1. Take no further action upon the October 23, 2017, determination.

2. Restore the Appellant's Personal Care Services authorization to the amount of seventy (70) hours per week (10 hours per day x 7 days).

3. Continue to provide the Appellant with a Personal Care Services authorization in the amount of seventy (70) hours per week unchanged.

Should the Centers Plan for Healthy Living need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant and the Appellant's Representative promptly in writing as to what documentation is needed. If such information is required, the Appellant or the Appellant's Representative must provide it to the Managed Long Term Care Plan promptly to facilitate such compliance.

As required by Section 358-6.4 of the Regulations, Centers Plan for Healthy Living must comply immediately with the directives set forth above.

DATED: Albany, New York
12/06/2017

NEW YORK STATE
DEPARTMENT OF HEALTH

By

Commissioner's Designee