STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: July 13, 2018
[redacted]
AGENCY: MAP
FH #: 7790750H

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 August 8, 2018, 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 (Centers Plan for Healthy Living)

On papers only - appearance waived by the Office of Administrative Hearings

ISSUE

Was the Managed Long Term Care Plan's determination dated July 6, 2018, to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days weekly) to 31 1/2 hours weekly (4 1/2 hours daily, 7 days weekly) 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 61, has been enrolled in a Medicaid Managed Long Term Care Plan, Centers Plan for Healthy Living, and has been in receipt of a Personal Care Services authorization in the amount of 56 hours weekly (8 hours daily, 7 days weekly).

2. By initial notice dated June 6, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days weekly) to 31 1/2 hours weekly (4 1/2 hours daily, 7 days weekly).

3. The Appellant requested an internal appeal.

4. By final notice dated July 6, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days weekly) to 31 1/2 hours weekly (4 1/2 hours daily, 7 days weekly).

5. On July 13, 2018, this fair hearing was requested.

APPLICABLE LAW

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.

In general, a recipient of Medical Assistance or Services has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Medical Assistance or Services; or has determined to change the amount of one of the items used in the calculation of a Medical Assistance spenddown; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358-3.3(a). In addition, pursuant to 18 NYCRR 358-3.3(d), an adequate, though not timely, notice is required for a Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that he or she no longer wishes to receive Medical Assistance; the Agency has reliable information that the recipient has been admitted to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Medical Assistance in another district.

DISCUSSION

The evidence establishes that the Appellant has been enrolled in a Medicaid Managed Long Term Care Plan, Centers Plan for Healthy Living, and has been in receipt of a Personal Care Services authorization in the amount of 56 hours weekly (8 hours daily, 7 days weekly). The evidence also establishes that by final notice dated July 6, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days weekly) to 31 1/2 hours weekly (4 1/2 hours daily, 7 days weekly).

The Plan's notice of reduction dated July 6, 2018, was carefully reviewed at the hearing as to the specific stated reason to justify its action to reduce the Appellant's Personal Care Services authorization, such as a change in the Appellant's medical, mental, or social circumstances, or if a mistake occurred in the previous personal care services authorization, etc. The Plan's notice dated July 6, 2018, provides, in part, as follows:

> "The Medical Director on behalf of Centers Plan for Healthy Living decided to deny this services because the service is not medically necessary.
>
> The denial for a reduction in CDPAP services to four and one half (4.5) hours per day, seven (7) days per week (totaling thirty-one and one half (31.5) hours per week) is upheld (continues to be denied).
>
> Before this decision you were receiving CDPAP: 8 Hours/Day - 7 day(s) per week - Total of 56 Hours per week.
>
> You currently resides with cousin in a private two-story home with two bedrooms.
>
> A comprehensive NYS Department of Health Uniform Assessment System (UAS-NY) was conducted on 5/15/2018. A comparison of the UAS-NY assessments completed on 11/19/2017 and 5/15/2018 showed that you have demonstrated some changes in your abilities to perform your Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). The UAS-NY assessment produces a Nursing Facility Level of Care (NFLOC) Score. Your NFLOC score changed from twenty-six (26) on 11/19/2017 to twenty (20) on 5/15/2018.
>
> Dressing upper body, personal hygiene, transfer toilet changed from maximal assistance (You need physical help to complete most parts of this task, like someone to lean on or help you lift a body part, however you can complete some parts of this task by yourself) to extensive assistance (You need physical help to complete some parts of this task, like someone to lean on or help you lift a body part, however you can complete most parts of this task by yourself.
>
> Bed mobility and toilet use changed from maximal assistance (You need physical help to complete most parts of this task, like someone to lean on or help you lift a body part, however you can complete some parts of this task by yourself) to Independent (You are able to complete this task by yourself, without any physical help or supervision).
>
> Bathing changed from maximal assistance (you need physical help to complete most parts of this task, like someone to lean on or help you lift a body part, however you can complete some parts of this task by yourself) to extensive assistance (you need physical help to complete some parts of this task, like someone to lean on or help you lift a body part, however you can complete most parts of this task by yourself).

> Eating changed from extensive assistance (you need physical help to complete some parts of this task, like someone to lean on or help you lift a body part, however you can complete most parts of this task by yourself) to Setup Help Only (If a specific item or device is prepared for you and placed within your reach, you are then able to complete this task by yourself, without any physical help or supervision).
>
> In summary, the denial for a reduction in CDPAP services to four and one half (4.5) hours per day, seven (7) days per week (totaling thirty-one and one half (3 1.5) hours per week) is upheld (continues to be denied)."

The credible evidence establishes that the Plan's notice dated July 6, 2018, does not adequately identify an appropriate reason to justify its action to reduce the Appellant's Personal Care Services authorization, such as a change in the Appellant's medical, mental, or social circumstances, or if a mistake occurred in the previous personal care services authorization. The Plan's notice dated July 6, 2018, was not proper.

For the foregoing reasons, the Plan's July 6, 2018, determination to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days weekly) to 31 1/2 hours weekly (4 1/2 hours daily, 7 days weekly) cannot be sustained.

DECISION AND ORDER

The Managed Long Term Care Plan's determination dated July 6, 2018, to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days weekly) to 31 1/2 hours weekly (4 1/2 hours daily, 7 days weekly) is not correct and is reversed.

1. The Managed Long Term Care Plan is directed to cancel its notice dated July 6, 2018, and take no further action on it.

2. The Managed Long Term Care Plan is directed to continue to provide the Appellant with a Personal Care Services authorization in the amount of 56 hours weekly (8 hours daily, 7 days weekly).

Should the Managed Long Term Care Plan 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, the Managed Long Term Care Plan must comply immediately with the directives set forth above.

DATED: Albany, New York
08/17/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By

Commissioner's Designee