

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: April 19, 2017

AGENCY: MAP

FH #: 7516950Z

In the Matter of the Appeal of	:
	: DECISION
	AFTER
	: FAIR
	HEARING
from a determination by the New York City	:
Department of Social Services	:

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 June 29, 2017, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For Centers Plan For Healthy Living(Managed Long Term Care Plan)


No appearance by Centers Plan For Healthy Living

ISSUE

Was the Centers Plan For Healthy Living 's determination of April 13, 2017 to reduce the Appellant's reduce the Appellant's Personal Care Services 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, who is , receives Personal Care Services from Centers Plan For Healthy Living.
2. On April 13, 2017, Centers Plan For Healthy Living notified the Appellant that it would reduce the Appellant's Personal Care Services.

3. On April 19, 2017, the Appellant requested this fair hearing.

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. The Centers Plan For Healthy Living must provide complete copies of its documentary evidence to the hearing officer at the hearing and also to the Appellant or representative where such documents were not otherwise provided in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). Unless a waiver of appearance is approved by the Office of Administrative Hearings, a representative of the Centers Plan For Healthy Living 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. If a waiver has been approved, the hearing officer may require the Centers Plan For Healthy Living's appearance if necessary to protect the appellant's due process rights. 18 NYCRR 358-4.3(b) and (c). In fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, SNAP benefits or services, the Centers Plan For Healthy Living must establish that its actions were correct. 18 NYCRR 358-5.9(a).

DISCUSSION

The evidence establishes that the Centers Plan For Healthy Living sent a Notice of Intent to the Appellant on April 13, 2017 advising the Appellant that it had determined to reduce the Appellant's Personal Care Services.

The Centers Plan For Healthy Living was duly notified of the time and place of the hearing. However, the Centers Plan For Healthy Living did not appear at the hearing. Therefore, with respect to the Centers Plan For Healthy Living's determination of April 13, 2017 to reduce the Appellant's Personal Care Services, the Centers Plan For Healthy Living failed to meet its obligations under 18 NYCRR 358-4.3(b) and federal regulations, and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

DECISION AND ORDER

The determination of the Centers Plan For Healthy Living to reduce the Appellant's Personal Care Services is not correct and is reversed.

1. The Centers Plan For Healthy Living is directed to withdraw its Notice of Intent dated April 13, 2017 with respect to the Appellant's Personal Care Services.
2. The Centers Plan For Healthy Living is directed to restore any Personal Care Services lost as a result of the Centers Plan For Healthy Living's action in accordance with the provisions of 18 NYCRR 360-7.5(a).

FH# 7516950Z

Should the Centers Plan For Healthy Living in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Medical Assistance benefits, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

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 promptly in writing as to what documentation is needed. If such information is requested, the Appellant must provide it to the Centers Plan For Healthy Living promptly to facilitate such compliance.

As required by 18 NYCRR 358-6.4, the Centers Plan For Healthy Living must comply immediately with the directives set forth above.

DATED: Albany, New York
07/28/2017

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Joanne Keelo", written over a horizontal line.

Commissioner's Designee