

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: April 7, 2017

AGENCY: MAP

FH #: 7511166K

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 May 31, 2017, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Managed Long Term Care plan

Alicia Jacobs, Centers Plan for Healthy Living, Fair Hearing Representative

ISSUE

Was the March 10, 2017, determination by the Managed Long Term Care plan, Centers Plan for Healthy Living, to deny the Appellant's request for an authorization to increase the Appellant's Personal Care Services from forty-nine (49) hours per week (7 hours per day x 7 days) to seventy (70) hours per week (10 hours per day x 7 days) on the grounds that the requested increase is not medically necessary 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 ninety-two (92), has been in receipt of a Medical Assistance authorization, Medicaid of 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 of Personal Care Services in the amount of forty-nine (49) hours per week (7 hours per day x 7 days).
3. The Appellant requested an authorization to increase his Personal Care Services to ten hours per day, seven days per week, totaling seventy (70) hours per week.
4. On March 1, 2017, the Plan completed a Client Task Sheet: PCW/PCA level II report which estimates the Appellant's Personal Care Services needs as 49 hours per week based upon a nurse's visit with the Appellant which was conducted on March 1, 2017.
5. On March 8, 2017, the Plan's registered nurse assessor completed a Uniform Assessment System – New York Comprehensive Community Assessment Report based upon a visit by a Registered Nurse with the Appellant on March 1, 2017.
6. By written notice, Initial Adverse Determination, which is dated March 10, 2017, the Plan determined to deny the Appellant's request for an authorization to increase the Appellant's Personal Care Services from forty-nine (49) hours per week (7 hours per day x 7 days) to seventy (70) hours per week (10 hours per day x 7 days) on the grounds that the requested increase is not medically necessary.
7. On April 7, 2017, the Appellant requested a fair hearing in this matter.

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.

18 NYCRR 505.14(a)(5) provides that:

Personal care services shall include the following two levels of care, and be provided in accordance with the following standards:

- (i) Level I shall be limited to the performance of nutritional and environmental support functions.
 - (a) Nutritional and environmental support functions include assistance with the following:
 - (1) making and changing beds;
 - (2) dusting and vacuuming the rooms which the patient uses;
 - (3) light cleaning of the kitchen, bedroom and bathroom;
 - (4) dishwashing;
 - (5) listing needed supplies;
 - (6) shopping for the patient if no other arrangements are possible;
 - (7) patient's laundering, including necessary ironing and mending;
 - (8) payment of bills and other essential errands; and
 - (9) preparing meals, including simple modified diets...
 - (ii) Level II shall include the performance of nutritional and environmental support functions and personal care functions.
 - (a) Personal care functions include assistance with the following:
 - (1) bathing of the patient in the bed, the tub or in the shower;
 - (2) dressing;

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- (3) grooming, including care of hair, shaving and ordinary care of nails, teeth and mouth;
- (4) toileting; this may include assisting the patient on and off the bedpan, commode or toilet;
- (5) walking, beyond that provided by durable medical equipment, within the home and outside the home;
- (6) transferring from bed to chair or wheelchair;
- (7) turning and positioning;
- (8) preparing meals in accordance with modified diets, including low sugar, low fat, low salt and low residue diets;
- (9) feeding;
- (10) administration of medication by the patient, including prompting the patient as to time, identifying the medication for the patient, bringing the medication and any necessary supplies or equipment to the patient, opening the container for the patient, positioning the patient for medication and administration, disposing of used supplies and materials and storing the medication properly;
- (11) providing routine skin care;
- (12) using medical supplies and equipment such as walkers and wheelchairs; and
- (13) changing of simple dressings.

The NYS Department of Health, Office of Health Insurance Programs, Guidelines for the Provision of Personal Care Services in Medicaid Managed Care provides, in part, that:

The assessment process should evaluate and document when and to what degree the member requires assistance with personal care services tasks and whether needed assistance with tasks can be scheduled or may occur at unpredictable times during the day or night. ... A care plan must be developed that meets the member's scheduled and unscheduled day and nighttime personal needs.

DISCUSSION

The record in this matter establishes that the Appellant has been enrolled in a Medicaid Managed Long Term Care plan through Centers Plan for Healthy Living. The Appellant has

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been receiving seven hours per day, seven days weekly, of Personal Care Services and has requested an increase to a ten-hour day. By written notice dated March 10, 2017, the Plan denied the Appellant's request on the grounds that same is not deemed by the plan to be medically necessary.

At the hearing the Appellant's son/advocate testified that because of the Appellant's near blindness he is unable to reheat meals which the home attendant leaves for him when the home attendant leaves at 3:00 pm each day. The Appellant's son claims that, as a result, the Appellant has been losing weight and that his weight loss is nearly 15 pounds. It is noted that the Appellant is ninety-two (92) years of age, and therefore extremely elderly. In support of the claim of the Appellant's son as to vision issues, the Appellant's son presented medical documentation, some of which the Plan already has received previously, documenting that the Appellant's poor vision limits his daily activities in a manner which requires more time to perform his activities of daily living with the assistance of his home attendant.

A review of the UAS shows that the Appellant is diagnosed with the following medical conditions: Angina pectoris, atherosclerotic heart disease, coronary artery disease, benign prostatic hyperplasia with lower urinary tract symptoms, conductive hearing loss, dizziness and giddiness, abnormalities of gait and mobility, essential hypertension, low vision of both eyes, cerebrovascular disease, fatigue, shortness of breath, spondylolysis, osteoarthritis, vitamin D deficiency, and vitamin deficiency.

Regarding vision problems, the nurse noted that the Appellant's vision is "limited, uses magnified glass to read as needed." The nurse reports that the Appellant is totally dependent for assistance with meal preparation. The Appellant is reported to need maximal assistance with bathing, dressing lower body, and toilet use. The Appellant is reported to require extensive assistance with toilet transfer, bed mobility, **eating (including lifting of limbs)**, personal hygiene, dressing upper body, walking and locomotion. The Appellant is also reported as being frequently incontinent of bladder and continent of bowel. The nurse also noted that the Appellant "has finger deformity, exhibits poor fine motor skills, has history of shoulder injury and limited range of motion, and requires assistance in all areas of adl's and iadl's.

The evidence and claims of both parties has/have been fully considered. Although duly notified of the issues to be addressed at the fair hearing, the Plan's representative did not rebut the persuasive and credible claims of the Appellant's son regarding the need for an increase in hours, particularly as regarding necessary assistance with eating and meal set-up. Therefore, the Plan's March 10, 2017, determination cannot be sustained.

DECISION AND ORDER

The March 10, 2017, determination by Centers Plan for Healthy Living to deny the Appellant's request for an authorization to increase the Appellant's Personal Care Services from forty-nine (49) hours per week (7 hours per day x 7 days) to seventy (70) hours per week (10 hours per day x 7 days) cannot be sustained and is reversed.

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Centers Plan for Healthy Living is directed to:

1. Immediately provide the Appellant with an authorization to increase the Appellant's Personal Care Services authorization to seventy (70) hours per week (10 hours per day x 7).
2. Issue to the Appellant a written notice of authorization to provide seventy (70) hours per week (10 hours per day x 7) of Personal Care Services.
3. Continue to provide the Appellant with a Personal Care Services authorization in the amount of seventy (70) hours per week (10 hours per day x 7) unchanged.

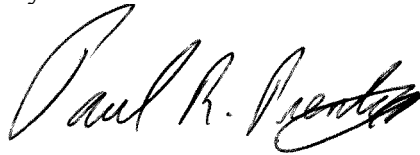
Should Centers Plan for Healthy Living need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant and the Appellant's representative promptly in writing as to what documentation is needed. If such information is required, the Appellant 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
06/06/2017

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "Paul R. Pendergast", with a stylized flourish at the end.

Commissioner's Designee