

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: November 28, 2018

AGENCY: MAP
FH #: 7867838H

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 April 2, 2019, 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 (Centers Plan for Healthy Living)

Debra Ferguson, Fair Hearing Representative

ISSUE

Was the Managed Long-Term Care Plan's determination to reduce the Appellant's personal care services authorization from 84 hours per week to 42 hours per day 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 has been in receipt of Medical Assistance benefits through a managed long-term care plan operated by Centers Plan for Healthy Living (hereinafter the Plan).
2. The Appellant had been in receipt of a personal care services authorization in the amount of 84 hours per week (12 hours per day per x 7 days per week).

FH# 7867838H

3. By Initial Adverse Determination dated November 20, 2018, the Plan informed Appellant of its determination to reduce the Appellant's personal care services authorization from 84 hours per week (12 hours per day x 7 days per week) to 42 hours per week (6 hours per day x 2 days per week and 6 hours per day x 5 days per week) for the period beginning December 12, 2018.

4. A request for an internal appeal was made on Appellant's behalf.

5. By Final Adverse Determination dated November 28, 2019, the Plan informed Appellant of its determination to uphold the Initial Adverse Determination dated November 20, 2018.

6. On November 28, 2018, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to notice when the agency proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance authorization or services. Regulations at 18 NYCRR 358-3.3(b)(1) and Federal regulations at 7 CFR 273.13 provide that a recipient of SNAP benefits has a right to notice when the agency proposes to take any action to discontinue or reduce SNAP benefits.

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 or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a)

DISCUSSION

In this matter, the uncontroverted evidence establishes the Appellant has been in receipt of Medical Assistance benefits through a managed long-term care plan operated by Centers Plan for Healthy Living (hereinafter the Plan). It further establishes the Appellant had been in receipt of a personal care services authorization in the amount of 84 hours per week (12 hours per day per x 7 days per week).

At the hearing, the Plan explained that by Initial Adverse Determination dated November 20, 2018, the Plan informed Appellant of its determination to reduce the Appellant's personal

FH# 7867838H

care services authorization from 84 hours per week (12 hours per day x 7 days per week) to 42 hours per week (6 hours per day x 2 days per week and 6 hours per day x 5 days per week). The Plan also stated that request for an internal appeal was made on Appellant's behalf. The Plan further explained that by Final Adverse Determination dated November 28, 2019, the Plan informed Appellant of its determination to uphold the Initial Adverse Determination dated November 20, 2018.

Also at the hearing, the Appellant's son presented page 1 or 12 of the Plan's Initial Adverse Determination dated November 20, 2018, which informs Appellant of the above-cited reduction of Appellant's personal care services authorization and such reduction would be effective on December 2, 2018. Notably, page 1 does not provide the basis of its determination to reduce Appellant's personal care services authorization. The Appellant's son testified he requested an internal appeal of the Initial Adverse Determination. The Appellant's son further testified he received a Final Adverse Determination dated November 28, 2018 wherein upheld its Initial Adverse Determination.

However, although duly notified of the date and time of the fair hearing as well as issue in same, the Plan failed present a complete case record. Specifically, the Plan failed to present all pages of the Initial Adverse Determination dated November 20, 2018, and a copy of the Final Adverse Determination dated November 28, 2018. Therefore, with respect to the Plan's determination to reduce the Appellant's Personal Care Services authorization, the Plan failed to meet its obligations under 18 NYCRR 358-4.3(b) and it cannot be upheld.

DECISION AND ORDER

The Managed Long-Term Care Plan's determination to reduce the Appellant's personal care services authorization from 84 hours per week to 42 hours per day was not correct and is reversed.

Centers Plan for Healthy Living is directed to:

1. Withdraw its written notices dated November 20, 2018 and November 28, 2018, and take no further action upon same.
2. Restore/continue the Appellant's Personal Care Services authorization in the amount of 84 hours per week (12 hours per week x 7 days per week) unchanged.

Should the Plan in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record, to issue a new written notice and to produce the required case record at any subsequent fair hearing.

Should the Plan 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

FH# 7867838H

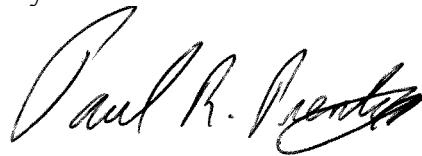
documentation is needed. If such information is requested, the Appellant must provide it to the plan promptly to facilitate such compliance.

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

DATED: Albany, New York
04/16/2019

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