STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: May 12, 2017
[redacted]
AGENCY: MAP
FH #: 7533081N

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 July 10, 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 (Centers Plan for Healthy Living)

Alisha Jacobs, Centers Plan for Healthy Living Representative

ISSUE

Was the Managed Long Term Care Plan's determination to 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, age 78, has been in receipt of Medicaid benefits provided through a Managed Long Term Care Plan, Centers Plan for Healthy Living (CPHL).

2. By notice dated May 4, 2017, the Managed Long Term Care Plan determined to reduce the Appellant's Personal Care Services (PCS) from 77 hours weekly (11 hours x 7 days) to 45.5 hours weekly (6.5 hours x 7 days).

3. On May 12, 2017, the Appellant requested this fair hearing.

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.

18 NYCRR 505.14(b)(5)(v)(c)(2) provides, in part, that:

(c) The social services district's determination to deny, reduce or discontinue personal care services must be stated in the client notice.

(2) Appropriate reasons and notice language to be used when reducing or discontinuing personal care services include but are not limited to the following:

(i) the client's medical or mental condition or economic or social circumstances have changed and the district determines that the personal care services provided under the last authorization or reauthorization are no longer appropriate or can be provided in fewer hours. For proposed discontinuances, this includes but is not limited to cases in which: the client's health and safety can no longer be assured with the provision of personal care services; the client's medical condition is no longer stable; the client is no longer self-directing and has no one to assume those responsibilities; or the services the client needs exceed the personal care aide's scope of practice. The notice must identify the specific change in the client's medical or mental condition or economic or social circumstances from the last authorization or reauthorization and state why the services should be reduced or discontinued as a result of the change;

(ii) a mistake occurred in the previous personal care services authorization or reauthorization. The notice must identify the specific mistake that occurred in the previous authorization or reauthorization and state why the prior services are not needed as a result of the mistake…

DISCUSSION

The evidence establishes that the Appellant has been in receipt of Medicaid benefits provided through a Managed Long Term Care Plan, CPHL. The evidence also establishes that by notice dated May 4, 2017, the Managed Long Term Care Plan determined to reduce the Appellant's PCS from 77 hours weekly (11 hours x 7 days) to 45.5 hours weekly (6.5 hours x 7 days).

CPHL's notice of reduction, the Initial Adverse determination dated May 4, 2017 and effective May 17, 3017, was reviewed at the hearing as to the specific stated reason to justify its action to reduce the Appellant's PCS. The notice's sole reason for the reduction from 77 hours weekly PCS was because "the health service is not medically necessary." However, this written determination was not adequate. The basis for the determination of "not medically necessary" was not explained. The notice did not clearly indicate a clinical rationale that shows review of the enrollee's specific clinical data and medical condition.

CPHL's notice lacked specificity of reason as well as clinical and medical justification for the reduction. It merely stated that the Appellant is totally dependent for meal preparation and ordinary housework; needs maximal assistance for bathing, dressing lower body, walking, locomotion, toilet transfer and toilet use; extensive assistance for bed mobility, dressing upper body and personal hygiene; limited assistance for managing medications and set up help for eating.

Although the May 4, 2017 notice noted that the Appellant had been receiving a continuation of 77 hours weekly up until May 17, 2017, it failed to show what had changed in Appellant's condition since then. The CPHL reduction was based on the February 23, 2017 New York State Department of Health Uniformed Assessment System (UAS) assessment done by CPHL. There was no comparison done to any previous assessments to justify the reduction, 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. because CPHL has no previous records or assessments, according the CPHL's representative. The Appellant was transferred from a different plan to CPHL effective February 1, 2017. In addition, CPHL used no medical documentation from the Appellant's doctors when making its determination because the Plan was unsuccessful in its attempts to retrieve that documentation from any doctor, according to CPHL's representative.

A letter was submitted by the Appellant at the hearing from her pain management doctor at NYC Medical & Neurodiagnostic, P.C., dated June 16, 2017. It stated the Appellant suffers from medical conditions including severe neuropathy, lumbosacral radiculopathy and generalized chronic pain from polyosteoarthritis. The Appellant has so much pain that she must spend most of the time in her room in order to avoid movement and stairs, and she has no relatives or friends in the state to rely upon for assistance. The letter further stated that the Appellant requires 11 hours a day of an aide's assistance to feed her all of her meals, ambulate safely, and help her perform ADLs because she has so much difficulty with even simple activities. At the hearing, the Appellant further explained that she also suffers from high blood pressure, diabetes and atrial fibulation requiring a blood thinner, that she has a cornea implant and vison impairment, and that she must take morphine and oxycodone every day to get through the day. Yet the UAS upon which the determination relied failed to indicate most of these problems.

CPHL's notice to Appellant regarding the reduction did not satisfy the requirements as stated in 18 NYCRR 505.14(b)(5). The record did not support the determination of CPHL to reduce Appellant's PCS from 77 hours weekly (11 hours x 7 days) to 45.5 hours weekly (6.5 hours x 7 days).

DECISION AND ORDER

The Managed Long Term Care Plan's determination to reduce the Appellant's Personal Care Services is not correct and is reversed.

1. The Managed Long Term Care Plan is directed to restore the Appellant's Personal Care Services to the amount of 77 hours weekly (11 hours x 7 days).

2. The Managed Long Term Care Plan is directed to continue to provide the Appellant with Personal Care Services in the amount of 77 hours weekly (11 hours x days) unchanged.

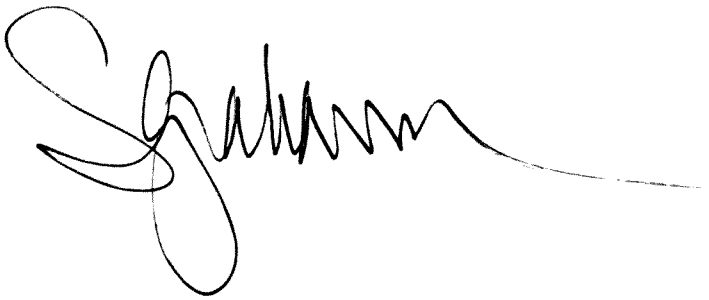
Should the Managed Long Term Care Plan need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant promptly in writing as to what documentation is needed. If such information is required, the Appellant must provide it to the Managed 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
07/17/2017

NEW YORK STATE
DEPARTMENT OF HEALTH

By



Commissioner's Designee