STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: March 26, 2018
[redacted]
AGENCY: MAP
FH #: 7728885R

In the Matter of the Appeal of [redacted] from a determination by the New York City Department of Social Services	:	**DECISION ON STIPULATION 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 May 1, 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 (Centers Plan)

Julia Rolffot, Manager for Appeals and Grievances

For the Social Services Agency (New York City Medical Assistance Program)

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

ISSUE

Was the Managed Long-Term Care Plan's determination to deny the Appellant's request for an increase in the amount of Appellant's Personal Care Services (PCS) Authorization from 49 hours per week to 84 hours per week and approve Appellant for 52.5 hours per week 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 82, has been enrolled in a Medicaid Managed Long Term Care Plan through Centers Plan for Healthy Living (Centers Plan) and had been in receipt of a Personal Care Services authorization in the amount of 49 hours per week.

2. In February 2018, Appellant's Representative requested an increase of PCS hours to 84 hours per week for Appellant.

3. On February 22, 2018, Centers Plan obtained a Uniform Assessment System - New York, Comprehensive Community Assessment Report (UAS).

4. By notice dated March 6, 2018, the Managed Long Term Care Plan advised the Appellant of its determination to deny Appellant's requested increase in Personal Care Services authorization from 49 hours per week to 84 hours a week and to authorize Personal Care Aide, Level 2 services, in the amount of 52.5 hours per week, effective March 6, 2018.

5. On March 26, 2018, this hearing was requested.

APPLICABLE LAW

In general, a recipient of Public Assistance, Medical Assistance or Services (including child care and supportive 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. A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23.

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- for reductions, the previous and new amounts of assistance or benefits provided;

- the effective date of the action;

o the specific reasons for the action;

18 NYCRR 358-2.2

Volume 42 of the Code of Federal Regulations, section 438.404, states, regarding Notices to be issued by Managed Long-Term Care Plan:

Notice of action.

(a) ***Language and format requirements.*** The notice must be in writing and must meet the language and format requirements of § 438.10(c) and (d) to ensure ease of understanding.

(b) ***Content of notice.*** The notice must explain the following:

(1) The action the MCO or PIHP or its contractor has taken or intends to take.
(2) The reasons for the action.
(3) The enrollee's or the provider's right to file an MCO or PIHP appeal.
(4) If the State does not require the enrollee to exhaust the MCO or PIHP level appeal procedures, the enrollee's right to request a State fair hearing.
(5) The procedures for exercising the rights specified in this paragraph.
(6) The circumstances under which expedited resolution is available and how to request it.
(7) The enrollee's right to have benefits continue pending resolution of the appeal, how to request that benefits be continued, and the circumstances under which the enrollee may be required to pay the costs of these services.

(c) Timing of notice. The MCO or PIHP must mail the notice within the following timeframes:

(1) For termination, suspension, or reduction of previously authorized Medicaid-covered services, within the timeframes specified in §§ 431.211, 431.213, and 431.214 of this chapter.
(2) For denial of payment, at the time of any action affecting the claim.
(3) For standard service authorization decisions that deny or limit services, within the timeframe specified in § 438.210(d)(1).
(4) If the MCO or PIHP extends the timeframe in accordance with § 438.210(d)(1), it must—

(i) Give the enrollee written notice of the reason for the decision to extend the timeframe and inform the enrollee of the right to file a grievance if he or she disagrees with that decision; and
(ii) Issue and carry out its determination as expeditiously as the enrollee's health condition requires and no later than the date the extension expires.

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.

DISCUSSION

At the hearing, the Appellant's daughter stated that right after the Appellant's last UAS on February 22, 2018, the Appellant's medical condition seriously deteriorated and Appellant cannot wait until August 2018 for the next scheduled assessment. The Managed Long Term Care Plan agreed to immediately conduct a new Assessment of Appellant's Personal Care Service's needs.

At the hearing, the Appellant's Representative accepted the terms of the Managed Long Term Care Plan's stipulation as a complete resolution of the Appellant's request for a fair hearing.

DECISION AND ORDER

In accordance with its agreement at the hearing, the Managed Long Term Care Plan is directed to take the following actions if it has not already done so:

1. Immediately conduct a new Assessment of Appellant's Personal Care Service's needs by a registered nurse, taking into account Appellant and his family's request for an increase in hours to the amount of 84 hours a week; and

2. Review medical documentation, if any, supplied by Appellant; and

3. Notify in writing, the Appellant and Appellant's Representative of the Managed Long Term Care Plan's new determination.

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 requested, the Appellant or the Appellant's Representative must provide it to the Managed Long Term Care Plan promptly to facilitate such compliance.

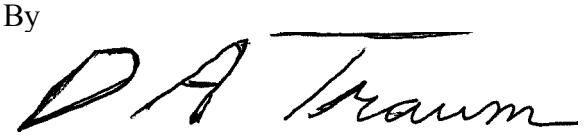
As required by 18 NYCRR 358-6.4, the Agency must comply immediately with the directives set forth above.

FH# 7728885R

DATED: Albany, New York
05/07/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By



Commissioner's Designee