STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: August 7, 2018
[redacted]
AGENCY: MAP
FH #: 7804480J

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 August 30, 2018, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[redacted]

For the Social Services Agency

J. Rolffort, Fair Hearing Representative

ISSUE

Was the determination by the Managed Long-Term Care Plan, Center Plan for Healthy Living, dated March 20, 2018, to reduce the Appellant's Personal Care Services authorization from 77 hours per week (11 hours daily x 7 days weekly) to 42 hours per week (6 hours daily x 7 days weekly) 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 88, has been in receipt of Medicaid benefits and is enrolled in a Medicaid Managed Long Term Care Plan, operated by Center Plan for Healthy Living.

2. The Appellant has been in receipt of a Personal Care Services authorization in the amount of 77 hours per week (11 hours daily x 7 days weekly).

3. By notice dated March 20, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from 77 hours per week (11 hours daily x 7 days weekly) to 42 hours per week (6 hours daily x 7 days weekly).

4. On August 7, 2018, this fair hearing was requested.

APPLICABLE LAW

MLTC Policy 16.06 entitled "Guidance on Notices Proposing to Reduce or Discontinue Personal Care Services or Consumer Directed Personal Assistance Services" provides, in part, that:

The purpose of this directive is to provide further guidance to MLTC plans concerning appropriate reasons and notice language to be used when proposing to reduce or discontinue PCS or CDPAS. In particular, it addresses notices that propose to reduce or discontinue PCS or CDPAS for either of the following reasons: a change in the enrollee's medical or mental condition or social circumstances; or a mistake that occurred in the previous authorization or reauthorization.

A MLTC plan may not reduce or discontinue an enrollee's PCS or CDPAS unless there is a legitimate reason for doing so, such as one of the reasons set forth in 18 NYCRR §§ 775.14(b)(5)(v)(c)(2)(i) through (vi), for PCS, and 18 NYCRR §§ 775.28(h)(5)(ii)(a) through (f), for CDPAS. Two such examples are discussed in greater detail below. The MLTC plan must advise the enrollee of the specific reason for the proposed action. A plan cannot reduce or discontinue services without considering the facts of the individual enrollee's circumstances and thus cannot reduce services as part of an "across-the-board" action that does not consider each individual enrollee's particular circumstances and need for assistance.

The general purpose of these requirements is to assure that the plan's notice accurately advises the enrollee, in plain comprehensible language, what the plan is proposing to change with regard to the enrollee's PCS or CDPAS and why the plan is proposing to make that change. The more specificity the plan's notice provides with regard to the specific change in the enrollee's services, the reason for the change, and why the prior services are no longer needed, the better able the plan will be to defend its proposed reduction or discontinuance at any fair hearing, at which the plan bears the burden of proof to support its proposed action (i.e. the plan must establish that its proposed reduction or discontinuance is correct).

A. Change in Enrollee's Medical or Mental Condition or Social Circumstances

In such a case, the Plan's notice must indicate:

The enrollee's medical or mental condition or social circumstances have changed and the plan determines that the services provided under the last authorization or reauthorization are no longer appropriate or can be provided in fewer hours. If the reason for the proposed reduction or discontinuance is a change in one or more such conditions or circumstances, the plan's notice must not simply recite the underlined language in the previous sentence, which would impermissibly make it the enrollee's responsibility to figure out which particular condition or circumstance had changed. Such boilerplate recitations are inadequate. Instead, the plan's notice must:

1) state the enrollee's particular condition or circumstance - whether medical condition, mental condition, or social circumstance – that has changed since the last assessment or authorization;

2) identify the specific change that has occurred in that particular medical or mental condition or social circumstance since the last assessment or authorization; and

3) state why the services should be reduced or discontinued as a result of that change in the enrollee's medical or mental condition or social circumstances.

Example of a change in medical condition: The plan authorized an enrollee for personal care services. At the time of the assessment, the enrollee was recuperating from hip replacement surgery. As the enrollee recovered from her surgery, her medical condition improved. Specifically, the enrollee's hip has now healed sufficiently that she is now able to walk 30 feet alone. The physician's order documented this improvement in her medical condition. Due to the improvement in her medical condition, she no longer needs the previously authorized level and amount of assistance with personal care services. Accordingly, the enrollee no longer needs help ambulating inside her apartment.

DISCUSSION

The credible evidence establishes that the Appellant has been enrolled in a Medicaid Managed Long Term Care Plan through Center Plan for Healthy Living and had been in receipt of a Personal Care Services authorization in the amount of 77 hours per week (11hours daily x 7 days weekly. The credible evidence further establishes that by notice dated March 20, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from 77 hours per week (11 hours daily x 7 days weekly) to 42 hours per week (6 hours daily x 7 days weekly).

The Plan's notice of reduction dated March 20, 2018, was carefully reviewed at the hearing as to the specific stated reason to justify its action to reduce the Appellant's Personal Care Services authorization. The Plan's notice dated March 20, 2018, provided as follows:

> "The Plan is taking this action because a comprehensive NYS Department of Health Uniform Assessment System was conducted by Centers Plan for Healthy Living (CPHL) on February 9, 2018 as your 120 days Continuity of Care is ending March 31, 2018. This assessment showed that you have demonstrated the following in your abilities to perform your Activities of Daily Living and Instrumental Activities of Daily Living: dressing upper body, dressing lower body, personal hygiene, bed mobility, walking, locomotion, bathing, transfer toileting, toilet use and eating, extensive assistance: you need physical help to complete some parts of this task, like someone to lean on or help you lift a body part, however you can complete most parts of this task by yourself,
>
> Medication management capacity: maximal assistance: meal preparation capacity and ordinary household capacity: total dependence.
>
> The current UAS-NY assessment conducted on February 9, 2018 demonstrated that your needs can be effectively met with six hours per day seven days a week."

The credible evidence establishes that the Plan's notice dated March 20, 2018, does not adequately: (1) state the enrollee's particular condition or circumstance - whether medical condition, mental condition, or social circumstance – that has changed since the last assessment or authorization; (2) identify the specific change that has occurred in that particular medical or mental condition or social circumstance since the last assessment or authorization; and (3) state why the services should be reduced as a result of that change in the enrollee's medical or mental condition or social circumstances. The Plan failed to establish that its notice of reduction dated March 20, 2018, met the guidance requirements set forth in MLTC Policy 16.06 concerning appropriate reasons and notice language.

For the foregoing reasons, the Plan's March 20, 2018, determination to reduce the Appellant's Personal Care Services authorization from 77 hours per week (11 hours daily x 7 days weekly) to 42 hours per week (6 hours daily x 7 days weekly) cannot be sustained.

DECISION AND ORDER

The determination by the Managed Long-Term Care Plan, Center Plan for Healthy Living, dated March 20, 2018, to reduce the Appellant's Personal Care Services authorization from 77 hours per week (11 hours daily x 7 days weekly) to 42 hours per week (6 hours daily x 7 days weekly)is not correct and is reversed.

The Managed Long Term Care Plan is directed to:

1. Cancel its notice dated March 20, 2018, and take no further action on it.

2. Restore the Appellant's Personal Care Services authorization to the amount of 77 hours per week (11 hours daily x 11 days weekly) retroactive to the effective date of reduction.

3. Continue to provide the Appellant with a Personal Care Services authorization in the amount of 77 hours per week (11 hours daily x 7 days weekly) unchanged.

Should the 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 required, the Appellant or the Appellant's Representative must promptly provide it to the Plan 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
10/23/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By

Sadiqa Holland

Commissioner's Designee