

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: September 14, 2018

AGENCY: MAP
FH #: 7826000N

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 October 10, 2018, 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")

No appearance by Centers Plan for Healthy Living

ISSUE

Was the determination of the Appellant's Managed Long Term Care Plan, Centers Plan for Healthy Living, to reduce the Appellant's authorization for personal care services hours from 35 hours weekly to 25 hours 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 73, has been enrolled in a Managed Long Term Care Program and has been receiving care and services, including Personal Care Services, through a Managed Long Term Care Health Plan operated by Centers Plan for Healthy Living.

2. On September 6, 2018, Centers Plan for Healthy Living sent a Notice of Intent to the Appellant setting forth its intention to reduce the Appellant's personal care services from 35 hours weekly to 25 hours weekly.

3. On September 14, 2018, the Appellant requested this fair hearing.

APPLICABLE LAW

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 Public Assistance, Medical Assistance, SNAP benefits or Services, or the source of funding and the amount deducted from the initial payment of supplemental security income as reimbursement of Public Assistance, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

Regulations at 18 NYCRR 358-4.3(c) provides, in part, that no later than five calendar days before the hearing date, the social services agency may make application to the OAH [Office of Administrative Hearings] to appear at a hearing on papers only. The OAH may approve such application in its discretion where the rights of the appellant can be protected and the personal appearance of the agency is neither feasible nor necessary.

DISCUSSION

The evidence establishes that Centers Plan for Healthy Living issued a notice to the Appellant, dated September 6, 2018, advising the Appellant that it had determined to reduce the Appellant's personal care services from 35 hours weekly to 25 hours weekly.

Although Centers Plan for Healthy Living was duly notified of the time and place of the hearing, Centers Plan for Healthy Living failed to either appear at the hearing or otherwise present any evidence concerning the determination at issue. Therefore, as Centers Plan for Healthy Living has failed to establish that its determination to reduce the Appellant's Personal Care Service hours was correct, the determination cannot be sustained.

It is noted that the Appellant did not present the September 6, 2018 notice that states that Centers Plan for Healthy Living determined to reduce his personal care services from 35 hours weekly to 25 hours weekly; thus, a review of the notice was not possible.

DECISION AND ORDER

The Plan's September 6, 2018 determination to reduce the Appellant's personal care services from 35 hours weekly to 25 hours weekly is not correct and is reversed.

1. Centers Plan for Healthy Living is directed to withdraw its determination made on or about September 6, 2018, and any related subsequent determination to reduce the Appellant's personal care services hours, and take no action thereon.

2. Centers Plan for Healthy Living is directed to continue to authorize personal care services to the Appellant in the amount of 35 hours weekly.

3. Centers Plan for Healthy Living is directed to notify the Appellant in writing of its compliance with this Decision.

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 promptly in writing as to what documentation is needed. If such information is required, the Appellant must provide it to Centers Plan for Healthy Living promptly to facilitate such compliance.

As required by 18 NYCRR 358-6.4, Centers Plan for Healthy Living must comply immediately with the directives set forth above.

DATED: Albany, New York
10/25/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By



Commissioner's Designee