STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: February 11, 2019
[redacted]
AGENCY: MAP
FH #: 7909755Y

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 April 12, 2019, 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

Ferguson, Fair Hearing Representative

ISSUE

Was the Managed Long-Term Care Plan's Final Adverse determination dated February 28, 2019, to reduce the Appellant's Consumer Directed Personal Assistance Personal Care Services authorization from 70 hours weekly (10 hours daily, 7 days weekly) to 38.5 hours weekly (5.5 hours daily, 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 has been enrolled in a Medicaid Managed Long Term Care Plan through Centers Plan for Healthy Living.

2. By initial adverse determination dated January 28, 2019, the Managed Long-Term Care Plan determined to reduce the Appellant's Consumer Directed Personal Assistance Personal Care Services authorization from 70 hours weekly (10 hours daily, 7 days weekly) to 38.5 hours weekly (5.5 hours daily, 7 days weekly).

3. By final adverse determination dated February 28, 2019, the Managed Long-Term Care Plan determined to uphold its determination to reduce the Appellant's Consumer Directed Personal Assistance Personal Care Services authorization from 70 hours weekly (10 hours daily, 7 days weekly) to 38.5 hours weekly (5.5 hours daily, 7 days weekly).

4. On February 11, 2019, 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…

DISCUSSION

The evidence establishes that the Appellant has been enrolled in a Medicaid Managed Long Term Care Plan through Centers Plan for Healthy Living. By initial adverse determination dated January 28, 2019, the Managed Long-Term Care Plan determined to reduce the Appellant's Consumer Directed Personal Assistance Personal Care Services authorization from 70 hours weekly (10 hours daily, 7 days weekly) to 38.5 hours weekly (5.5 hours daily, 7 days weekly). By final adverse determination dated February 28, 2019, the Managed Long-Term Care Plan determined to uphold its determination to reduce the Appellant's Consumer Directed Personal Assistance Personal Care Services authorization from 70 hours weekly (10 hours daily, 7 days weekly) to 38.5 hours weekly (5.5 hours daily, 7 days weekly).

The Managed Long-Term Care Plan's notice of reduction was reviewed as to the specific stated reason to justify its action to reduce the Appellant's Personal Care Services authorization. The Managed Long-Term Care Plan's notice determined to reduce the Appellant's Personal Care Service hours because "the health care service is not medically necessary." The Notice additionally states, "You recently underwent a follow up face to face clinical assessment on January 11, 2019 utilizing the New York State Department of Health Uniform Assessment System Tool that showed some of your abilities to perform physical functioning stayed the same and some improved since your prior assessment that was completed by Centers Plan for Healthy Living on July 20, 2018."

The credible evidence establishes that the Managed Long-Term Care Plan's notice does not adequately identify an appropriate reason to justify its action to reduce the Appellant's Personal Care Services authorization. The Managed Long-Term Care Plan's stated reason that the Appellant's "shows improvement in health condition and functional status" is not proper. Notices citing this reason for reducing services must identify the specific (emphasis added) medical, mental, social or economic change in the client's circumstances that justifies the proposed reduction in services. It is insufficient to merely state that the Appellant shows "improvement" in certain areas.

The Managed Long-Term Care Plan failed to identify the specific medical, mental, social or economic change in the client's circumstances in its notice that justified the proposed reduction in services. Furthermore, the notices must state why the services should be reduced as a result of the change. The Managed Long-Term Care Plan's notice was not proper.

For the foregoing reasons, the Managed Long-Term Care Plan's determination dated February 28, 2019 to reduce the Appellant's Personal Care Services authorization from 70 hours weekly to 38.5 hours weekly cannot be sustained.

DECISION AND ORDER

The Managed Long-Term Care Plan's determination dated February 28, 2019, to reduce the Appellant's Personal Care Services authorization from 70 hours weekly to 38.5 hours weekly is not correct and is reversed.

1. The Managed Long-Term Care Plan is directed to restore the Appellant's Personal Care Services authorization to the amount of 70 hours weekly (10 hours daily, 7 days weekly).

2. The Managed Long-Term Care Plan is directed to continue to provide the Appellant with a Personal Care Services authorization in the amount of 70 hours weekly (10 hours daily, 7 days weekly).

Should the Managed Long-Term Care Plan need additional information from the Appellant 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 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
04/17/2019

NEW YORK STATE
DEPARTMENT OF HEALTH

By

C. C. Oluoga

Commissioner's Designee