

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: October 10, 2018

AGENCY: MAP
FH #: 7841472Z

In the Matter of the Appeal of
[REDACTED]
from a determination by the New York City
Department of Social Services

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**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 November 1, 2018, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For Centers Plan For Healthy Living (Managed Long-Term Care Organization)

Deborah Ferguson, Fair Hearing Representative

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1. The Appellant, [REDACTED], has been in receipt of a Personal Care Services Authorization in the amount of 10 hours per day, 7 days a week.

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2. On February 23, 2018, a nursing assessor completed a Uniform Assessment System evaluation of the Appellant's personal care needs.

3. On May 18, 2018, a different nursing assessor completed another Uniform Assessment System evaluation of the Appellant's personal care needs.

4. On June 25, 2018, a different nursing assessor completed another Uniform Assessment System evaluation of the Appellant's personal care needs.

5. By notice dated July 10, 2018, the Managed Long-Term Care Plan's determined to deny the Appellant's request for an increased Personal Care Services authorization from 70 hours per week to 24 hour live-in based on the NYS Department of Health Uniform Assessment System (UAS-NY).

6. The Appellant's Representative requested an appeal of the Long-Term Plan's July 10, 2018 determination to deny Appellant's request for an increased Personal Care Services authorization from 70 hours per week to 24 hour live in.

7. By notice dated August 7, 2018, the Managed Long-Term Care Plan's determined to deny the Appellant's appeal on the grounds that the service is not medically necessary.

8. On October 10, 2018, the Appellant requested this fair hearing.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

Social services districts should authorize assistance with recognized, medically necessary personal care services tasks. As previously advised, social services districts are NOT required to allot time for safety monitoring as a separate task as part of the total personal care services hours authorized (see GIS 99 MA/013, GIS 99 MA/036). However, districts are reminded that a clear and legitimate distinction exists between “safety monitoring” as a non-required independent stand-alone function while no Level II personal care services task is being provided, and the appropriate monitoring of the patient while providing assistance with the performance of a Level II personal care services task.

[REDACTED]

The record in this case establishes that the Appellant, [REDACTED], has been in receipt of a Personal Care Services Authorization in the amount of 10 hours per day, 7 days a week. By notice dated July 10, 2018, the Managed Long-Term Care Plan's determined to deny the Appellant's request for an increased Personal Care Services authorization from 70 hours per week to 24 hour live-in based on the NYS Department of Health Uniform Assessment System (UAS-NY). The Appellant's Representative requested an appeal of the Long-Term Plan's

March 19, 2018 determination to deny Appellant's request for an increased Personal Care Services authorization from 70 hours per week to 24 hour live in. By notice dated August 7, 2018, the Managed Long-Term Care Plan's determined to deny the Appellant's appeal on the grounds that the service is not medically necessary.

At the hearing, the Appellant's Representative contends that the Appellant needs 24 hour live-in care because he needs someone to watch him. He testified that the Appellant leaves the house. He testified that the Appellant is [REDACTED]. He also, testified that the Appellant takes insulin twice a day and no one is there when he takes the second insulin at 3 p.m. He testified that the Appellant has two Home Health Aides and their hours are 7:30 a.m. to 2:30 p.m. and 6 p.m. to 9 p.m. He testified that the hours are insufficient to assist the Appellant with his activities of daily living. In support of his testimony, he presented a note from [REDACTED], MD dated October 31, 2018 that states "Patient is legally blind in both eyes & is deaf. He needs more assistance in activities of daily life." The Appellant submitted a letter from [REDACTED], MD dated February 15, 2018 which states that the Appellant is a "pleasant gentleman with deteriorating health and declining functional status. His mobility is limited. He requires extensive assistance with ADLs. He lacks the capacity to make appropriate decisions without assistance and requires supervision at all times as to his poor safety awareness. He was recently admitted twice to the hospital." The letter states that the Appellant has been diagnosed with [REDACTED].

On February 23, 2018, a nursing assessor completed a Uniform Assessment System evaluation of the Appellant's personal care needs. On May 18, 2018, a different nursing assessor completed another Uniform Assessment System evaluation of the Appellant's personal care needs. On June 25, 2018, a different nursing assessor completed another Uniform Assessment System evaluation of the Appellant's personal care needs. By notice dated July 10, 2018, the Managed Long-Term Care Plan's determined to deny the Appellant's request for an increased Personal Care Services authorization from 70 hours per week to 24 hour live-in based on the NYS Department of Health Uniform Assessment System (UAS-NY). The Appellant's Representative requested an appeal of the Long-Term Plan's July 10, 2018 determination to deny Appellant's request for an increased Personal Care Services authorization from 70 hours per week to 24-hour live in. By notice dated August 7, 2018, the Managed Long-Term Care Plan's Final Adverse Determination Denial Notice notified the Appellant of its determination to deny the Appellant's appeal on the grounds that the service is not medically necessary.

The May 18, 2018 assessment states total dependence-full performance by others during all episodes for: stairs, shopping, transportation, bathing, personal hygiene, dressing upper and lower body and toilet use. It states maximal assistance-weight-bearing support (including lifting limbs) by 2+ helpers-or-weight-bearing support for more than 50% of subtasks for: walking, locomotion, toilet transfer, bed mobility and eating. It states change in ADL status as compared to 90 days ago, or since last assessment if less than 90 days ago: declined. It states Overall self-sufficient has changed significantly as compared to status 90 days ago, or since last assessment if less than 90 days: deteriorated. The comments section states "member requires maximal to total assistance with ADLS/IADLS due to [REDACTED] and other present health conditions."

The June 25, 2018 assessment states total dependence-full performance by others during all episodes for: shopping and managing medications. It states maximal assistance-weight-bearing support (including lifting limbs) by 2+ helpers-or-weight-bearing support for more than 50% of subtasks for: stairs, transportation, walking, locomotion, toilet transfer. It states extensive assistance (weight-bearing support (including lighting limbs) by 1 helper where 1 person still performs 50% or more of subtasks) with bed mobility and eating. It states change in ADL status as compared to 90 days ago, or since last assessment if less than 90 days ago: declined. It states Overall self-sufficient has changed significantly as compared to status 90 days ago, or since last assessment if less than 90 days: deteriorated. The comments section states “member needs increased assistance with ADLs and IADL due to osteoarthritis, pain, diabetic neuropathy and dizziness. Member ambulates with assistance of two helper. PCA provides set up help and reminders with pre-packed medications.”

The Appellant’s Representative’s contention that the Appellant needs an increase in hours from 70 hours per week to 24 hour -live in because he needs to be watched is not a stand-alone task that may be authorized by Centers Plan. However, the May 18, 2018 UAS and the June 25, 2018 UAS show that the Appellant’s ADL has declined and overall self-sufficiency has deteriorated. Based on the totality of the evidence, the Appellant’s testimony fails to establish a change in his medical condition which warrants 24 hour live. However, the UAS shows that the Appellant’s needs for assistance with ADLs and IADLs rises to the need for an additional two hours of Personal Care Services. Therefore, Centers Plan For Healthy Living’s authorization for Personal Care Services in the amount of 10 hours per day, 7 hours per day is not sustained.

DECISION AND ORDER

Centers Plan For Healthy Living 's determination to deny an increase in Personal Care Services is not correct and is reversed.

1. The Centers Plan For Healthy Living is directed to authorize Personal Care Services to the Appellant in the amount of 12 hours per day, 7 days a week.

Should the 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 requested, the Appellant must provide it to the Centers Plan For Healthy Living promptly to facilitate such compliance.

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

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DATED: Albany, New York
11/27/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "Jacob Kello". The signature is written in a cursive, flowing style with a large initial "J" and a distinct "K".

Commissioner's Designee