STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: December 27, 2018
[redacted]
AGENCY: MAP
FH #: 7884135N

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 January 23, 2019, 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)

Deborah Ferguson, Fair Hearing Representative

ISSUE

Was the determination of the Appellant's Managed Long-Term Care Program not to provide the Appellant with an increase in personal care services hours 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 65, has been enrolled in a Managed Long-Term Care Program and has received care and services, including Personal Care Services, through a Medicaid Managed Long Term Care Health Plan operated by Centers Plan for Healthy Living.

2. On December 27, 2018, this fair hearing was requested.

APPLICABLE LAW

Section 358-5.9 of the Regulations provides that, at a fair hearing concerning the denial of an application for or the adequacy of Public Assistance, HEAP, SNAP benefits, Medical Assistance or Services, the Appellant must establish that the Agency's denial of assistance or benefits was not correct or that the Appellant is eligible for a greater amount of assistance or benefits.

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 438.404(b) of 42 CFR Subpart F provides in part:

(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...

Appellant right to fair hearing and appeal rights: 42 CFR section 438.402 (c)(1)(i) and 438 (f)(1) establish that enrollees may request a state fair hearing after receiving an appeal resolution (Final Adverse Determination) that an adverse benefit determination (Initial Adverse Determination) has been upheld. 42 CFR section 438.402 (c)(1)(i)(A), 438.408 (c)(3) and 438.408 (f)(1)(i) provide that an enrollee may be deemed to have exhausted a plan's appeals process and may request a state fair hearing where notice and timeframe requirements under 42 CFR 438.408 have not been met. Deemed exhaustion applied when: an enrollee requests a Plan Appeal, verbally or in writing, and does not receive an appeal resolution notice or extension notice from the plan; an enrollee requests a Plan Appeal, verbally or in writing, and does not receive an appeal resolution notice or extension notice from the plan within State – specified timeframes; or a plan's appeal resolution or extension notice does not meet noticing requirements identified in 42 CFR section 438.408. 42 CFR section 438.408 (f) (2) provides the enrollee no less than 120 days from the date of the adverse appeal resolution (Final Adverse Determination) to request a state fair hearing. Pursuant to 42 CFR section 438.424 (a), if OAH determines to reverse the MMC decision, and the disputed services were not provided while the appeal and hearing were pending, the plan must authorize or provide the disputed services promptly and as expeditiously as the enrollee's condition requires but no later than 72 hours from the date the plan receives the OAH fair hearing decision.

DISCUSSION

The Appellant seeks review of the determination of the Appellant's Managed Long-Term Care Program provider not to provide the Appellant with an increase in personal care services hours. The Appellant's representative contended at the hearing that the Appellant was released from rehabilitation with insufficient personal care hours. The Appellant's representative, however, conceded that while telephone calls were made to the Plan, no formal written request

was ever made to the Plan on the Appellant's behalf for an increase in personal care services hours. The Appellant's representative further conceded that to date the Plan has not issued any determination regarding the Appellant's alleged request for an increase in personal care services hours. At the hearing, the Plan confirmed that there was no record of a formal request for an increase in hours or an issuance of an initial or final adverse determination which would have followed such a request.

Given the foregoing, there is no issue for the Commissioner to review in this case. The Appellant is advised that a formal written request for the increase in the number of hours the Appellant was seeking can be made to the Plan and that if such request is denied the Appellant may seek from the Plan the required internal review prior to a request for a fair hearing.

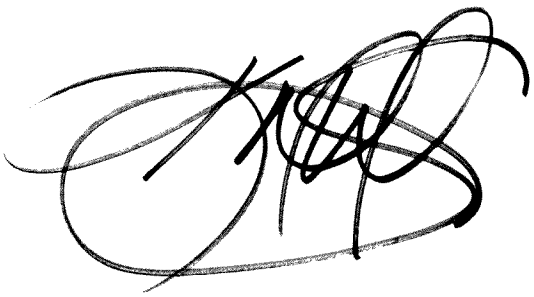
DECISION

With respect to the Appellant's contention that the Plan failed to provide the Appellant with an increase in personal care services hours, there is no issue to be decided.

DATED: Albany, New York
01/29/2019

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By



Commissioner's Designee