STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: October 11, 2018
[redacted]
AGENCY: MAP
FH #: 7841363J

In the Matter of the Appeal of [redacted]	:	**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 December 20, 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

Julia Rolffot, Manager of Appeals and Grievances, Centers Plan For Healthy Living (CPHL) MLTC Plan, Fair Hearing Representative

ISSUE

Was the determination by the Managed Long Term Care Plan, Centers Plan For Healthy Living, dated September 20, 2018, to reduce the Appellant's Personal Care Services authorization from 35 hours per week (5 hours daily x 7 days weekly) to 24.5 hours per week (3.5 hours daily x 7 days per week) 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 85, has been in receipt of Medicaid benefits and is enrolled in a Medicaid Managed Long Term Care Plan, Centers Plan For Healthy Living.

2. The Appellant has been in receipt of a Personal Care Services authorization in the amount of 35 hours per week (5 hours daily x 7 days weekly).

3. On March 23, 2018, a nursing assessor completed a uniform assessment system evaluation of the Appellant's personal care needs.

4. On September 12, 2018, a nursing assessor completed a uniform assessment system evaluation of the Appellant's personal care needs.

5. By notice dated September 20, 2018, the MLTC Plan determined to reduce the Appellant's Personal Care Services authorization from 35 hours per week (5 hours daily x 7 days weekly) to 24.5 hours per week (3.5 hours daily x 7 days per week).

6. The Appellant requested an internal appeal and on October 11, 2018, the MLTC Plan determined to uphold its original determination and reduce Appellant's Personal Care Services to 24.5 hours per week effective October 21, 2018.

7. On October 11, 2018, this fair hearing was requested. At the hearing, the issue was clarified or amended, without objection by the parties, to review the correctness of the Plan's determination dated September 20, 2018.

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 §§ 505.14(b)(5)(v)(c)(2)(i) through (vi), for PCS, and 18 NYCRR §§ 505.28(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 <u>Medical or Mental Condition or Social Circumstances</u>

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

> <u>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</u>. 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.
>
> <u>Example of a change in medical condition</u>: 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 evidence establishes that the Appellant has been enrolled in a Medicaid Managed Long Term Care Plan through Centers Plan For Healthy Living and had been in receipt of a Personal Care Services authorization in the amount of 35 hours per week (5 hours daily x 7 days weekly). The evidence further establishes that by notice dated September 20, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from 35 hours per week (5 hours daily x 7 days weekly) to 24.5 hours per week (3.5 hours daily x 7 days per week).

The Plan's notice of reduction dated September 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 September 20, 2018, provided as follows:

> "The plan is taking this action because the health care provided is not medically necessary…
>
> The UAS-NY comprehensive assessment conducted on 9/12/2018 showed improved in your health condition and based on this assessment, it was identified that:
> You are able to walk independently
> You can transfer on and off the toilet and take care of your toileting needs with some assistance
> You are able to changes bed positions as needed it (lying position, turns side by side)
> You are able to direct your care and activate a Personal Emergency Response if necessary
> The UAS-NY comprehensive assessment conducted on 9/12/2018 showed that you need three and one half (3,5) hours per day, seven (7) days per week (totaling twenty-four and a half (24.5) hours per week of PCA services to complete the above-mentioned tasks and keep you safe. This change will take effect as of 10/02/2018."

The credible evidence establishes that the Plan's notice dated September 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 or discontinued 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 September 20, 2018, met the guidance requirements set forth in MLTC Policy 16.06 concerning appropriate reasons and notice language.

For example, Appellant's primary diagnosis is osteoarthritis. The State's guidelines would permit a reduction of Personal Care Services hours if one of Appellant's conditions, such as the just-named osteoarthritis had ameliorated. To be adequate, though, the Notice of Intent (a.k.a.,

Adverse Determination Notice) would have to specify (sincerely, of course) that the condition had improved.

Here, while the Plan in its Notice mentioned that Appellant was able to perform certain tasks, stating that demonstrated an improved medical condition, the Plan did not specify a particular medical condition, such as osteoarthritis, that had improved.

For the foregoing reasons, the Plan's September 20, 2018, determination to reduce the Appellant's Personal Care Services authorization from 35 hours per week (5 hours daily x 7 days weekly) to 24.5 hours per week (3.5 hours daily x 7 days per week) cannot be sustained.

DECISION AND ORDER

The determination by the Managed Long Term Care Plan, Centers Plan For Healthy Living, dated September 20, 2018, to reduce the Appellant's Personal Care Services authorization from 35 hours per week (5 hours daily x 7 days weekly) to 24.5 hours per week (3.5 hours daily x 7 days per week) is not correct and is reversed.

The Managed Long Term Care Plan is directed to:

1. Restore the Appellant's Personal Care Services authorization to the amount of 35 hours per week (5 hours daily x 7 days weekly) retroactive to the effective date of reduction.

2. Continue to provide the Appellant with a Personal Care Services authorization in the amount of 35 hours per week (5 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 Agency must comply immediately with the directives set forth above.

DATED: Albany, New York
02/01/2019

NEW YORK STATE
DEPARTMENT OF HEALTH

By

Commissioner's Designee