

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: May 19, 2017

AGENCY: MAP

FH #: 7537017L

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 July 11, 2017, 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)

A. Jacobs, Fair Hearing Representative

ISSUE

Was the Managed Long Term Care Plan's determination dated May 17, 2017, to reduce the Appellant's Personal Care Services authorization from 50 hours weekly (7 hours daily, 6 days weekly plus 8 hours daily, 1 day weekly) to 38 1/2 hours weekly (5 1/2 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, age 86, has been in receipt of Medicaid benefits provided through a Managed Long Term Care Plan, Centers Plan for Healthy Living.

2. By notice dated May 17, 2017, the Managed Long Term Care Plan determined to reduce the Appellant's Personal Care Services authorization from 50 hours weekly (7 hours daily, 6 days weekly plus 8 hours daily, 1 day weekly) to 38 1/2 hours weekly (5 1/2 hours daily, 7 days weekly).

3. On May 19, 2017, 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 Managed Long Term Care Plan's determination dated May 17, 2017, to reduce the Appellant's Personal Care Services authorization from 50 hours weekly (7 hours daily, 6 days weekly plus 8 hours daily, 1 day weekly) to 38 1/2 hours weekly (5 1/2 hours daily, 7 days weekly).

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

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.

DISCUSSION

The evidence establishes that the Appellant has been in receipt of Medicaid benefits provided through a Managed Long Term Care Plan, Centers Plan for Healthy Living. The evidence also establishes that by notice dated May 17, 2017, the Managed Long Term Care Plan determined to reduce the Appellant's Personal Care Services authorization from 50 hours weekly (7 hours daily, 6 days weekly plus 8 hours daily, 1 day weekly) to 38 1/2 hours weekly (5 1/2 hours daily, 7 days weekly).

The Managed Long Term Care Plan's notice of reduction dated May 17, 2017, 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, such as a change in the Appellant's medical, mental, or social circumstances, or if a mistake occurred in the previous personal care services authorization, etc. The Managed Long Term Care Plan's notice dated May 17, 2017, provided, in part, as follows:

"The plan is taking this action because the health care service is not medically necessary.

Based on the NYS Department of Health Uniformed Assessment System (UAS-NY) assessment performed on 5/04/2017 and the Plan Client Tasking Tool you demonstrated the following abilities and level of participation to perform your Activities of Daily Living and Instrumental Activities of Daily Living:

Bathing; Transfer; Personal Hygiene; Dressing Lower Body; Dressing Upper Body; Toilet Use, Ambulation/Locomotion you require Extensive Assistance where you

FH# 7537017L

need physical help to complete some parts of this task, like someone to lean on or help you lift a body part, however you can complete most parts of this task by yourself;

Bed mobility: you require limited assistance where you need some physical touch and direction throughout the task, but you can complete the task without someone to lean on or help you lift any body parts.

Eating. you are independent, set up only where a specific item or device is prepared for you and placed within your reach, and you are then able to complete this task by yourself, without any physical help or supervision

Meal preparation; Ordinary housework; Shopping. You require Total assistance where you depend completely upon someone else to complete all parts of this task. You do not participate in this task at all

Stair Capacity; Transportation: you require Maximal Assistance where you need physical help to complete most parts of this task, like someone to lean on or help you lift a body part, however you can complete some parts of this task by yourself;

Phone use: you require limited assistance where you need some physical touch and direction throughout the task, but you can complete the task without someone to lean on or help you lift any body parts.

Managing medication: you require supervision where you can physically complete this task by yourself, but you need someone to supervise you throughout the task

Transportation: you require Maximal Assistance where you need physical help to complete most parts of this task, like someone to lean on or help you lift a body part, however you can complete some parts of this task by yourself.

Falls you have reported no falls in the last 90 days.

Pain control: You reported chronic-intermittent pain adequately controlled with current therapeutic regimen

Hospitalizations: you have reported No hospitalization within 90 days.

The current UAS-NY assessment and the plan's client tasking tool showed that you need 5.5 hours a day/7 days a week (Total of 38.5 hours a week) of Personal Care Aide Services to complete the above tasks."

The credible evidence establishes that the Managed Long Term Care Plan's notice dated May 17, 2017, does not adequately identify an appropriate reason to justify its action to reduce the Appellant's Personal Care Services authorization, such as a change in the Appellant's

FH# 7537017L

medical, mental, or social circumstances, or if a mistake occurred in the previous personal care services authorization. The Managed Long Term Care Plan's notice dated May 17, 2017, was not proper.

For the foregoing reason, the Managed Long Term Care Plan's determination dated May 17, 2017, to reduce the Appellant's Personal Care Services authorization from 50 hours weekly (7 hours daily, 6 days weekly plus 8 hours daily, 1 day weekly) to 38 1/2 hours weekly (5 1/2 hours daily, 7 days weekly) cannot be sustained.

DECISION AND ORDER

The Managed Long Term Care Plan's determination dated May 17, 2017, to reduce the Appellant's Personal Care Services authorization from 50 hours weekly (7 hours daily, 6 days weekly plus 8 hours daily, 1 day weekly) to 38 1/2 hours weekly (5 1/2 hours daily, 7 days 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 50 hours weekly (7 hours daily, 6 days weekly plus 8 hours daily, 1 day 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 50 hours weekly (7 hours daily, 6 days weekly plus 8 hours daily, 1 day weekly) unchanged.

Should the Managed Long Term Care 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 provide it to the Managed Long Term Care Plan promptly to facilitate such compliance.

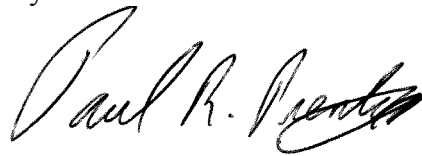
FH# 7537017L

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
07/18/2017

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "Paul R. Prentiss", with a stylized flourish at the end.

Commissioner's Designee