

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: April 18, 2018

AGENCY: MAP

FH #: 7741307J

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In the Matter of the Appeal of	:
	: <b>DECISION</b>
	<b>AFTER</b>
	: <b>FAIR</b>
	<b>HEARING</b>
from a determination by the New York City	:
Department of Social Services	:

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**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 May 23, 2018, 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)

On Papers Only – Appearance waived by the Office of Administrative Hearings

**ISSUE**

Was the determination of the Appellant's Managed Long Term Care Plan, Centers Plan for Healthy Living, to reduce the Appellant's personal care services authorization from 70 hours per week to 49 hours 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 80, is in receipt of authorization for Medical Assistance and currently enrolled in a Medicaid managed long term care plan operated by Centers Plan for Healthy Living ("the Plan").
2. The Appellant is in receipt of personal care services in the amount of 70 hours per

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week.

3. Prior to enrollment with the Plan, the Appellant had been enrolled in a Medicaid managed long term care plan operated by [REDACTED], where she had been in receipt of personal care services in the amount of 70 hours per week.

4. On October 23, 2017 [REDACTED] completed a Uniform Assessment System Report of the Appellant.

5. On February 19, 2018, the Plan completed a Uniform Assessment System Report of the Appellant, with the reason stated for the assessment as, "First assessment".

6. By notice dated March 23, 2018, the Plan determined to reduce the Appellant's personal care services from 70 hours per week to 49 hours per week, effective April 1, 2018.

7. This fair hearing was requested on April 18, 2018.

### **APPLICABLE LAW**

Regulations at 18 NYCRR 358-3.7(a) provide that an appellant has the right to examine the contents of the case record at the fair hearing. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a representative of the agency must appear at the hearing along with the case record and a written summary of the case and be prepared to present evidence in support of its determination. 18 NYCRR 358-4.3(b). Except as otherwise established in law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, SNAP benefits or Services, the Agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

In general, a recipient of Public Assistance, Medical Assistance or Services (including child care and supportive services) has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Public Assistance, Medical Assistance or Services; or has increased the Public Assistance grant; or has determined to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358-3.3(a).

A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23.

### **DISCUSSION**

The record establishes that by notice dated March 23, 2018, the Appellant's Medicaid managed long term care plan, Centers Plan for Healthy Living ("the Plan"), determined to reduce the Appellant's personal care services from 70 hours per week to 49 hours per week, effective April 1, 2018. However, Regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Medical Assistance or services has a right to a timely and adequate notice when the Agency proposes to discontinue, suspend, reduce or change the manner of payment of such benefits, and Regulations at 18 NYCRR 358-2.23 provide that a timely notice means a notice which is mailed at least ten days before the date upon which the proposed action is to become effective. In this case, as the proposed effective date for the reduction of the Appellant's benefits is less than ten days after the date of the notice, the March 23, 2018 notice is defective and cannot be sustained.

### **DECISION AND ORDER**

The determination of the Appellant's Managed Long Term Care Plan, Centers Plan for Healthy Living, to reduce the Appellant's personal care services authorization from 70 hours per week to 49 hours per week was not correct and is reversed. Centers Plan for Healthy Living is directed to:

1. Cancel its notice dated March 28, 2018 and continue to authorize the Appellant for personal care services in the amount of 70 hours per week.
2. Notify the Appellant in writing upon compliance with this Decision.

Should Centers Plan for Healthy Living in the future determine to implement its previous action, it is directed to issue a new Notice of Intent and to produce the required case record at any subsequent fair hearing.

Should Centers Plan for Healthy Living need additional information/documentation from the Appellant in order to comply with the above directives, it is directed to notify her, in writing, as to what additional information/ documentation is needed. If such information/ documentation is requested, the Appellant must provide it to Centers Plan for Healthy Living promptly to facilitate such compliance.

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As required by Section 358-6.4 of the Regulations, Centers Plan for Healthy Living must comply immediately with the directives set forth above.

DATED: Albany, New York  
05/30/2018

NEW YORK STATE  
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, consisting of a large, stylized 'H' followed by a series of loops and a horizontal line extending to the right.

Commissioner's Designee