

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: November 7, 2018

AGENCY: MAP

FH #: 7858041L

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 December 4, 2018, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For Centers Plan for Healthy Living

Debra Ferguson, Fair Hearing Representative

ISSUE

Is Appellant entitled to another fair hearing when a previous fair hearing already took place and a decision was rendered regarding the determination of Centers Plan for Healthy Living to discontinue the Appellant's Personal Care Services effective November 1, 2018?

FACT FINDING

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 47, has been in receipt of Medical Assistance for himself only.
2. The Appellant is enrolled in the Office of Persons with Developmental Disabilities (OPWDD).

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3. The Appellant had been in receipt of Personal Care Services from Centers Plan for Healthy Living, a Managed Long Term Care Plan.

4. On or before August 23, 2018, Centers Plan for Healthy Living submitted a request to New York Health Options to disenroll the Appellant from managed long-term care services as an excluded person.

5. On August 23, 2018, New York Health Options notified the Appellant that it agreed to end the Appellant's enrollment in Centers Plan for Healthy Living.

6. On August 30, 2018, a fair hearing was requested on behalf of the Appellant. By Decision After Fair Hearing #7818925L, issued on October 22, 2018, the August 23, 2018 determination was sustained.

7. On November 1, 2018, in compliance with Decision After Fair Hearing #7818925L, Centers Plan for Healthy Living discontinued the Appellant's personal care services authorization.

8. On November 7, 2018, this hearing was requested.

APPLICABLE LAW

Section 358-6.6 of 18 NYCRR states as follows:

(a) Corrected decisions.

- (1) The commissioner may review an issued fair hearing decision for purposes of correcting any error found in such decision.
- (2) After review, the commissioner may correct any error occurring in the production of an issued fair hearing decision including, but not limited to, typographical and spelling errors.
- (3) After review, on notice to the parties, the commissioner may correct any error of law or fact which is substantiated by the fair hearing record.
- (4) During the pendency of any review of an issued fair hearing decision, the original decision is binding and must be complied with by the social services agency in accordance with the provisions of section 358-6.4 of this Subpart.

(b) Reopened hearings.

On notice to all parties, the OAH may reopen a previously closed fair hearing record for purposes of completing such record. If such reopening occurs subsequent to the issuance of a fair hearing decision, the provisions of paragraph (a)(4) of this section apply.

Section 358-3.4 of 18 NYCRR states as follows:

As an appellant you have the right:

- (a) to the continuation or reinstatement of your public assistance, medical assistance authorization, SNAP benefits or services until the issuance of a decision in your fair hearing, to

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the extent authorized by section 358- 3.6 of this Subpart. You have the right to request that your assistance, benefits or services not be continued or reinstated until the fair hearing decision is issued;

(b) to examine your case record and to receive copies of documents in your case record which you need to prepare for the fair hearing, upon your request, to the extent authorized by and within the time periods set forth in section 358-3.7 of this Subpart;

(c) to examine and receive copies of all documents and records which will be submitted into evidence at the fair hearing by a social services agency, upon your request, to the extent authorized by and within the time periods set forth in section 358-3.7 of this Subpart;

(d) to the rescheduling (adjournment) of your hearing, to the extent authorized by section 358-5.3 of this Part;

(e) to be represented by an attorney or other representative at any conference and hearing, or to represent yourself;

(f) to have an interpreter at any fair hearing, at no charge to you, if you do not speak English or if you are deaf. You should advise OAH prior to the date of the fair hearing if you will need an interpreter;

(g) to appear and participate at your conference and fair hearing, to explain your situation, to offer documents, to ask questions of witnesses, to offer evidence in opposition to the evidence presented by the social services agency and to examine any documents offered by the social services agency;

(h) to bring witnesses to present written and oral evidence at any conference or fair hearing;

(i) at your request to the social services agency, to receive necessary transportation or transportation expenses to and from the fair hearing for yourself and your representatives and witnesses and to receive payment for your necessary child care costs and for any other necessary costs and expenditures related to your fair hearing;

(j) to have the fair hearing held at a time and place convenient to you as far as practicable, taking into account circumstances such as your physical inability to travel to the regular hearing location;

(k) to request removal of a hearing officer in accordance with section 358- 5.6 of this Part; and

(l) to seek review by a court if the decision is not in your favor

At a fair hearing concerning the denial of an application for or the adequacy of Public Assistance, Medical Assistance, HEAP, Supplemental Nutrition Assistance Program benefits 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. Except where otherwise established by law or regulation, in fair hearings concerning the discontinuance, reduction or suspension of Public Assistance, Medical Assistance, Supplemental Nutrition Assistance benefits or services, the social services agency must establish that its actions were correct. 18 NYCRR 358-5.9(a).

DISCUSSION

The Appellant is not entitled to another fair hearing when a previous fair hearing already took place and a decision was rendered regarding the same issue.

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At the hearing the Appellant's representative readily admitted that Appellant already had a hearing on September 27, 2018, regarding the issue of an Agency determination dated August 23, 2018, based on the request of a Managed Long Term Care Health Plan, to disenroll the Appellant from the plan. As reported by the ALJ in DAFH 7818925L Appellant again argues that: "the Agency erred by not providing 'the current services authorization plan to the local district managed care coordinator to coordinate the delivery of LTSS [long term services and supports] through fee-for-services Medicaid,' quoting from GIS 18 MA/01." The Commissioner's decision specifically found that the Centers Plan for Healthy Living, the opposing party at the hearing, is not responsible for providing transitional care to the Appellant."

The Appellant is not entitled to a second hearing when he already had a fair hearing on this issue and a decision was rendered. The Appellant's Representative, who represented him at the hearing in September, acknowledged that she received the written prior fair hearing decision and the enclosed instructions on how to appeal the fair hearing decision. There is no right to a second fair hearing after the issue was previously decided at the first fair hearing.

It is noted that the Appellant was and is advised that he could apply for fee-for-service personal care services at any time.

DECISION

The Appellant is not entitled to another fair hearing when a previous fair hearing already took place and a decision was rendered regarding the same issue. Therefore, there is no issue to be decided by this fair hearing.

DATED: Albany, New York
12/20/2018

NEW YORK STATE OFFICE OF
TEMPORARY AND DISABILITY ASSISTANCE

By

A handwritten signature in black ink, appearing to read "Ruth L. ...", is written over a horizontal line.

Commissioner's Designee