

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: February 2, 2018

AGENCY: MAP

FH #: 7700741L

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 March 12, 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)

Alisha Jacobs, Fair Hearing Representative

ISSUE

Has the Appellant's Managed Long Term Care Plan, Centers Plan for Healthy Living, acted correctly with respect to its determination to discontinue, without notice, the Appellant's authorization for personal care services?

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, 83 years of age and homebound, had been in receipt of a Personal Care Services authorization in the amount of 45.5 hours weekly through a Managed Long Term Care Plan known as Centers Plan for Healthy Living.

2. On or about February 1, 2018, the Plan discontinued, without notice to the Appellant, the Appellant's Personal Care Services.

3. On February 2, 2018, the Appellant requested this fair hearing.

APPLICABLE LAW

Regulations at 18 NYCRR 358-3.3(a)(1) states that, except as provided in subdivision (d) a recipient has a right to a timely and adequate notice when a social services agency:

(i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance Authorization or services.

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).

Section 505.14(a)(1) of the Regulations defines "Personal Care Services" to mean some or total assistance with personal hygiene, dressing and feeding and nutritional and environmental support functions. Such services must be essential to the maintenance of the patient's health and safety in his or her own home...".

DISCUSSION

The record establishes that the Appellant has been in receipt of a Personal Care Services authorization in the amount of 45.5 hours weekly (6.5 hours daily for 7 days per week) through a Managed Long Term Care Plan known as Centers Plan for Healthy Living.

On or about February 1, 2018, the Plan discontinued, without notice to the Appellant, the Appellant's Personal Care Services.

The Managed Long Term Care Plan appeared at the hearing but failed to present any documentation to support its determination to discontinue Appellant's Personal Care Services without notice.

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The Plan's failure to give notice of its determination to discontinue the Appellant's Personal Care Services violates the above cited regulations.

DECISION AND ORDER

The Plan's determination to discontinue the Appellant's Personal Care Services without notice, effective on or about February 1, 2018, was not correct and is reversed.

1. The Plan is directed to restore the Appellant's Personal Care Service hours retroactive to February 1, 2018, the date the Appellant's Personal Care Service hours were reduced.

2. Should the Plan in the future determine to implement its previous action, it is directed to issue a timely and adequate Notice of Intent.

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

As required by 18 NYCRR 358-6.4, the Plan must comply immediately with the directives set forth above.

DATED: Albany, New York
04/19/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "T. A. Selekm", followed by a period.

Commissioner's Designee