

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: June 5, 2018

AGENCY: MAP  
FH #: 7771560M

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In the Matter of the Appeal of  
[REDACTED]  
from a determination by the New York City  
Department of Social Services

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**DECISION  
AFTER  
FAIR  
HEARING**

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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 October 25, 2018, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Managed Long Term Care Plan (Centers Plan for Healthy Living)

D. Ferguson, Fair Hearing Representative

**ISSUE**

Was the Managed Long Term Care Plan's determination dated May 29, 2018, to reduce the Appellant's Personal Care Services authorization from 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly) to 56 hours weekly (8 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 91, has been enrolled in a Medicaid Managed Long Term Care Plan, Centers Plan for Healthy Living, and has been in receipt of a Personal Care Services authorization in the amount of 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly).

2. By initial notice dated May 2, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly) to 52 ½ hours weekly (7 ½ hours daily, 7 days weekly).

3. The Appellant requested an internal appeal.

4. By final notice dated May 29, 2018, the Plan determined to modify its determination dated May 2, 2018, and instead reduce the Appellant's Personal Care Services authorization from 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly) to 56 hours weekly (8 hours daily, 7 days weekly).

5. On June 5, 2018, this fair hearing was requested.

### **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

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#### 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.

In general, 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. An adequate, though not timely, notice is required where the Agency has accepted or denied an application for Medical Assistance or Services; or has determined to change the amount of one of the items used in the calculation of a Medical Assistance spenddown; or has determined that an individual is not eligible for an exemption from work requirements. 18 NYCRR 358-3.3(a). In addition, pursuant to 18 NYCRR 358-3.3(d), an adequate, though not timely, notice is required for a Medical Assistance recipient when, for example, the Agency has factual information confirming the death of the recipient; the Agency has received a clear written statement from the recipient that he or she no longer wishes to receive Medical Assistance; the Agency has reliable information that the recipient has been admitted to an institution or prison; the recipient's whereabouts are unknown and mail has been returned to the Agency; or the recipient has been accepted for Medical Assistance in another district.

## **DISCUSSION**

The credible evidence establishes that the Appellant has been enrolled in a Medicaid Managed Long Term Care Plan, Centers Plan for Healthy Living, and has been in receipt of a Personal Care Services authorization in the amount of 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly). The credible evidence also establishes that by initial notice dated May 2, 2018, the Plan determined to reduce

the Appellant's Personal Care Services authorization from 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly) to 52 ½ hours weekly (7 ½ hours daily, 7 days weekly). The credible evidence further establishes that the Appellant requested an internal appeal and that by final notice dated May 29, 2018, the Plan determined to modify its determination dated May 2, 2018, and instead reduce the Appellant's Personal Care Services authorization from 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly) to 56 hours weekly (8 hours daily, 7 days weekly).

The Plan's notice of reduction dated May 29, 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, 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 Plan's notice dated May 29, 2018, provides, in part, as follows:

“... Centers Plan for Healthy Living decided to partially approve this service because the service is partially medically necessary.

The member is a 90 year old man who lives at home with his wife. She provides informal assistance with his activities of daily living and instrumental activities of daily living. Daughters are supportive. He has a history of dementia, is 6 feet tall, and weighs 198 pounds.

The UAS-NY of 1/30/18 was reviewed and the following was noted: 1) He is totally dependent for meal preparation, housework, finances and transportation; 2) He requires maximal assistance for medications, phone use, stairs, shopping, bathing, toilet use and dressing lower body; 3) He requires extensive assistance for hygiene, dressing upper body, walking, locomotion and toilet transfers. He is able to walk 15-149 feet with assistance; 4) He requires limited assistance for eating; 5) He is incontinent of bowel and bladder. There is no skin breakdown; 6) There were no falls or hospitalizations within the preceding 90 days; 7) He has moderate cognitive impairment. Decisions are consistently poor or unsafe. Cues or supervision are required at all times; He has mild communication difficulties. There is no mood disturbance or wandering behavior.

Based upon review of the record, denial is partially overturned, and will authorize 8 hours of PCA services/7 days per week. Seventy-two hours of PCA services per week (12 hours x 5 days. 8 hours x 1 day, and 4 hours x 1 day) are not medically necessary.”

The credible evidence establishes that the Plan's notice dated May 29, 2018, 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 medical, mental, or social circumstances, or if a mistake occurred in the previous personal care services authorization. The Plan's notice dated May 29, 2018, was not proper.

For the foregoing reason, the Plan's determination dated May 29, 2018, to reduce the Appellant's Personal Care Services authorization from 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly) to 56 hours weekly (8 hours daily, 7 days weekly) cannot be sustained.

### **DECISION AND ORDER**

The Managed Long Term Care Plan's determination dated May 29, 2018, to reduce the Appellant's Personal Care Services authorization from 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly) to 56 hours weekly (8 hours daily, 7 days weekly) is not correct and is reversed.

1. The Managed Long Term Care Plan is directed to cancel its notice dated May 29, 2018, and take no further action on it.
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 72 hours weekly (12 hours daily, 5 days weekly plus 8 hours daily, 1 day weekly plus 4 hours daily, 1 day weekly).

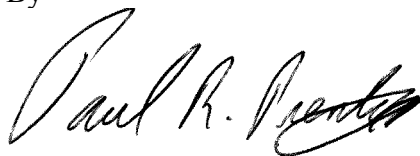
Should the Managed Long Term Care Plan need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant and the Appellant's Representative promptly in writing as to what documentation is needed. If such information is required, the Appellant or the Appellant's Representative must provide it to the Managed Long Term Care Plan promptly to facilitate such compliance.

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  
11/05/2018

NEW YORK STATE  
DEPARTMENT OF HEALTH

By

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

Commissioner's Designee