

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: October 4, 2019

AGENCY: MAP

FH #: 8040375J

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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 November 6, 2019, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Mr. Etifit, Fair Hearing Representative  
Waiver Packets received for Centers Plan for Healthy Living and New York Medicaid Choice

**ISSUES**

Was the determination of the Agency to discontinue the Appellant's Medical Assistance benefits without notice correct?

Was the Managed Care Plan's determination to disenroll the Appellant from Managed Care on the grounds that she was no longer eligible for Medical Assistance correct?

Was the Managed Long-Term Care Plans determination to discontinue the Appellant's Managed Long-Term Care Personal Care Services on the grounds that she was no longer eligible for Medical Assistance 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 had been in receipt of Medical Assistance benefits for herself only.
2. The Appellant is enrolled in [REDACTED], a Managed Care Plan (hereinafter "MCP")
3. The Appellant is receiving Managed Long-Term Care Personal Care service through [REDACTED], a Managed Long-Term Care Plan.
4. On October 5, 2018, the Appellant's representative submitted the Appellant's Medical Assistance Renewal Application.
5. On or about May 2019, the Appellant was advised by the Appellant's Managed Long-Term Care Plan that the Appellant was no longer eligible for Medical Assistance.
6. The Agency failed to issue a Notice of Intent with respect to the Appellant's October 5, 2018 Medical Assistance Renewal Application.
7. On or about September 2019, the Appellant's representative was verbally notified by the Appellant's Managed Care Plan that she would be disenrolled on the grounds that the Appellant was no longer eligible for Medical Assistance.
8. On or about September 2019, the Appellant's representative was verbally notified by the Appellant's Managed Long-Term Care Plan that her personal care services would be discontinued on the grounds that the Appellant was no longer eligible for Medical Assistance.
9. On October 4, 2019, the Appellant requested this fair hearing.

**APPLICABLE LAW**

Regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to notice when the agency:

- (i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance authorization or services; or
- (ii) proposes to change the manner or method or form of payment of a Public Assistance grant; or

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- (iii) determines that the recipient of Public Assistance or Medical Assistance is not eligible for an exemption requested from work requirements as described in 18 NYCRR Part 385; or
- (iv) determines to restrict a Medical Assistance authorization.
- (v) accepts or denies an application for Public Assistance, Medical Assistance or services; or
- (vi) increases a Public Assistance grant; or
- (vii) determines to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown although there is no change in the amount of the Public Assistance grant or Medical Assistance spenddown; or
- (viii) denies an application for an exemption from or an increase in a Medical Assistance utilization threshold and the recipient has reached such utilization threshold.
- (ix) makes changes in the manner of payment of supportive services provided to enable an individual to participate in work activities.

## **DISCUSSION**

At the hearing, the Appellant presented a letter of authorization, signed by the Appellant. The Appellant's representative stated that she never received a Notice of Intent either approving or denying the Appellant's October 5, 2018 Renewal Application.

The Agency representative acknowledged that there was no Notice of Intent sent to the Appellant or her representative with respect to the October 5, 2018 Renewal Application. In sum, the Agency, without sending any notice, discontinued the Appellant's Medical Assistance benefits.

As cited above, the Regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to notice when the agency proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance authorization or services. The record in this case establishes that the Agency violated the Regulations.

## **DECISION AND ORDER**

The determination of the Agency to discontinue the Appellant's Medical Assistance benefits without notice is not correct and is reversed.

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The Managed Care Plan's determination to disenroll the Appellant from Managed Care on the grounds that she was no longer eligible for Medical Assistance was not correct and is reversed.

The Managed Long-Term Care Plans determination to discontinue the Appellant's Managed Long-Term Care's Personal Care Services on the grounds that she was no longer eligible for Medical Assistance was not correct and is reversed.

1. The Agency is directed to restore the Appellant's Medical Assistance benefits retroactive to the date of discontinuance.
2. The Managed Care Plan is directed to reenroll the Appellant in Managed Care retroactive to the date of discontinuance.
3. The Managed Long-Term Care Plan is directed to reinstate the Appellant's Managed Long-Term Care Personal Care Services.
4. Should the Agency in the future determine to implement its previous action with respect to the Appellant's Medical Assistance benefits, it is directed to issue a timely and adequate Notice of Intent.

Should the Agency 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 Agency promptly to facilitate such compliance.

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

DATED: Albany, New York  
11/26/2019

NEW YORK STATE  
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "Richard A. Lumbuck". The signature is fluid and cursive, written over a white background.

Commissioner's Designee