

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: April 11, 2018

AGENCY: MAP

FH #: 7738058Q

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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 18, 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 by the Managed Long Term Care Plan dated April 9, 2018, to reduce the Appellant's Personal Care Services authorization from continuous personal care (split-shift care) 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 75, has been in receipt of Medicaid benefits provided through a Managed Long Term Care Plan, Centers Plan for Healthy Living.

FH# 7738058Q

2. By notice dated April 9, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from continuous personal care (split-shift care) to 56 hours weekly (8 hours daily, 7 days weekly).

3. On April 11, 2018, this fair hearing was requested.

### **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. The Agency must provide complete copies of its documentary evidence to the hearing officer at the hearing and also to the Appellant or representative where such documents were not otherwise provided in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). Unless a waiver of appearance is approved by the Office of Administrative Hearings, 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. If a waiver has been approved, the hearing officer may require the Agency's appearance if necessary to protect the appellant's due process rights. 18 NYCRR 358-4.3(b) and (c). 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).

### **DISCUSSION**

The uncontroverted evidence establishes that the Appellant has been in receipt of Medicaid benefits provided through a Managed Long Term Care Plan, Centers Plan for Healthy Living. The uncontroverted evidence also establishes that by notice dated April 9, 2018, the Plan determined to reduce the Appellant's Personal Care Services authorization from continuous personal care (split-shift care) to 56 hours weekly (8 hours daily, 7 days weekly).

The Plan was duly notified of the time and place of the hearing. However, while the Plan produced some evidence at the hearing, it failed to produce the Appellant's relevant case record, including the notice of intent dated April 9, 2018. Therefore, with respect to the Plan's determination dated April 9, 2018, to reduce the Appellant's Personal Care Services, the Plan failed to meet its obligations under 18 NYCRR 358-4.3(b) and federal regulations, and failed to establish that its determination dated April 9, 2018, was correct pursuant to 18 NYCRR 358-5.9(a).

**DECISION AND ORDER**

The determination by the Managed Long Term Care Plan dated April 9, 2018, to reduce the Appellant's Personal Care Services authorization from continuous personal care (split-shift care) 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 withdraw its notice of intent dated April 9, 2018, with respect to the Appellant's Personal Care Services authorization.
2. The Managed Long Term Care Plan is directed to restore the Appellant's Personal Care Services authorization to continuous personal care (split-shift care) retroactive to the effective date of reduction.
3. The Managed Long Term Care Plan is directed to continue to provide the Appellant with a Personal Care Services authorization in the amount of continuous personal care (split-shift care) unchanged.

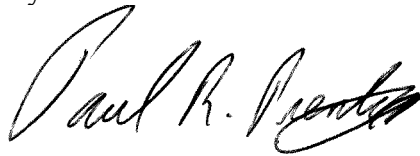
Should the Managed Long Term Care Plan need additional information from the Appellant in order to comply with the above directives, it is directed to notify the Appellant and the Appellant's Representative promptly in writing as to what documentation is needed. If such information is requested, the Appellant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

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

DATED: Albany, New York  
05/25/2018

NEW YORK STATE  
DEPARTMENT OF HEALTH

By

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

Commissioner's Designee