

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: May 4, 2018

AGENCY: MAP

FH #: 7753825J

---

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	:

---

**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 June 11, 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 Living Healthy)

Plan appearance waived by the Office of Administrative Hearings

**ISSUE**

Was the April 30, 2018, determination by the Managed long term Care plan, Centers Plan for Healthy Living, to authorize a reduction of the Appellant's Consumer Directed Personal Program Services (CDPAPS) from 84 hours weekly to 42 hours 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 44, is in receipt of authorization for Medical Assistance and is enrolled in a managed long-term care plan, operated by Centers Plan for Healthy Living.
2. The Appellant has been in receipt of Consumer Directed Personal Program Services (CDPAPS) in the amount of 84 hours weekly.

3. By notice dated April 30, 2018, the Centers Plan for Healthy Living determined to authorize a reduction of the Appellant's Consumer Directed Personal Program Services (CDPAPS) from 84 hours weekly to 42 hours weekly.

4. Centers Plan for Healthy Living's Notice of Intent dated April 30, 2018 was not mailed at least ten days prior to the effective date of the proposed action.

5. On May 4, 2018, this fair hearing was requested.

### **APPLICABLE LAW**

In general, a recipient of Public Assistance, Medical Assistance authorization or Services (including child care and supportive 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 Public Assistance, Medical Assistance or Services; or has increased the Public Assistance grant; or has determined to change the amount of one of the items used in the calculation of a Public Assistance grant or 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 Public Assistance or 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 Public Assistance or 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 Public Assistance or Medical Assistance in another district.

In general, a SNAP recipient has a right to a timely and adequate adverse action notice when the Agency proposes to take any action to discontinue, suspend or reduce the recipient's SNAP benefits during the certification period. 18 NYCRR 358-2.3; 18 NYCRR 358-3.3(b). An adequate, though not timely, action taken notice is required where the Agency has accepted or denied an application for SNAP benefits; or has increased the SNAP benefits; or has determined to change the amount of one of the items used in the calculation of the SNAP benefits. 18 NYCRR 358-3.3(b). However, pursuant to 18 NYCRR 358-3.3(e), there is no right to an adverse action notice when, for example, the change is the result of a mass change, the Agency determines that all members of the household have died or the household has moved from the district or when the household has failed to reapply at the end of the certification period.

A timely notice means a notice which is mailed at least 10 days before the date upon which the proposed action is to become effective. 18 NYCRR 358-2.23.

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single

FH# 7753825J

notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- o for reductions, the previous and new amounts of assistance or benefits provided;
- o the effective date of the action;
- o the specific reasons for the action;
- o the specific laws and/or regulations upon which the action is based;
- o the recipient's right to request an agency conference and fair hearing;
- o the procedure for requesting an agency conference or fair hearing, including an address and telephone number where a request for a fair hearing may be made and the time limits within which the request for a fair hearing must be made;
- o an explanation that a request for a conference is not a request for a fair hearing and that a separate request for a fair hearing must be made;
- o a statement that a request for a conference does not entitle one to aid continuing and that a right to aid continuing only arises pursuant to a request for a fair hearing;
- o the circumstances under which public assistance, medical assistance, SNAP benefits or services will be continued or reinstated until the fair hearing decision is issued;
- o a statement that a fair hearing must be requested separately from a conference;
- o a statement that when only an agency conference is requested and there is no specific request for a fair hearing, there is no right to continued public assistance, medical assistance, SNAP benefits or services;
- o a statement that participation in an agency conference does not affect the right to request a fair hearing;
- o the right of the recipient to review the case record and to obtain copies of documents which the agency will present into evidence at the hearing and other documents necessary for the recipient to prepare for the fair hearing at no cost;
- o an address and telephone number where the recipient can obtain additional information about the recipient's case, how to request a fair hearing, access to the case file, and/or obtaining copies of documents;

FH# 7753825J

- o the right to representation by legal counsel, a relative, friend or other person or to represent oneself, and the right to bring witnesses to the fair hearing and to question witnesses at the hearing;
- o the right to present written and oral evidence at the hearing;
- o the liability, if any, to repay continued or reinstated assistance and benefits, if the recipient loses the fair hearing;
- o information concerning the availability of community legal services to assist a recipient at the conference and fair hearing; and
- o a copy of the budget or the basis for the computation, in instances where the social services agency's determination is based upon a budget computation.

18 NYCRR 358-2.2

### **DISCUSSION**

The Appellant's Representative requested this hearing to review the Appellant's Managed Long Term Care Plan, Centers Plan for Healthy Living determination to reduce the Appellant's authorization for Consumer Directed Personal Program Services (CDPAPS) based on its Notice of Intent dated April 30, 2018.

A review of the Centers Plan for Healthy Living's Notice shows that it was not mailed at least ten days prior to the effective date of the proposed action as required by 18 NYCRR 358-2.23. The Notice dated April 30, 2018 purports to reduce the Appellant's authorization for Personal Care Services on May 9, 2018, nine days after its Notice. This defect in Centers Plan for Healthy Living's notice make it void and therefore, Centers Plan for Healthy Living's determination to reduce the Appellant's personal care services hours cannot be sustained.

### **DECISION AND ORDER**

The Appellant's Managed Long Term Care Plan's, Centers Plan for Healthy Living, determination to reduce the Appellant's Personal Care Services authorization from 84 hours per week to 42 hours per week was not correct and is reversed.

1. Centers Plan for Healthy Living is directed to continue to provide the Appellant with Consumer Directed Personal Program Services (CDPAPS) in the amount of 84 hours per week.

In the event that Centers Plan for Healthy Living determines to implement its previously contemplated action, Centers Plan for Healthy Living is directed to provide the Appellant with a notice that meets the requirements set forth in 18 NYCRR 358-2.2.

FH# 7753825J

Should Centers Plan for Healthy Living 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 Centers Plan for Healthy Living promptly to facilitate such compliance.

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

DATED: Albany, New York  
07/02/2018

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