

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: May 22, 2018

AGENCY: MAP

FH #: 7762004P

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 June 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)

Plan appearance waived by the Office of Administrative Hearings

ISSUE

Was the determination by the Managed Long Term Care Plan, Centers Plan for Healthy Living, dated April 19, 2018, to reduce the Appellant's Personal Care Aide Services authorization from 84 hours per week (12 hours daily x 7 days weekly) to 56 hours per week (8 hours daily x 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 80, has been in receipt of Medicaid benefits and is enrolled in a Medicaid Managed Long Term Care Plan, Centers Plan for Healthy Living.

2. The Appellant has been in receipt of a Personal Care Aide Services authorization in the amount of 84 hours per week (12 hours daily x 7 days weekly).

3. By notice dated April 19, 2018, Centers Plan for Healthy Living determined to reduce the Appellant's Personal Care Services authorization from 84 hours per week (12 hours daily x 7 days weekly) to 56 hours per week (8 hours daily x 7 days weekly) because a mistake has occurred in the amount of Level II Personal Care Aide (PCA) services the Appellant has been receiving.

4. On May 22, 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 evidence establishes that Centers Plan for Healthy Living sent a Notice to the Appellant on April 19, 2018, advising the Appellant that it had determined to reduce the Appellant's Personal Care Aide Services from 84 hours (12 hours a day, 7 days a week) to 56 hours (8 hours a day, 7 days a week) because a mistake has occurred in the amount of Level II Personal Care Aide (PCA) services the Appellant has been receiving.

Centers Plan for Healthy Living was duly notified of the time and place of the hearing. However, while Centers Plan for Healthy Living produced some evidence at the hearing in support of its determination, it failed to produce the April 19, 2018 Notice. Therefore, with respect to Centers Plan for Healthy Living's determination to reduce the Appellant's Personal Care Aide Services, Centers Plan for Healthy Living failed to meet its obligations under 18 NYCRR 358-4.3(b) and failed to establish that its determination was correct pursuant to 18 NYCRR 358-5.9(a).

DECISION AND ORDER

The determination by the Managed Long Term Care Plan, Centers Plan for Healthy Living, dated April 19, 2018, to reduce the Appellant's Personal Care Aide Services authorization from 84 hours per week (12 hours daily x 7 days weekly) to 56 hours per week (8 hours daily x 7 days weekly) is not correct and is reversed.

1. Centers Plan for Healthy Living is directed to withdraw its April 19, 2018 Notice with respect to the Appellant's Personal Care Aide Services.
2. Centers Plan for Healthy Living is directed to restore any Personal Care Aide Services lost as a result of the Plan's action in accordance with the provisions of 18 NYCRR 352.31(f).

Should Centers Plan for Healthy Living in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record with respect to a determination relating to the Appellant's Personal Care Aide Services, to issue a new Notice of Intent and to produce the required case record(s) at any subsequent fair hearing.

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 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 promptly provide it to Centers Plan for Healthy Living to facilitate such compliance.

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

DATED: Albany, New York
07/03/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By



Commissioner's Designee