

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: May 3, 2017

AGENCY: MAP
FH #: 7527608H

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 2, 2017, 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)

A. Jacobs, Fair Hearing Representative

ISSUE

Was the Managed Long Term Care Plan's determination dated April 27, 2017, to reduce the Appellant's Personal Care Services authorization from 48 hours weekly (8 hours daily, 6 days weekly) to 42 hours weekly (7 hours daily, 6 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 95, has been in receipt of Medicaid benefits provided through a Managed Long Term Care Plan, Centers Plan for Healthy Living.

2. By notice dated April 27, 2017, the Managed Long Term Care Plan determined to reduce the Appellant's Personal Care Services authorization from 48 hours weekly (8 hours daily, 6 days weekly) to 42 hours weekly (7 hours daily, 6 days weekly).

3. On May 3, 2017, this fair hearing was requested. At the hearing, the issue was clarified or amended, without objection by the parties, to review the correctness of the Agency's determination dated April 27, 2017.

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

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.

DISCUSSION

The 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 evidence also establishes that by notice dated April 27, 2017, the Managed Long Term Care Plan determined to reduce the Appellant's Personal Care Services authorization from 48 hours weekly (8 hours daily, 6 days weekly) to 42 hours weekly (7 hours daily, 6 days weekly).

The Managed Long Term Care Plan's notice of reduction dated April 27, 2017, 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 Managed Long Term Care Plan's notice dated April 27, 2017, provided, in part, as follows:

"The plan is taking this action because the health care service is not medically necessary.

Based on the comprehensive NYS Department of Health Uniformed Assessment System (UAS-NY) conducted on 04/19/2017 and the Plan Client Tasking Tool completed on 04/19/2017 you have demonstrated the following abilities to perform your Activities of Daily Living and Instrumental Activities of Daily Living:

Meal Preparation, Housework, Managing Finances, Shopping, and Transportation: Showed that your performance for these tasks are Total Dependence where you depend completely upon someone else to complete all parts of this task. You do not participate in this task at all.

Managing Medications and Stair Climbing: Showed that your performance for this task is at Maximal Assistance where you need physical help to complete most parts of this task, like someone to lean on or help you lift a body part, however you can complete some parts of this task by yourself.

Phone Use: Showed that your performance for this task is Independent, Setup Only where if a specific item or device is prepared for you and placed within your reach, you are then able to complete this task by yourself, without any physical help or supervision.

Locomotion: Showed that your performance for these tasks are Total Dependence where you depend completely upon someone else to complete all parts of this task. You do not participate in this task at all.

Bathing, Personal Hygiene, Dressing Upper Body, Dressing Lower Body, Walking, Transfer Toilet, Toilet Use, and Bed Mobility: Showed that your performance for this task is at Extensive Assistance. You need physical help to complete some parts of this task, like someone to lean on or help you lift a body part, however you can complete most parts of this task by yourself.

Eating: Showed that your performance for this task is Independent, Setup Only where if a specific item or device is prepared for you and placed within your reach, you are then able to complete this task by yourself, without any physical help or supervision.

Pain control: You reported experiencing moderate, intermittent pain, that is adequately controlled through therapeutic management. no pain.

Falls: You reported no falls in the last 90 days.

Hospitalizations: You reported no hospitalizations in the last 90 days.

The UAS -NY comprehensive assessment outcome produces a Nursing Facility Level of Care (NFLOC) Score. The UAS-NY assessment performed on 04/19/2017 showed NFLOC score of 23.

The current UAS-NY assessment and the plan's client tasking tool showed that you need seven (7) hours a day, six (6) days a week (Total forty-two (42) hours a week) of Personal Care Aide services to complete the above tasks. Pursuant the New York State Department of Health Continuity of Care Policy (MLTC Policy 13.13) you have been receiving eight (8) hours a day, six (6) days a week (Total forty-eight (48) hours a week) as a continuity of your pre-existing Personal Care Aide (PCA) service plan prior to your enrollment to Centers Plan for Healthy Living on 2/1/2017. These services have been in effect for at least 90 days or until 5/09/2017.

Therefore, based on the UAS-NY comprehensive assessment conducted on 04/19/2017, your Level II Personal Care Assistance of receiving eight (8) hours a day, six (6) days a week (Total forty-eight (48) hours a week) will be decreased to Level II Personal Care Assistance of, seven (7) hours a day, six (6) days a week (total forty-two (42) hours a week) effective 05/10/2017.”

The credible evidence establishes that the Managed Long Term Care Plan’s notice dated April 27, 2017, 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 Managed Long Term Care Plan’s notice dated April 27, 2017, was not proper.

For the foregoing reason, the Managed Long Term Care Plan’s determination dated April 27, 2017, to reduce the Appellant’s Personal Care Services authorization from 48 hours weekly (8 hours daily, 6 days weekly) to 42 hours weekly (7 hours daily, 6 days weekly) cannot be sustained.

DECISION AND ORDER

The Managed Long Term Care Plan’s determination dated April 27, 2017, to reduce the Appellant’s Personal Care Services authorization from 48 hours weekly (8 hours daily, 6 days weekly) to 42 hours weekly (7 hours daily, 6 days weekly) is not correct and is reversed.

1. The Managed Long Term Care Plan is directed to restore the Appellant’s Personal Care Services authorization to the amount of 48 hours weekly (8 hours daily, 6 days weekly).
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 48 hours weekly (8 hours daily, 6 days weekly) 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 required, the Appellant or the Appellant's Representative must provide it to the Managed Long Term Care Plan promptly to facilitate such compliance.

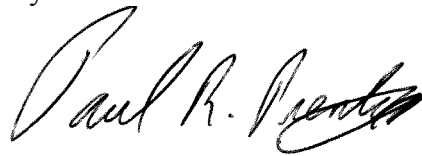
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As required by Section 358-6.4 of the Regulations, the Managed Long Term Care Plan must comply immediately with the directives set forth above.

DATED: Albany, New York
06/08/2017

NEW YORK STATE
DEPARTMENT OF HEALTH

By

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

Commissioner's Designee