

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: August 24, 2018

AGENCY: MAP

FH #: 7814728Q

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 October 25, 2018, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



For the Social Services Agency

Agency appearance waived by the Office of Administrative Hearings

For the Appellant's Managed Long Term Care Plan (Centers Plan for Healthy Living)

Deborah Ferguson, Centers Plan for Healthy Living Representative

ISSUE

Was the Managed Long Term Care Plan's determination dated August 28, 2018, to deny the Appellant's request for an increase of Personal Care Services to the amount of Continuous Personal Care Services (Split-Shift Care), correct?

FACT FINDING

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 81) has been in receipt of a task based Personal Care Services authorization in the amount of 31.5 hours weekly from a Managed Long Term Care Plan, Centers Plan for Healthy Living, as part of a mutual case with the Appellant's Wife (age 80.) The Personal Care Services needs of the Appellant's Wife was not an issue at the hearing.
2. The Appellant requested an increase of Personal Care Services to the amount of Continuous Personal Care Services (Split-Shift Care).
3. On April 22, 2018, a nursing assessor completed a Uniform Assessment System evaluation of the Appellant's personal care needs. Among other things, the assessment indicates that the Appellant needs assistance with toileting, transferring, ambulation and positioning in bed.
4. On June 15, 2018 a different nursing assessor completed another Uniform Assessment System evaluation of the Appellant's personal care needs. Among other things, the assessment indicates that the Appellant needs assistance with toileting, transferring, ambulation and positioning in bed.
5. By Notice of Initial Adverse Determination dated June 26, 2018, the Managed Long Term Care Plan's determined to partially deny the Appellant's request for an increased Personal Care Services authorization to the amount of Continuous Personal Care Services (Split-Shift Care) and to provide the Appellant with a task based Personal Care Services authorization in the amount of 38.5 hours weekly.
6. The Appellant requested an internal appeal.
7. By Notice of Final Adverse Determination dated August 28, 2018, the Managed Long Term Care Plan's determined to deny the Appellant's request for an increased Personal Care Services authorization to the amount of Continuous Personal Care Services (Split-Shift Care).
8. On August 24, 2018, this 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. At the fair hearing, the agency is required to provide complete copies of its documentary evidence to the hearing officer. In addition, such documents must be provided to the appellant and appellant's authorized representative where such documents were not provided otherwise to the appellant or appellant's authorized representative in accordance with 18 NYCRR 358-3.7. 18 NYCRR 358-4.3(a). In addition, a

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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. 18 NYCRR 358-4.3(b).

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.

18 NYCRR 505.14(a)(2) provides a new definition of “Continuous Personal Care Services” (“Split-Shift Care”) as follows: Continuous personal care services means the provision of uninterrupted care, by more than one personal care aide, for more than 16 hours in a calendar day for a patient who, because of the patient’s medical condition, needs assistance during such calendar day with toileting, walking, transferring, turning and positioning, or feeding and needs assistance with such frequency that a live-in 24 hour personal care aide would be unlikely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide’s eight hour period of sleep.

18 NYCRR 505.14(a)(4) provides a new definition of “Live-in 24-Hour Personal Care Services” as follows: Live-in 24-hour personal care services means the provision of care by one personal care aide for a patient who, because of the patient’s medical condition, needs assistance during a calendar day with toileting, walking, transferring, turning and positioning, or feeding and whose need for assistance is sufficiently infrequent that a live-in 24-hour personal care aide would be likely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide’s eight hour period of sleep.

DISCUSSION

The Managed Long Term Care Plan, although duly notified of the time and place of this fair hearing, appeared without a case record. Centers Plan for Healthy Living produced copies of Notices and Uniform Assessments and other documents, all of which were missing approximately half of their pages.

The credible evidence establishes that the Appellant has been in receipt of a task based Personal Care Services authorization in the amount of 38.5 hours weekly from a Managed Long Term Care Plan, Centers Plan for Healthy Living. The credible evidence, in the form of copies of Uniform Assessment System assessments provided by the Managed Long Term Care Plan at the hearing, also establishes that on April 22, 2018, and June 15, 2018, different nursing assessors completed Uniform Assessment System evaluations of the Appellant's personal care needs. The credible evidence further establishes that both assessors independently stated that the Appellant has a need for positioning in bed. As standard protocol for positioning is once every two hours, it is plain that a home attendant could not meet the Appellant's positioning needs while obtaining, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep. The Managed Long Term Care Plan's own evidence clearly establishes that the Appellant is appropriate for continuous care Personal Care Services.

18 NYCRR 505.14(a)(2) provides a new definition of "Continuous Personal Care Services" ("Split-Shift Care") as follows: Continuous personal care services means the provision of uninterrupted care, by more than one personal care aide, for more than 16 hours in a calendar day for a patient who, because of the patient's medical condition, needs assistance during such calendar day with toileting, walking, transferring, turning and positioning, or feeding and needs assistance with such frequency that a live-in 24 hour personal care aide would be unlikely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.

At the hearing, the Appellant's Representative contended that the Appellant has unmet nighttime needs that include, but are not limited to assistance with positioning.

The evidence has been considered. The Appellant's Representative's testimony that the Appellant needs frequent hands-on assistance at night with positioning was found to be credible as it was supported by the weight of the evidence presented at the hearing. Furthermore, based on a consideration of such a need for frequent hands-on assistance at night with positioning, the credible evidence establishes that the Appellant needs assistance at night with toileting and positioning with such frequency that a live-in 24 hour personal care aide would be unlikely to obtain, on a regular basis, five hours daily of uninterrupted sleep during the aide's eight hour period of sleep.

The credible evidence establishes that the Appellant qualifies for Personal Care Services authorization in the amount of Continuous Personal Care Services (Split-Shift Care).

DECISION AND ORDER

The Managed Long Term Care Plan's determination dated August 28, 2018, to deny the Appellant's request for an increase of Personal Care Services to the amount of Continuous Personal Care Services (Split-Shift Care) is not correct and is reversed.

1. The Managed Long Term Care Plan is directed to provide the Appellant with an increased Personal Care Services authorization in the amount of Continuous Personal Care Services (Split-Shift Care).

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.

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
10/30/2018

NEW YORK STATE DEPARTMENT
OF HEALTH

By

A handwritten signature in black ink, consisting of a stylized 'L' followed by a series of loops and a horizontal line at the end.

Commissioner's Designee