

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: August 7, 2018

AGENCY: MAP  
FH #: 7805099M

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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 October 29, 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)

Deborah Ferguson, Fair Hearing Representative (October 11, 2018)

No appearance (October 29, 2017)

**ISSUE**

Was the determination of the Agency to discontinue the Appellant's Consumer Directed Personal Assistance Services (CDPAS) without notice, 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 has been enrolled in a Managed Long Term Care Program and has received care and services, including Consumer Directed Personal Assistance Services (CDPAS), through a Medicaid Managed Long Term Care Health Plan operated by Centers Plan for Healthy Living (herein referred to as the Plan).

2. The Plan approved Consumer Directed Personal Assistance Services (CDPAS) of 30 hours per week for the Appellant from April 10, 2018 to July 28, 2018.

3. Effective on or about July 29, 2018, the Plan discontinued the Appellant's Consumer Directed Personal Assistance Services (CDPAS), without notice.

4. On August 7, 2018, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Regulations at 18 NYCRR 358-3.3(a) provide that a recipient of Public Assistance, Medical Assistance or services has a right to notice when the Plan:

- (i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance authorization or services; or
- (ii) proposes to change the manner or method or form of payment of a Public Assistance grant; or
- (iii) determines that the recipient of Public Assistance or Medical Assistance is not eligible for an exemption requested from work requirements as described in 18 NYCRR Part 385; or
- (iv) determines to restrict a Medical Assistance authorization.
- (v) accepts or denies an application for Public Assistance, Medical Assistance or services; or
- (vi) increases a Public Assistance grant; or
- (vii) determines to change the amount of one of the items used in the calculation of a Public Assistance grant or Medical Assistance spenddown although there is no change in the amount of the Public Assistance grant or Medical Assistance spenddown; or
- (viii) denies an application for an exemption from or an increase in a Medical Assistance utilization threshold and the recipient has reached such utilization threshold.
- (ix) makes changes in the manner of payment of supportive services provided to enable an individual to participate in work activities.

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

Except as otherwise established in law or regulation, 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 enrolled in a Managed Long Term Care Program and has received care and services, including Personal Consumer Directed Personal Assistance Services (CDPAS), through a Medicaid Managed Long Term Care Health Plan operated by Centers Plan for Healthy Living (herein referred to as the Plan).

The Plan submitted a denial notice dated August 16, 2018 which indicates that prior to its decision, the Appellant was approved for Consumer Directed Personal Assistance Services (CDPAS) of 30 hours per week from April 10, 2018 to July 28, 2018.

The Appellant contends that her grandchildren provided her with Personal Consumer Directed Personal Assistance Services but the Plan refused to pay them.

The uncontroverted evidence establishes that effective on or about July 29, 2018, the Plan, without sending any notice, discontinued the Appellant's Consumer Directed Personal Assistance Services (CDPAS).

The Plan's failure to give timely and adequate notice of its proposed actions violates State Regulations at 18 NYCRR 358-3.3(a).

## **DECISION AND ORDER**

The determination of the Plan to discontinue the Appellant's Consumer Directed Personal Assistance Services (CDPAS) without notice is not correct and is reversed.

1. The Plan is directed to restore the Appellant's Consumer Directed Personal Assistance Services (CDPAS) retroactive to July 29, 2018, the date such benefits were discontinued and to restore any lost benefits.
2. Should the Plan in the future determine to implement its previous action with respect to the Appellant's Consumer Directed Personal Assistance Services (CDPAS), it is directed to issue a timely and adequate Notice of Intent.

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Should the Plan 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 the Agency promptly to facilitate such compliance.

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

DATED: Albany, New York  
11/21/2018

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