

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: April 2, 2018

AGENCY: MAP

FH #: 7732222K

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 May 10, 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)


No Appearance

ISSUE

Was the Managed Long Term Care Plan's determination to reduce the Appellant's Personal Care Services authorization from 24-hour split-shift care to 24-hour live-in care 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 in receipt of a personal care services authorization in the amount of 24-hour split-shift care, through Centers Plan for Healthy Living, a Managed Long Term Care Plan (hereinafter "the Plan").

2. By an Adverse Determination notice in April 2018, the Plan determined to reduce the Appellant's personal care services authorization from 24-hour split-shift care to 24-hour live-in care.

3. On April 2, 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. 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 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). 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 in receipt of a personal care services authorization in the amount of 24-hour split-shift care. The Plan, by means of a notice dated in April 2018 (the exact date of the notice was not established at the hearing), informed the Appellant of its determination to reduce the Appellant's personal care services authorization from 24-hour split-shift care to 24-hour live-in care.

The Plan was duly notified of the time and place of the hearing. The Plan failed to appear at the hearing and failed to present any documentation concerning the determination at issue. Therefore, with respect to the Plan's determination to reduce the Appellant's Personal Care Services authorization, the Plan 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 Plan's determination to reduce the Appellant's Personal Care Services authorization from 24-hour split-shift care to 24-hour live-in care is not correct and is reversed.

1. The Plan is directed to continue to provide the Appellant with a personal care services authorization in the amount of 24-hour split-shift care unchanged retroactively to the effective date of its action.

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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 required, the Appellant must provide it to the Plan 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
05/16/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "C. C. Oweza". The signature is written in a cursive, flowing style.

Commissioner's Designee