STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: February 25, 2019
CASE #: [redacted]
CENTER #: MAP
FH #: 7917769J

In the Matter of the Appeal of

[redacted]

from a determination by the New York City Department of Social Services

DECISION AFTER FAIR HEARING

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 March 22, 2019, in New York City, before [redacted], Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[redacted], Appellant (by telephone)

For the Managed Long-Term Care Plan (Centers Plan for Healthy Living)

D. Ferguson, Fair Hearing Representative

ISSUE

Was the January 29, 2019 determination by the Appellant's Managed Long-Term Care Plan to deny the Appellant's request for coverage of a stair lift for the Appellant 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 79, has been in receipt of Medical Assistance benefits and is enrolled in a Managed Long-Term Care Plan operated by Centers Plan for Healthy Living (hereinafter "the Plan").

2. By Notice dated January 29, 2019, the Plan advised the Appellant of its intent to deny

the request for coverage of a stair lift for the Appellant on the grounds that the services requested were not medically necessary according to New York State Medicaid guidelines.

3. On February 25, 2019 the Appellant requested this fair hearing.

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.

Section 365-a of the Social Services Law provides in part:

> 2. "Medical Assistance" shall mean payment of part or all of the cost of medically necessary medical, dental and remedial care, services and supplies, as authorized by this title or the regulations..., which are necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with such person's capacity for normal activity, or threaten some significant handicap and which are furnished an eligible person in accordance with this title and the regulations...

Section 364.2 of the Social Services Law provides in part, as follows:

The Department of Health shall be responsible for…

> (b) establishing and maintaining standards for all non-institutional health care and services rendered pursuant to this title…

The New York State Medicaid Program, Durable Medical Equipment, Orthotics, Prosthetics and Supplies, Procedure Codes and Coverage Guidelines manual sets forth general clinical and coverage criteria for wheeled mobility equipment. It provides, in part, that a motorized

wheelchair is covered if the member does not have sufficient upper extremity function to self-propel an optimally-configured manual wheelchair to perform MRADLs (mobility related activities of daily living) during a typical day.

18 NYCRR section 505.5 Durable medical equipment; medical/surgical supplies; orthotic and prosthetic appliances; orthopedic footwear. (a) Definitions. (1) Durable medical equipment means devices and equipment, other than prosthetic or orthotic appliances, which have been ordered by a practitioner in the treatment of a specific medical condition and which have all of the following characteristics:

(i) can withstand repeated use for a protracted period of time;

(ii) are primarily and customarily used for medical purposes;

(iii) are generally not useful to a person in the absence of an illness or injury; and

(iv) are usually not fitted, designed or fashioned for a particular individual's use. Where equipment is intended for use by only one person, it may be either custom-made or customized.

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18 NYCRR section 513.6 Evaluation of requests. (a) Requests will be evaluated in accordance with:

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(3) the medical necessity of the medical, dental and remedial care, services or supplies to prevent, diagnose, correct or cure a condition of the recipient which:

***

(iv) interferes with his or her capacity for normal activity;

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New York State Medicaid Program Durable Medical Equipment Manual provides, in pertinent part:

Durable Medical Equipment

Durable Medical Equipment, Orthotics, Prosthetics and Supplies Procedure Codes and Coverage Guidelines
Version 2016-3 (11/04/2016)

WHEELED MOBILITY EQUIPMENT (WME), SEATING AND POSITIONING COMPONENTS (SPC)
I. GENERAL CLINICAL AND COVERAGE CRITERIA FOR WHEELED MOBILITY EQUIPMENT

• The term wheeled mobility equipment (WME) describes manual wheelchairs (MWC), power mobility devices (PMD) including power wheelchairs (PWC), power operated vehicles (POV) and push rim activated power assist devices (PAD). Seating and positioning components (SPC) describe seat, back and positioning equipment used to optimize the individual's positioning and level of function in their wheeled mobility equipment.
• Wheeled mobility equipment is covered if the member's medical condition(s) and mobility limitation(s) are such that without the use of the WME, the member's ability to perform mobility related activities of daily living (MRADL) in the home and/or community is significantly impaired and the member is not ambulatory or functionally ambulatory.
• In order for these criteria to be met, the member must have an evaluation that was performed by a qualified practitioner who has specific training and/or experience in wheelchair evaluation and ordering.

DISCUSSION

The record establishes that the Appellant, age 79, has been in receipt of Medical Assistance benefits and is enrolled in a Managed Long-Term Care Plan operated by Centers Plan for Healthy Living (hereinafter "the Plan"). By Notice dated January 29, 2019, the Plan advised the Appellant of its intent to deny the request for coverage of a stair lift for the Appellant on the grounds that the services requested were not medically necessary according to New York State Medicaid guidelines.

The New York State Medicaid Program, Durable Medical Equipment, Orthotics, Prosthetics and Supplies, Procedure Codes and Coverage Guidelines manual sets forth general clinical and coverage criteria for wheeled mobility equipment. It provides, in part, that a motorized wheelchair is covered if the member's medical condition and mobility limitations are such that without the use of the medical equipment, the member's ability to perform mobility related activities of daily living (MRADL) in the home and/or community is significantly impaired and the member is not ambulatory or functionally ambulatory.

At the hearing, the Plan testified that the Plan determined to deny the Appellant's physician's request for coverage for a stair lift for the Appellant because the Appellant already receives 11 hours of Personal Care Aide (PCA) services per day, including assistance with ambulation and locomotion. However, the Appellant's representative testified that the Appellant suffers from several medical conditions including Paget's disease of the bone, osteoarthritis, and lumbar radiculopathy that severely impair the Appellant's ability to move on her own and

perform daily basic tasks.

The Appellant submitted the Plan's November 30, 2018 Uniform Assessment System – New York Community Comprehensive Assessment Report of the Appellant that indicated that the Appellant needed assistance in performing activities of daily living (ADLs) in the following levels (1) Total dependence with meal preparation, ordinary household and shopping, bathing, toileting, locomotion, and *navigating stairs* (emphasis added) and (2) Maximal assistance with transportation, bed mobility, and walking. (Appellant Exhibit B, pages 3-5). Moreover, the Plan indicated in the Report that "[redacted] requires a great amount of assistance with ADLs and IADLs [Instrumental Activities of Daily Living]. [redacted] is completely dependent on PCA for meal prep, household tasks and shopping. . . [redacted] is unable to navigate the stairs in the home and needs a 2 person carry up/down the stairs." (Appellant Exhibit B, pages 5-6).

In addition, the Appellant's representative testified that the Appellant lives on the second floor which is solely accessible by stairs. The Appellant's representative submitted documentation provided to the Plan by the Appellant's physician stating that the Appellant is unable to walk, crawl, and use the stairs without assistance due to the Appellant's medical conditions. (Appellant Exhibit A). Furthermore, the Appellant's representative submitted documentation from the Appellant's pain management specialist attesting that the Appellant is "unable to transfer or ambulate independently" and needs assistance with ". . . basic tasks, including using the bathroom, bathing, dressing, feeding, or brushing her teeth" and "to go to her doctor's appointment or anywhere outside of her home." (Appellant Exhibit D).

Based on the foregoing, the Appellant has met her burden of proof to establish that the Agency erred in its determination to deny the Appellant's request for authorization of coverage for a stair lift. The record establishes that the Appellant is not ambulatory and the Appellant's ability to perform MRADLs in the home and community is significantly impaired without the use of a stair lift. Therefore, the Plan's determination to deny the Appellant's request for an authorization of coverage for a stair lift is not correct.

DECISION AND ORDER

The determination by the Appellant's Managed Long-Term Care Plan to deny the Appellant's request for coverage of a stair lift was not correct and is reversed.

1. The Plan is directed to withdraw the Notice of Intent dated January 29, 2019 and approve the Appellant's prior approval request for a stair lift for the Appellant.

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 Plan promptly to facilitate such compliance.

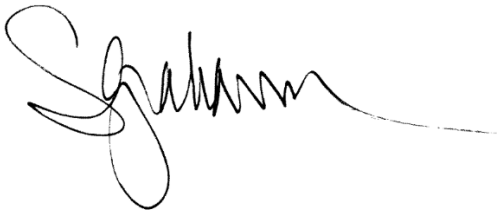
As required by 18 NYCRR 358-6.4, the Plan must comply immediately with the directives set forth above.

FH# 7917769J

DATED: Albany, New York
05/07/2019

NEW YORK STATE
DEPARTMENT OF HEALTH

By



Commissioner's Designee