

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: November 2, 2017

AGENCY: MAP
FH #: 7643577Y

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 December 13, 2017, 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)

Alicia Jacobs, Centers Plan for Healthy Living Representative

ISSUE

Was the Managed Long Term Care Plan's determination dated September 8, 2017, 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 77) has been in receipt of a Personal Care Services authorization in the amount of 12 hours daily, seven days weekly, from a Managed Long Term Care Plan, Centers Plan for Healthy Living. The Appellant requested an increase of Personal Care Services to Continuous Personal Care Services (Split-Shift Care).

2. On August 30, 2017, 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 resides in a single room.

3. By notice dated September 8, 2017, 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).

4. On November 2, 2017, this hearing was requested.

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.

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 credible evidence establishes that the Appellant has been in receipt of a Personal Care Services authorization in the amount of 12 hours daily, seven days weekly, from a Managed Long Term Care Plan, Centers Plan for Healthy Living. The Appellant requested an increase of Personal Care Services to Continuous Personal Care Services (Split-Shift Care). By notice dated September 8, 2017, 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). At the hearing, both sides agreed that the Managed Long Term Care Plan offered the Appellant 24 hour sleep-in Personal Care Services, which the Appellant declined. Therefore, both sides are in agreement that the Appellant does have night time Personal Care Services needs.

At the hearing, the Appellant’s Son and Representative stated that the Appellant lives in a studio apartment, and that there would be nowhere in that home for a personal care worker to sleep or have any privacy. This testimony is supported by the August 30, 2017 Uniform Assessment System report (UAS) which states that the Appellant lives in a “room”. Based on this evidence, it is evident that Live-in 24-Hour Personal Care Services is simply not possible, and the Appellant’s night time needs would have to be met by Continuous Personal Care Services. Therefore, the Managed Long Term Care Plan’s determination cannot be sustained.

Moreover, at the hearing the Appellant’s Son and Representative credibly testified that the Appellant needs toileting 3 to 4 times per night, a circumstance observed by the Appellant’s Son personally while staying overnight to assist the Appellant. The Appellant’s Son and Representative’s testimony in this regard was credible based upon his demeanor and answers to questions. Therefore, it is reasonable to conclude that the Appellant’s night time needs are such 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. Therefore, for this reason as well, the Managed Long Term Care Plan’s determination cannot be sustained.

The credible evidence establishes that the Appellant is entitled to a 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 September 8, 2017, 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
12/19/2017

NEW YORK STATE DEPARTMENT
OF HEALTH

By

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Commissioner's Designee