

STATE OF NEW YORK
DEPARTMENT OF HEALTH

REQUEST: July 24, 2018

AGENCY: MAP
FH #: 7796069N

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 11, 2018, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant



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

Deborah Ferguson, Fair Hearing Representative

ISSUE

Was the Appellant's Managed Long Term Care Plan's determination to deny the Appellant's request for increase in Personal Care Aide hours from 70 hours weekly (10 hours daily, 7 days weekly) to 24 hours, 7 days weekly provided on a "sleep-in" basis, correct?

FACT FINDINGS

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 78, has been enrolled in a Managed Long Term Care Program and has received care and services, including Personal Care Services, through a Medicaid Managed Long Term Care Health Plan operated by Centers Plan for Healthy Living.
2. The Appellant has been authorized to receive Personal Care Services in the amount of

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84 hours weekly, provided under a task-based plan of care (10 hours daily, 7 days weekly).

3. A request was made by the Appellant's representative for increase in her Personal Care Assistance services authorization from 70 hours weekly (10 hours daily, 7 days weekly) to 24 hours daily, 7 days weekly provided on a "sleep-in" basis.

4. On May 10, 2018 and June 1, 2018, Centers Plan for Health Living completed a Uniform Assessment System- Assessment (Comprehensive) Reports of the Appellant.

5. On July 12, 2018, Centers Plan for Health Living, issued a Determination to deny the Appellant's request for an increase in Personal Care Services from 70 hours weekly to 24 hours daily, 7 days weekly provided on a "sleep-in" basis.

6. On July 24, 2018, the Appellant's Representative requested this fair hearing to contest the Managed Long Term Care Plan's determination not to increase the Appellant's personal care services to 24 hours, 7 days weekly provided on a "sleep-in" basis.

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 505.14(a) of the Regulations provides, in part, that:

- (4) 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.

MLTC Policy 16.07 provides, in part, that:

All plans, including those that use task-based assessment tools, must evaluate and document when and to what extent the enrollee requires assistance with IADLs and ADLs and whether needed assistance can be scheduled or may occur at unpredictable times during the day or night. All plans must assure that the plan of care that is developed can meet any unscheduled or recurring daytime or nighttime needs that the enrollee may have for assistance.

DISCUSSION

The credible evidence establishes that the Appellant has been in receipt of a Personal Care Services authorization from a Managed Long Term Care Plan, Centers Plan for Healthy Living, in the amount of 70 hours weekly (10 hours daily, 7 days weekly). The credible evidence also establishes that on May 10, 2018 and June 1, 2018, a nursing assessor completed a uniform assessment system evaluation of the Appellant's personal care needs. The credible evidence further establishes that by notice dated July 12, 2018, the Plan determined to deny the Appellant's request for an increase in Personal Care Services from 70 hours weekly to 24 hours daily, 7 days weekly provided on a "sleep-in" basis.

At the hearing, the Appellant's Representatives contended that a live-in 24-hour Personal Care Services authorization would be adequate to meet the Appellant's needs.

Section 505.14(a) of the Regulations provides, in part, that:

- (4) 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.

The credible evidence establishes that on May 10, 2018 and June 1, 2018, a nursing assessor completed a uniform assessment system evaluation of the Appellant's personal care needs. This assessment was carefully reviewed.

With regard to walking and locomotion, the Uniform Assessment System evaluation of the Appellant's personal care needs dated May 10, 2018 and June 1, 2018, establishes a need for maximal assistance (weight-bearing support including lifting limbs by 2+ helpers or weight-bearing support for more than 50% subtasks).

With regard to toilet use, the Uniform Assessment System evaluation of the Appellant's personal care needs dated May 10, 2018 and June 1, 2018, establishes a need for maximal assistance (weight-bearing support including lifting limbs by 2+ helpers or weight-bearing support for more than 50% subtasks).

The credible evidence establishes that the Appellant needs assistance during a calendar day with toileting and/or walking and/or transferring and/or 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. The Appellant's Representatives' contention that the Appellant is entitled to a live-in 24-hour Personal Care Services authorization was persuasive.

DECISION AND ORDER

The Appellant's Managed Long Term Care Plan's determination to deny the Appellant's request for increase in Personal Care Aide hours from 70 hours weekly (10 hours daily, 7 days weekly) to 24 hours, 7 days weekly provided on a "sleep-in" basis, is not correct and is reversed.

1. The Managed Long Term Care Plan is directed to provide the Appellant a live-in 24-hour Personal Care Services authorization.

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.

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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
10/31/2018

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, appearing to read "T. A. Selekm", with a horizontal line above the first letter "T".

Commissioner's Designee