

STATE OF NEW YORK  
DEPARTMENT OF HEALTH

REQUEST: April 23, 2018

AGENCY: MAP  
FH #: 7744093M

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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 May 18, 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)

On papers only - appearance waived by the Office of Administrative Hearings

**ISSUE**

Was the April 12, 2018, determination by the Managed Long Term Care plan, Center4s Plan for Healthy Living, to provide the Appellant with a Personal Care Services authorization in the amount of live-in 24-hour personal care services, 4 days a week (on Monday, Wednesday, Friday and Sunday) and 10 hours daily, 3 days weekly on dialysis days (Tuesday, Thursday and Saturday) correct with regard to the adequacy of such services?

**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 82, had 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 live-in

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24-hour personal care services, 4 days a week (on Monday, Wednesday, Friday and Sunday) and 10 hours daily, 3 days weekly on dialysis days (Tuesday, Thursday and Saturday).

2. On March 28, 2018, a nursing assessor completed a uniform assessment system evaluation of the Appellant's personal care needs.

3. By notice dated April 12, 2018, the Plan determined to provide the Appellant with a Personal Care Services authorization in the amount of live-in 24-hour personal care services, 4 days a week (on Monday, Wednesday, Friday and Sunday) and 10 hours daily, 3 days weekly on dialysis days (Tuesday, Thursday and Saturday).

4. On April 23, 2018, 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.

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 had 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 live-in 24-hour personal care services, 4 days a week (on Monday, Wednesday, Friday and Sunday) and 10 hours daily, 3 days weekly on dialysis days (Tuesday, Thursday and Saturday). The credible evidence establishes that on March 28, 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 April 12, 2018, the Managed Long Term Care Plan determined to provide the Appellant with a Personal Care Services authorization in the amount of live-in 24-hour personal care services, 4 days a week (on Monday, Wednesday, Friday and Sunday) and 10 hours daily, 3 days weekly on dialysis days (Tuesday, Thursday and Saturday).

At the hearing, the Appellant's Representative 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.

At the hearing, the Plan contended that the uniform assessment system evaluation of the Appellant's personal care needs showed that the Appellant needs a Personal Care Services authorization in the amount of 63 hours weekly (9 hours daily, 7 days weekly). However, the Plan failed to present a copy of the uniform assessment system evaluation into evidence. Based thereon, the Plan's contention was given no weight.

The credible evidence establishes that the Appellant has been determined to be eligible for a Personal Care Services authorization in the amount of live-in 24-hour personal care services, 4 days a week (on Monday, Wednesday, Friday and Sunday) on non-dialysis days. Based thereon, the credible evidence establishes that the Appellant is medically eligible for a Personal Care Services authorization in the amount of live-in 24-hour personal care services on dialysis days, 3 days a week (Tuesday, Thursday and Saturday).

The only remaining question is if the Appellant is eligible to receive a Personal Care Services authorization while she is attending dialysis. At the hearing, the Appellant's

Representative presented credible testimony, that the Plan did not controvert given that the Plan failed to present the required current uniform assessment system evaluation of the Appellant's personal care needs, that established that the Appellant, while attending dialysis, requires assistance with mobility and toileting, and that employees of the dialysis center are not available to meet the Appellant's need for such assistance. The Appellant's Representative presented a letter from the dialysis center that indicated that the Appellant is wheelchair bound and both bowel and urine incontinent, and requires the assistance of a person with activities of daily living throughout the Appellant's hemodialysis treatment. The Appellant's Representative's testimony was found to be credible based on the Appellant's Representative's demeanor and responsiveness to questioning and because the Appellant's Representative's testimony was plausible, believable and bolstered by supporting documentation. The Appellant's Representative's contention that the Appellant is entitled to a live-in 24-hour Personal Care Services authorization, 7 days weekly was persuasive.

### **DECISION AND ORDER**

The April 12, 2018, determination by Centers Plan For Healthy Living to provide the Appellant with a Personal Care Services authorization in the amount of live-in 24-hour personal care services, 4 days a week (on Monday, Wednesday, Friday and Sunday) and 10 hours daily, 3 days weekly on dialysis days (Tuesday, Thursday and Saturday), with regard to the adequacy of said services, is not correct and is reversed.

1. Center's Plan for Health Living is directed to cancel its notice dated April 12, 2018, and take no further action on it.
2. Center's Plan for Healthy Living is directed to immediately provide the Appellant with an authorization for "live-in" 24-hour Personal Care Services on a 7 day per week basis.

Should Center's Plan for Healthy Living 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.

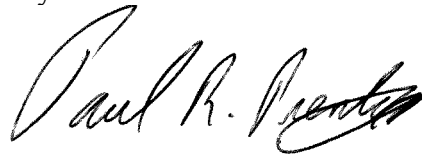
As required by Section 358-6.4 of the Regulations, Center's Plan for Health Living must comply immediately with the directives set forth above.

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DATED: Albany, New York  
05/25/2018

NEW YORK STATE DEPARTMENT  
OF HEALTH

By

A handwritten signature in black ink, appearing to read "Paul R. Prentiss", with a stylized flourish at the end.

Commissioner's Designee