
In the Matter of the Appeal of
[REDACTED]

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

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**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 September 3, 2015, in New York City, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Managed Long Term Care Plan (“Aetna Better Health of NY”)

Agency appearance waived by the Office of Administrative Hearings

ISSUE

Was the Appellant's Managed Long Term Care Plan's, Aetna Better Health, determination to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days a week), to 49 hours weekly, 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 57, has been enrolled in and has received care and services, including Personal Care Services, through a Managed Long Term Care Plan operated by Aetna Better Health.

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2. The Appellant has been in receipt of Personal Care Services in the amount 56 hours weekly (8 hours daily, 7 days a week).
3. On June 24, 2015, a nursing assessor completed a Uniform Assessment System-New York Level of Care Report of the Appellant's personal care needs.
4. By notice dated July 9, 2015, effective July 23, 2015, Aetna Better Health determined to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days a week), to 49 hours weekly.
5. On July 13, 2015, the Appellant requested this fair hearing to contest the Managed Long Term Care Plan's determination.

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).

Regulations at 18 NYCRR 358-3.3(a)(1) states that, except as provided in subdivision (d) a recipient has a right to a timely and adequate notice when a social services agency:

- (i) proposes to take any action to discontinue, suspend, or reduce a Public Assistance grant, Medical Assistance Authorization or services.

An adequate notice is a notice of action, an adverse action notice or an action taken notice which sets forth the action that the Agency proposes to take or is taking, and if a single notice is used for all affected assistance, benefits or services, the effect of such action, if any, on a recipient's other assistance, benefits or services. In addition, the notice must contain:

- the specific laws and/or regulations upon which the action is based;

DISCUSSION

The hearing record establishes that Aetna Better Health issued a Notice of Intent to reduce Appellant's Personal Care Services from 56 hours weekly (8 hours daily, 7 days a week), to 49 hours weekly

Although duly notified of the time and place of the hearing, Aetna Better Health presented an inadequate notice of intent to reduce Appellant's Personal Care Services.

Regulations at 18 NYCRR 358-3.3(a)(1) requires that an adequate notice must contain the **specific laws and/or regulations upon which the action is based** (emphasis added). Aetna Better Health's notice contains no law or regulations upon which its determination is based. Accordingly, Aetna Better Health's Notice is ruled to have not fully met adequacy standards for Personal Care Services reduction notices, and the determination is not sustained.

DECISION AND ORDER

The Appellant's Managed Long Term Care Plan's determination dated June 9, 2015 to reduce the Appellant's Personal Care Services authorization from 56 hours weekly (8 hours daily, 7 days a week), to 49 hours weekly, was not correct and is reversed.

1. Aetna Better Health is directed to restore the Appellant's Personal Care Services authorization to the amount of 56 hours weekly (8 hours daily, 7 days a week).
2. Aetna Better Health is directed to continue to provide the Appellant with a Personal Care Services authorization in the amount of 56 hours weekly (8 hours daily, 7 days a week).

Should Aetna Better Health in the future determine to implement its previous action, it is directed to procure and review the Appellant's case record, to issue a new, timely, and adequate Notice of Intent, and to produce the complete case record at any subsequent fair hearing.

Should Aetna Better Health 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 Aetna Better Health promptly to facilitate such compliance.

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As required by Section 358-6.4 of the Regulations, Aetna Better Health must comply immediately with the directives set forth above.

DATED: Albany, New York
10/02/2015

NEW YORK STATE
DEPARTMENT OF HEALTH

By

A handwritten signature in black ink, consisting of a large, stylized initial 'J' followed by a series of loops and a horizontal line extending to the right.

Commissioner's Designee