

---

In the Matter of the Appeal of  
[REDACTED]

from a determination by the Cayuga County  
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 November 12, 2015, in Cayuga County, before an Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

[REDACTED]

For the Managed Care Plan

Agency appearance waived by the Office of Administrative Hearings

**ISSUE**

Was the determination by the Managed Care Agency to deny the Appellant's prior authorization request for additional physical therapy after exhausting the 20 visits in a benefit year limit 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, [REDACTED], has been in receipt of Medicaid Managed Care through [REDACTED], Inc. d/b/a [REDACTED] New York
2. In March 2015, the Agency approved 20 physical therapy visits for the Appellant.
3. The Appellant underwent left foot/ankle surgery on June 11, 2015.

FH# 7152875L

4. In August 2015, the Appellant's provider, [REDACTED], submitted additional requests for authorization of additional physical therapy visits.
5. On September 16, 2015, the Agency denied the Appellant's prior authorization request on the following ground; Administrative Denial Reason; Benefits Exhausted.
6. On October 15, 2015, the Appellant requested this fair hearing.

### **APPLICABLE LAW**

Pursuant to Chapter 59 L. 2011, Part H, Section 27, Social Services Law Section 365-a(2)(h) was amended, effective October 1, 2011, to provide that speech therapy, physical therapy, and occupational therapy, each shall be limited to coverage of twenty visits per year; such limitations shall not apply to person with developmental disabilities or, notwithstanding any other provision of law to the contrary, to persons with traumatic brain injury. Additionally, this limit will not apply to Medicaid Managed Care recipients younger than twenty-one years of age.

Department Regulations at 18 NYCRR 358-3.1(f) list circumstances in which an individual does not have the right to a fair hearing. This regulation provides that there is no right to a fair hearing where the sole issue involving the receipt of Medical Assistance is a Federal or State law requiring an automatic change which adversely affects some or all recipients.

### **DISCUSSION**

By this appeal, the Appellant seeks review of the Agency's determination to deny his request for additional physical therapy because he has exhausted the 20 visits yearly benefit limit.

The Agency requested and was granted a waiver of personal appearance. A written summary and documentation were submitted in lieu of personal appearance.

In its summary, the Agency stated that the Appellant's prior authorization request for physical therapy was denied because the Appellant had been approved for a total of 20 visits in the 2015 calendar year. Pursuant to the December 2011 New York State Medicaid update, effective October 1, 2011, Medicaid began to limit speech therapy, physical therapy, and occupational therapy, to 20 visits each per twelve-month period. As the provider failed to show that the Appellant qualified for an exception of the 20-benefit limit, the Appellant's prior authorization request for additional physical therapy was denied.

The Appellant acknowledged that he had already received 20 physical therapy visits at the time the request for more visits was made in August, but explained that the 20 visits were for his left shoulder. His need for additional therapy stemmed from the foot/ankle surgery that he had on June 19, 2015.

FH# 7152875L

The Appellant stated that he had the surgery on his left ankle and foot to lengthen the Achilles tendon. He also had a subtalar implant in his left foot. He was given a cane to walk with after the surgery, but found that he could not walk properly with it. He stated that his ankle is still sore and it tightens if he puts any pressure on it. He added that he has been doing the home exercises he was instructed to do, but he still cannot walk with the left foot. His doctor's recommendation is that he will need physical therapy in order to maximize his recovery.

The record does not establish that the meets any of the exceptions to the regulation limiting physical therapy to 20 visits per year. In his request for additional physical therapy, Appellant presented a letter from his physician who stated in pertinent part as follows, “ [REDACTED] recently underwent left foot/ankle surgery. He has been unable to participate in rehabilitation for this foot after the surgery due to exhausting 20 previous authorized visits for shoulder surgery. I feel that it is imperative that [REDACTED] begin his rehab as soon as possible to maximize his recovery”.

As the Appellant is not a Medicaid Managed Care recipient under age 21, has not verified that he had a traumatic brain injury and has not been determined developmentally disabled by the Office for People with Developmental Disabilities, the Agency's determination to deny the prior authorization request must be affirmed.

The Appellant may wish to consult with his doctor after the end of 2015 in order to obtain a new prescription for physical therapy.

### **DECISION**

The Managed Care Agency's determination of September 16, 2015 to deny the Appellant's prior authorization request for additional physical therapy visits is correct.

DATED: Albany, New York  
01/06/2016

NEW YORK STATE  
DEPARTMENT OF HEALTH

By



Commissioner's Designee