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In the Matter of the Appeal of :  
W M : DECISION  
: AFTER  
from a determination by the New York City : FAIR  
Department of Social Services : HEARING

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JURISDICTION

This appeal is from a determination by the local Social Services Agency relating to the adequacy of Appellant's Personal Care Services Authorization.

Pursuant to Section 22 of the New York State Social Services Law (hereinafter Social Services Law) and Part 358 of the Regulations of the New York State Department of Social Services (Title 18 NYCRR, hereinafter Regulations), a fair hearing was held on November 17, 1987, December 1, 1987, and December 4, 1987, at 330 West 34th Street, New York, New York, before Joachim Heukerott, Administrative Law Judge. The following persons appeared at the hearing:

For the Appellant

For the Local Social Services  
District (Agency)

L. Helfmam, Esq, Appellant's  
Representative

L. Blakeley, Representative

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, who is sixty-five years of age and disabled, has been in receipt of a Medical Assistance Authorization.

2. The Appellant is presently a patient at C M Hospital, New York City, where he was admitted on August 29, 1986.

3. On March 13, 1987, in anticipation of the Appellant's return to his home, the Agency approved a Personal Care Authorization for the Appellant for twenty-four hours per day, seven days per week, on a sleep-in basis.

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4. On March 26, 1987, the vendor Agency notified the Agency of its refusal to provide the Appellant with Personal Care Services as authorized by the Agency.

5. On March 27, 1987, the Agency determined not to provide the Appellant with the Personal Care Services authorized on March 13, 1987.

6. The Agency has provided the Appellant with no written notification of its determination not to provide the services authorized on March 13, 1987.

7. Since March 13, 1987, the Agency has obtained no new medical, social or nursing assessments and has made no new determination concerning the Appellant's Personal Care Services needs.

8. The Agency presented no medical evidence at the hearing to establish that the Appellant is not ready to be discharged from the hospital.

9. The Agency made no effort to find an alternative Personal Care Services provider, other than the vendor Agency that refused to provide the Appellant with the Personal Care Services Authorization approved on March 13, 1987.

10. On June 5, 1987, the Appellant requested this hearing to review the Agency's determination.

#### ISSUE

Is the Agency's determination not to provide the Appellant with services pursuant to its Personal Care Services Authorization, approved on March 13, 1987, correct?

#### APPLICABLE LAW

Section 358.8(a) of the Regulations of the State Department of Social Services provides that timely and adequate notice of any proposed action to discontinue or reduce Public Assistance payments or to discontinue or reduce a Medical Assistance Authorization must be sent to the recipient. Timely and adequate notice means a written notice mailed at least ten days prior to the effective date of the proposed action and which contains details of the reasons for the proposed action as well as information regarding conference and hearing rights and the right to continued Public Assistance and Medical Assistance Authorization.

Section 505.14(a) of the Regulations defines Personal Care Services as some or total assistance given to a person in their own home with personal hygiene, dressing, feeding; nutritional and environmental support functions and some health related tasks.

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Section 505.14(b) of the Regulations provides that an authorization for Personal Care Services shall be based upon a physician's order, a social and nursing assessment.

Section 505.14(b)(4) of the Regulations provides that an independent medical review of the case shall be completed, reviewing the physician's order and social and nursing assessments, if the case involves:

a disagreement the physician's order and the social and nursing assessments; or

the provision of twenty-four hour continuous (splitshift) services.

Section 505.14 of the Regulations of the State Department of Social Services further provides that it is the Agency's option to utilize "vendor Agencies" who are under contract with the Agency to provide Personal Care Services. The provider Agency or the Agency shall assign an aide to provide the case management shall be the responsibility of the Agency and cannot be delegated to a vendor Agency.

#### DISCUSSION

In this case, while the Appellant was hospitalized the Agency, in anticipated of his discharge and return to his home, approved a Personal Care Service Authorization for the Appellant for twenty-four hours per day, seven days per week, on a sleep-in basis. The Agency's Personal Care Services Authorization is dated March 13, 1987.

On March 23, 1987, the vendor Agency that provides Personal Care Services to persons living in the community in which the Appellant resides notified the Agency of its refusal to provide the Appellant with the serious authorized. Thereafter on March 27, 1987, the Agency determined not to provide the Appellant with the authorized services. The Agency did not, however, send the Appellant any written notification of its determination not to provide the previously authorized services or of a determination to reduce or discontinue his Personal Care Services Authorization. Further, the Agency had not, since March 13, 1987, obtained new medical, social or nursing assessments and has made no new determination concerning the Appellant's Personal Care Services needs.

The vendor Agency's refusal to provide authorized services does not absolve the Agency of its obligation to provide authorized services. The use of vendor Agencies to provide such services absence of vendor available to the Agency. In the absence of vendor Agency participation the Agency may contract with an individual provider or with another Agency to provide services. In any event the vendor Agency's refusal to provide authorized services in this case cannot, without other appropriate Agency action, result in the discontinuance of the Appellant's Personal Care Services Authorization.

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It is noted that the Agency's representative contended at the hearing that the Appellant is not presently ready to be discharged from the hospital and that, therefore, the issue to be decided is moot. However, the Agency presented no medical evidence to establish that the Appellant is not ready and able to return to his home.

It is also noted that the Appellant's representative sought to address the issue of the vendor Agency's contractual obligation with the Agency to provide services. The Agency's obligation, pursuant to Section 505.14 of the Regulations, to provide authorized Personal Care Services to recipients of such authorizations exists independently of any contractual agreements between it and vendor Agencies. Therefore, such agreement need not be involved in order to establish the Agency's clear obligation to provide recipients with authorized services.

DECISION AND ORDER

The Agency's determination is not correct and is reversed.

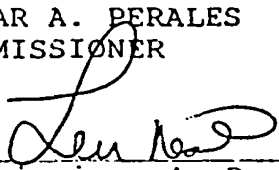
The Agency is directed to provide the Appellant with Personal Care Services for twenty-four hours per day, seven days per week, on a sleep-in basis, upon his return to his home.

As required by Department Regulations at 18 NYCRR 358.22, the Agency must comply immediately with the directives set forth above.

DATED: Albany, New York

CESAR A. PERALES  
COMMISSIONER

FEB 9 1988

BY   
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Commissioner's Designee