

DSS-4357EL

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**GENERAL INFORMATION SYSTEM**

05/28/96

**DIVISION:** Health and Long Term Care

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**GIS 96 MA/019**

**TO:** Personal Care Services Program Directors; Social Services Attorneys

**FROM:** Richard T. Cody, Deputy Commissioner for Health and Long Term Care

**SUBJECT:** Reductions or discontinuations of personal care services:  
Mayer et al. v. Wing (S.D.N.Y), Dowd et al. v. Bane  
(S.Ct.,N.Y.Co.)

**EFFECTIVE DATE:** Immediately

**CONTACT PERSON:** Bureau of Long Term Care Field Monitoring Staff

This is to advise you of a recent federal court decision that applies to social services districts' reductions or discontinuations of personal care services. [Mayer et al. v. Wing, (S.D.N.Y.)]

In general, the Mayer decision holds that a social services district must have a legitimate reason to reduce or discontinue a recipient's personal care services. Before reducing or discontinuing personal care services, the district must individually assess the recipient to determine whether the reduction or discontinuance is justified by State law or Department regulation. A social services district cannot reduce or discontinue a recipient's personal care services arbitrarily, capriciously or as part of a blanket, across-the-board reduction or discontinuance of services that does not consider each individual recipient's particular circumstances. This general principle is entirely consistent with the Department's policy.

The Mayer court, however, illustrated this general principle by setting forth six specific circumstances in which social services districts may reduce or discontinue recipients' personal care services. Effective immediately, a social services district may reduce or discontinue a recipient's personal care services only when the district has first identified that the proposed reduction or discontinuance is justified by one or more of the following reasons:

- (1) the recipient's medical, mental, economic or social circumstances have changed;
- (2) a mistake occurred in the previous authorization of services;
- (3) the recipient refused to comply with the required reassessment of services;

- (4) a technological development renders certain services unnecessary or less time consuming;
- (5) the recipient can be more appropriately and cost-effectively served through other MA programs or services, such as assisted living programs, personal emergency response services, shared aide or other programs or services set forth in State statute or Department regulations. (This circumstance would permit districts to discontinue services based upon the results of the fiscal assessment); or,
- (6) based upon a task-based assessment that the district conducted of the recipient, the district believes that the personal care services provided under the last authorization or reauthorization can be provided in fewer hours than they were previously.

When a social services district has determined to reduce or discontinue a recipient's personal care services because one or more of these circumstances exist, the district must include the specific reason for the reduction or discontinuance in the timely and adequate notice that the district sends to the recipient. This is consistent with long-standing Department policy and regulations.

PLEASE NOTE THE FOLLOWING SPECIAL RULES REGARDING TASK-BASED ASSESSMENT PLANS:

The Mayer preliminary injunction order prohibits social services districts from applying task-based assessment plans to reduce the hours of any recipient whom the district has determined needs 24 hour care, including continuous 24 hour services (split-shift); 24 hour live-in services; or the equivalent provided by formal or informal caregivers.

Until further notice, the Dowd temporary restraining order permits social services districts to use task-based assessment plans only when the district had implemented a task-based assessment plan prior to March 14, 1996, or the Department, prior to March 14, 1996, had approved the district's proposed task-based assessment plan. The Department will advise social services districts of further significant developments in the Dowd litigation. (See GIS 96 MA/013, issued on April 4, 1996, for a complete description of the Dowd temporary order.)

Districts having any questions or comments regarding the content of this message, should contact the Bureau of Long Term Care's Personal Care Services Program field monitors, Marcia Anderson, George Fleury or Margaret O. Willard at 1-800-343-8859, extension 3-5602, 3-8269 or 3-5569 or (518) 473-5602, 473-8269 or 473-5569 or on-line at OLT130, AW5610 or AW8310 respectively. Questions from social services attorneys regarding the Dowd litigation may be addressed to Assistant Counsel Jane McCloskey at (518) 474-9496 (AY3030).