



119 Washington Ave. ♦ Albany, NY 12210

Phone 518.462.6831 ♦ Fax 518.935-2852

[www.empirejustice.org](http://www.empirejustice.org)

## **Client Testimony of Sandra Southwell for the Permanent Commission on Access to Justice's 2020 Hearing on Civil Legal Services**

9/14/20

My name is Sandra Southwell, daughter of former client of Empire Justice Catherine Braithwaite. My mother is 82 years old, with complicated medical ailments, including end stage dementia, and is currently in hospice at home.

It has been my family's goal to keep my mother safely in her home for as long as possible. In order to do so, we needed adequate homecare services. She was therefore enrolled in a Medicaid Managed Long Term Care (MLTC) plan for 5 years. As her disease progressed, her aide service hours were steadily increased up to 56 hours per week, through the Consumer Directed Program. My mother needed every hour of those aide services, as she required care around the clock. An aide was hired to take care of her in the home for 40 hours per week while I worked, then I provided care of my mother for the rest of the time when I was not at work. I was only paid for 16 hours per week to be her aide.

In October 2019, my Mom was reassessed by Nascentia, her MLTC provider, for her home care hours authorization. I was present for the process, and discussed her increasing physical, and cognitive decline due to her Alzheimer's. While the nurse verbally sympathized with the situation, she also advised that due to the new Medicaid rules, my mother's hours were most likely going to be reduced. I immediately expressed my concern to the nurse and explained that I did not want my mother's care reduced at the time in her life when she needed it most.

Then on December 2, 2019, I received a phone call from Venture Forthe, the service that manages payroll for Nascentia, advising that my mother's hours had been reduced retroactively to 35 hours, effective November 20th. This meant that the aide and I would not be paid for those "extra" 21 hours worked between November 20th and December 2nd or the "extra" hours going forward. This was the first time I was hearing that my mother's hours were reduced. Nascentia never sent any formal notice or even called about the reduction of hours.

Our family now faced an impossible situation. With only 35 hours of authorized care a week, my mother, who needs 24/7 hours of extensive and unscheduled care, would have to be either moved to a Nursing Home; or I would have to pay privately for the extra 21 hours or decrease my hours at work, neither of which I could afford. Meanwhile, my mother's condition continued to decline, and Nascentia failed to acknowledge the written substantiated statements provided by her doctors and family, documenting the need for an increase, instead of a decrease, in hours.

Distressed, I reached out to Empire Justice for help. They immediately assisted with filing a Fair Hearing, and an "Aid to continue rendering of services", so that the 56 hours remained unchanged until the outcome of the Fair Hearing. The attorneys on Empire's Health Law team worked with my family, carefully reviewing the MLTC appeal process, to discuss the reasons why an MLTC plan may reduce care, and also to develop a record of Catherine's declining health. They prepared extensively for the hearing, and helped me gather supporting documentation for the appeal, which included medical documents from her doctors, a daily log of her care, including medical needs, and responded promptly to any questions I had.

I am a Medical Social Worker and am very familiar with the Health Care system and am used to dealing with Health Care plans. However, even with my level of experience and knowledge, I realized what a daunting task it would be to navigate the appeal process and prepare for the Hearing on my own. My mother and family greatly benefited from the legal services and guidance we received from Empire Justice.

The Fair Hearing was held February 27, 2020. The attorneys argued that the MLTC plan did not meet its burden of proof to reduce Catherine's care for a variety of technical and legal reasons, which they had identified in their preparation. They systematically referenced the various discrepancies through Nascentia's contract, the medical records, daily needs, and my testimony, in their presentation to the Judge. This outstanding effort by Empire Justice resulted in a favorable decision on March 6, 2020 from the Department of Health which has allowed my mother to remain in her home up to this moment.

This was my goal from the outset – to keep my mother in her familiar surroundings, maintain her quality of life, and avoid institutional care. When the pandemic hit later that same month, and we saw the devastating impact that Covid-19 was having on Nursing Home residents and their families, I knew that we had made the right decision to fight for my mother's right to remain safely in her home.

Thank you, Empire Justice!