STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Appellant
______________________/

Docket No. 2009-21606 HHS

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on . (Appellant) appeared and testified on her own behalf. Also appearing as witnesses for the Appellant were her , and .

r, represented the Department of Community Health (Department). Also appearing as a witness for the Department was ,

ISSUE

Did the Department properly deny the Appellant's request for Adult Home Help Services?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence presented, I find, as material fact:

1. Appellant is a Medicaid beneficiary.
2. On , the adult services worker sent the Appellant an Advance Negative Action Notice informing her home help services cannot be provided because she had failed to supply the required medical documentation (Form 54A and HHS Application).

3. As of the date of hearing, the Appellant has failed to supply the DHS adult services worker with either an Application for Home Help Services or 54A Medical Needs form.

4. On [redacted], the Appellant filed his request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

> ***GENERAL SERVICES REQUIREMENTS*** *The client must sign an Adult Services Application (DHS-390) to receive ILS.* An authorized representative or other person acting for the client may sign the DHS-390 if the client: *(Emphasis supplied by ALJ)*
>
> - Is incapacitated, **or**
> - Has been determined incompetent, **or**
> - Has an emergency.
>
> A client unable to write may sign with an "X", witnessed by one other person (e.g., relative or department staff). Adult services workers must not sign the services application (DHS-390) for the client.
>
> Eligibility must be determined within 45 days of the signature date on the DHS-390. **Note:** ASSIST (Automated Social Services Information and Support) requires a disposition within 30 days of the registered request. See ASSIST User Manual (AUM) 150-7/8.
>
> The DHS-390 is valid indefinitely unless the case is closed for more than 90 days.

ELIGIBILITY CRITERIA

Independent Living Services

The following **non-payment** related independent living services are available to any person upon request **regardless** of income or resources:

- Counseling.
- Education and training.
- Employment.
- Family planning.
- Health related.
- Homemaking.
- Housing.
- Information and referral.
- Money management.
- Protection (For adults in need of a conservator or a guardian, but who are not in any immediate need for protective service intervention.)

Home Help Services (HHS)

Payment related independent living services are available if the client meets HHS eligibility requirements. Clients who may have a need for HHS should be assisted in applying for Medicaid (MA). Refer the client to an eligibility specialist. Cases pending MA determination may be opened to program 9 (ILS). HHS eligibility requirements include all of the following:

- The client must be eligible for Medicaid.
- Have a scope of coverage of:
  •• 1F or 2F,
  •• 1D or 1K, (Freedom to Work), **or**
  •• 1T (Healthy Kids Expansion).

- The client must have a need for service, based on

  •• Client choice, **and**
  •• Comprehensive Assessment (DHS-324) indicating a functional limitation of level 3 or greater in an ADL or IADL.

- *Medical Needs (DHS-54A) form signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:*

- •• *Physician.*
- •• *Nurse practitioner.*
- •• *Occupational therapist.*
- •• *Physical therapist*

.

(Emphasis supplied by ALJ)

INDEPENDENT LIVING SERVICES PROGRAM REQUIREMENTS
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A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfied that burden here must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

The adult services worker credibly testified the Appellant failed to return either a completed application for adult home help services or the 54A medical needs form. By policy, this documentation is required before any determination can be made, via a home call assessment, as to an applicant's eligibility for adult home help services.

The Appellant testified she needs assistance, and that she gave everything to her physician, who has failed to complete the paperwork. Aside from these assertions, she presented no substantive challenge to the Department's claim she has failed to return a completed application for adult home help services or the 54A medical needs form. I must therefore conclude the Appellant has failed to satisfy initial eligibility requirements for the adult home help services program.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that the Department properly denied the Appellant's request for Adult Home Help Services.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

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Date Mailed: 7/2/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules for the Department of Community Health will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.