

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2009-34379 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant appeared without representation. He had no witnesses. ██████████, appeals review officer, represented the Department. Her witnesses were ██████████ and ██████████, ██████████.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services (HHS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████████ disabled Medicaid beneficiary and SSI recipient. (Appellant's Exhibit #1)
2. The Appellant is afflicted with osteoarthritis, limited mobility, CHF, DM, HTN. (Department's Exhibit A, p. 11)
3. On ██████████, the Appellant was advised via advanced negative action notice that his services were being terminated effective ██████████. (Department's Exhibit A, p. 2)
4. Prior to the proposed termination date the Department had no record that the Appellant was receiving home help as he was without a provider for 6 months. (Department's Exhibit A, pp. 2, 4)

5. Although referenced in the Hearing Summary the “last check” issue was resolved prior to hearing by administrative action. (See Testimony and Department’s Exhibit A, p. 9)
6. On ██████████, the Appellant filed a request for hearing. (Appellant’s Exhibit #1)
7. The instant request for hearing was received by SOAHR on ██████████. (Appellant’s Exhibit #1)

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.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-324) is the primary tool for determining need for services. The comprehensive assessment will be completed on all open cases, whether a home help payment will be made or not. ASCAP, the automated workload management system provides the format for the comprehensive assessment and all information will be entered on the computer program. Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the client’s social security card.
- Observe a picture I.D. of the caregiver, if applicable.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual redetermination.

- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

Adult Services Manual (ASM) §363, September 1, 2008, page 2

Provider Criteria

Determine the provider's ability to meet the following minimum criteria in a face-to-face interview with the client and the provider:

Age

- Appropriate to complete the needed service.

Ability

- To follow instructions and HHS program procedures.
- To perform the services required.
- To handle emergencies.

Physical Health

- Adequate to perform the needed services.

Knowledge

- How and when to seek assistance from appropriate others in the event of an emergency.

Personal Qualities

- Dependable.
- Can meet job demands including overtime, if necessary.

Training

- Willing to participate in available training programs if necessary. HHS payment may be terminated if the provider fails to meet any of the provider criteria.

Provider Interview

Explain the following points to the client and the provider during the initial interview:

- The provider is employed by the client not the State of Michigan.
- A provider who receives public assistance must report all income received as a home help provider to the FIS/ES.
- The client is the employer and has the right to hire and fire the provider.
- The client is responsible for notifying the worker of any change in providers or hours of care.
- The services the provider is responsible for and has agreed to deliver including the frequency, amount and type of service.
- The provider must keep a log of the services provided ...
(Emphasis supplied)

ASM *Supra* p. 16

* * *

The Department's witness testified that she terminated services because on 6-month review of the Appellant's case she found no evidence of provider services. [See ASM 362 at page 4] Absent a provider she determined that the Appellant no longer needed services or had made other arrangements for care.

The Appellant argued that there had actually been a dispute about the compensation of his provider – who he had discharged for poor performance.

In a colloquy at hearing it was apparent that the Appellant and the ASW were at odds, for the most part, based on missed communications. The Appellant testified that he was hospitalized for a serious illness in ██████████ and had suffered the loss of several family members shortly thereafter. The ASW said she became discouraged in her attempts to contact the Appellant by telephone – unaware of his health and family issues.

The Department's record documented the several attempts to call the Appellant. The Appellant, although not unpersuasive, produced no records to support his claim that he made multiple calls to the ASW to resolve his underlying dispute.

He held the provider's last check to evidence his complaint – but unfortunately never produced the voided check until today's hearing. By this time the dispute had been administratively resolved under the auspices of the supervisor, ██████████.

**Docket No. 2009-34379 HHS
Hearing Decision & Order**

On review, the testimony and evidence supports the Appellant's need for assistance in the home. [See Department's Exhibit A, at pages 7, 10] However, it remains the Appellant's duty to contact the Department to advise of changes in provider duties and hours.

Although clumsily brought, the Department properly terminated HHS benefits after evaluating the Appellant's status for lack of an enrolled chore provider. The evidence preponderates in favor of the Department's decision to terminate benefits for the period under review.

The "last check" issue was no longer extant based on the testimony of the Appellant and the actions of supervisor [REDACTED]. Accordingly, the Appellant is eligible for reinstatement of HHS benefits once a qualified chore provider is enrolled. See ASM 362.

Department policy is clear that payment for services may only be made to the enrolled provider who is actually providing services. The Appellant does not have the authority to self direct the HHS program or its payment system, but he does have the responsibility to inform the Department about chore provider problems – a duty breached by the Appellant in this instance.¹

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's Home Help benefits as he had no enrolled provider.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

¹ The Appellant was hospitalized.

Docket No. 2009-34379 HHS
Hearing Decision & Order

Date Mailed: 10/29/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.