

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2009-15217 HHS
Case No. ██████████
Load No. ██████████

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 ██████████ ██████████ appeared as Authorized Representative for ██████████ (Appellant), who also appeared and testified on her own behalf.

██████████, represented the Department of Community Health. Also appearing on behalf of the Department were ██████████ and ██████████ ██████████ Department of Human Services (DHS).

ISSUE

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

FINDINGS OF FACT

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

1. Appellant is an adult Medicaid beneficiary, with diagnoses of cervical spondylosis, lumbar spondylosis, chronic neck and back pain, seizure disorder/epilepsy and fibromyalgia. (*Exhibit 1, page 14*)
2. On ██████████, DHS issued to the Appellant a Services Negative Action notice informing her that her Home Help Services would be terminated because the medical needs form submitted by her doctor does not certify a medical need for assistance with personal care services. (*Exhibit 1, p. 17*)

3. On ██████████, the Appellant filed her request for hearing with the State Office of Administrative Hearings and Rules.

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.

ELIGIBILITY CRITERIA

Home Help Services (HHS)

Payment related independent living services (HHS) are available if the customer meets HHS eligibility requirements. Customers who may have a need for HHS should be assisted in applying for Medicaid. Refer the customer to an Eligibility Specialist. Cases pending MA determination may be opened to program 9 (ILS).Eligibility

- The customer must be eligible for Medicaid, with an eligibility status of 3, 4, or 7, **and**
- Have a scope of coverage of 1F or 2F, **and**
- The customer must have a need for service, based on Customer choice, **and**
- Comprehensive Assessment indicating a functional limitation of level 3 or greater in an ADLor **IADL and**
- *Medical Needs (FIA-54A) form signed and dated by a medical professional certifying a medical need for personal care services. (Emphasis supplied by ALJ)* The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

Physician
Nurse Practitioner
Occupational Therapist
Physical Therapist

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Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.
- *Verification of the customer's medical need by a Medicaid-enrolled medical professional. (Emphasis supplied by ALJ)* The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider.
- The Medical Needs form must be signed and dated by one of the following medical professionals:

Physician
Nurse Practitioner
Occupational Therapist
Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

If the case is closed and reopened within 90 days with no changes in the customer's condition, a new FIA-54A is not necessary.

*Do **not** authorize HHS prior to the date of the medical professional signature on the FIA-54A. (Emphasis added)*

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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 her 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).

Proof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence. See, e.g., *Martucci v Detroit Police Comm'r*, 322 Mich 270, 274; 33 NW2d 789 (1948).

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).

It is the province of the Administrative Law Judge to adjudge the credibility and weight to be afforded the evidence presented. *Maloy v. Stuttgart Memorial Hosp.*, 316 Ark. 447, 872 S.W.2d 401 (1994).

Current Home Help Service policy prohibits payment from being made prior to the time the FIA 54A form is signed, and only when the Medicaid enrolled medical professional certifies the beneficiary needs assistance with personal care activities.

The Appellant's representative recited the Appellant's medical conditions, but did not address the specific reasons why the Appellant's physician failed to certify a need for services. Having failed to carry her burden of establishing entitlement to services, I conclude the Department's action is proper.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that the Department's termination of Home Help Service payments is appropriate.

IT IS THEREFORE ORDERED that:

[REDACTED]
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The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 5/15/2009

***** 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.

[REDACTED]



