STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2010-15517 HHS
Case No. 1531878

[redacted],

Appellant
_____/

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 [redacted]. [redacted], Appellant's sister-in-law/chore provider, appeared on behalf of the Appellant. The Appellant, [redacted] sister and daughter, were also present.

[redacted], represented the Department. [redacted], [redacted], and [redacted] appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Home Help Services (HHS) payments to the Appellant?

FINDINGS OF FACT

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

1. Appellant is a [redacted] year-old man. (Exhibit 1, page 7).

2. Appellant is a Medicaid beneficiary.

3. In or around [redacted] the Appellant applied for HHS from the Department of Human Services (DHS).

4. On [redacted] the Appellant's doctor filled out a medical needs form and indicated the Appellant had no medical need for services. (Exhibit 1, page 7).

5. In the [redacted], medical needs form the Appellant's doctor indicated the Appellant would have surgery on his left great toe with recovery time of approximately two months. (Exhibit 1, page 7).

6. On [redacted], the Appellant's Independent Living Specialist (ILS Worker) sent an Adequate Action Notice notifying Appellant that his Home Help Services payments would be denied. The reason given was that the Appellant's doctor stated he had no medical need for assistance, and therefore did not meet eligibility criteria. (Exhibit 1, page 4).

7. On [redacted] the Department received Appellant's Request for Hearing. (Exhibit 1, page 3).

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 Social Welfare Act, 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 agencies.

Adult Services Manual (ASM 362, 12-1-07), page 9 of 5 outlines the Department's policy regarding date of HHS authorization:

ELIGIBILITY CRITERIA Home Help Services (HHS)

HHS eligibility requirements include all of the following:

* * * * *

- Medical Needs (DHS-54-A) 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.

(Exhibit 1, page 9).

According to Department policy, the DHS **must** deny an application for HHS if there is no medical professional certification of medical need. The ILS Worker testified that during the application process she noted the Appellant's physician indicated "NO" need for assistance in Box I of the DHS-54A medical needs form. (Exhibit 1, page 7). Because the Appellant had no medical certification for assistance the Department properly denied his application.

The Appellant's sister-in-law/chore provider testified that she had provided personal care for the Appellant while he recovered from his toe surgery. Appellant's sister-in-law/chore provider stated that she believed the doctor's mention of needing assistance for two months after toe surgery meant he authorized home help.

A review of the medical needs form demonstrates that the doctor clearly marked "NO." to the need for medical assistance. It is credible evidence which cannot be ignored. While the doctor's mention of needing assistance for two (2) months may have meant he needed home help, it could also have meant he needed some help but not to the level of paid HHS surgery; which is more likely in light of the fact that the procedure was merely surgery on one toe. The dubious nature of the two months statement demonstrates it is less credible than the clear mark of "NO."

The Appellant provided no DHS-54A medical needs form with medical professional certification for need of HHS-specific services *before* his toe surgery.

The Appellant bears the burden of proving by a preponderance of evidence that the Department's denial was not proper. The Appellant did not provide a preponderance of evidence that the Department's denial was not proper. The Department must implement the Home Help Services program in accordance to Department policy. The Department provided sufficient evidence that it properly denied the Appellants' payment authorization in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied his Home Help Services.

[redacted]
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Hearing Decision & Order

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 3/9/2010

***** 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.