

**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:

Docket No. 2010-29878 HHS

Case No. [REDACTED]

[REDACTED]
Appellant
_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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, appeared on his own behalf.

[REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Home Help Services (HHS) Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

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

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] man.
2. Appellant is a Medicaid beneficiary.
3. The Appellant has diagnoses of bi-polar disorder and seizures and receives services from [REDACTED] County Community Health (CMH). (Exhibit 1, Pages 3, 8, 11). The Appellant currently receives CMH services from CMH agent New Passages and his CMH/New Passages case manager is [REDACTED].

4. Appellant lives independently in an apartment. (Exhibit 1, Pages 3, 7).
5. On ██████████, Appellant's ASW made a visit to Appellant's home pursuant to a request for Home Help Services. During the assessment the ASW asked questions and received answers from the Appellant. (Exhibit 1, Pages 4-7).
6. During the assessment the ASW observed the Appellant and asked his questions about his functional abilities. The ASW noted that based on observations and Appellant's answers, the Appellant's limitations were not related to physical ability, rather his needs were due to his mental health diagnoses, such as guiding and supervising. (Exhibit 1, Pages 4-7).
7. On ██████████, the Department sent a Negative Action Notice notifying Appellant that his HHS eligibility would be denied. (Exhibit 1, Pages 4-6).
8. On ██████████, the Department received Appellant's Request for Hearing, filled out by Appellant's CMH Supports Coordinator. (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.

The ASW testified that a comprehensive assessment was completed on ██████████, at which the Appellant was asked questions to which he provided answers.

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

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 customer in his/his place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer'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 agency record.
- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS payment.

Conduct a functional assessment to determine the customer's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating
- Toileting
- Bathing
- Grooming
- Dressing
- Transferring
- Mobility

Instrumental Activities of Daily Living (IADL)

- Taking Medication
- Meal Preparation and Cleanup
- Shopping for food and other necessities of daily living
- Laundry
- Housework

ASW Determination of ineligibility for HHS –

The ASW testified that during the reassessment she observed that the Appellant did not have any functional needs based on a physical diagnosis, but might need prompting, guiding, and supervision needs due to his psychiatric diagnosis. The ASW testified that because the Appellant did not demonstrate any functional need for personal care services she was required, according to policy, to deny the Appellant's HHS.

The Appellant testified and wrote in his hearing request that he has mental health needs, is anxious about having a seizure and that he needs help with taking his medications and cleaning.

The Department's representative and witness explained to Appellant that it is the responsibility of the CMH/New Passages to help him with ensuring he takes his medication correctly.

The Department representative and witness clarified that a psychiatric condition making it necessary for Appellant to have supervision falls under the mandate of the CMH to provide prompting, guiding and supervision assistance through ACT, community living supports or skill building or similar services. Adult Services Manual (ASM 363, 9-1-08), page 9 of 24 unequivocally demonstrates that HHS cannot be used for reminding, guiding or encouraging:

Functional Scale ADL's and IADL's are assessed according to the following five-point scale:

1. Independent
Performs the activity safely with no human assistance.
2. Verbal Assistance
Performs the activity with verbal assistance such as reminding, guiding or encouraging.
3. Some Human Assistance
Performs the activity with some direct physical assistance and/or assistive technology.
4. Much Human Assistance
Performs the activity with a great deal of human assistance and/or assistive technology.
5. Dependent
Does not perform the activity even with human assistance and/or assistive technology.

Note: HHS payments April only be authorized for needs assessed at the 3 level or greater.

The above policy shows that HHS Medicaid funding cannot be used to provide medication, cleaning, or laundry supervision or guiding. The Department determination that HHS is prohibited from paying for CMH-related services of reminding, guiding or encouraging for Appellant's need for those services was proper.

The Appellant bears the burden of proving by a preponderance of evidence that the Department's HHS denial was not according to policy. The Appellant did not provide a preponderance of evidence that the Department's termination was not according to policy. The Department must implement the Home Help Services program in accordance to 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.

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: 6/30/2010

***** 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.