

**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. 2010-2742 PDS

████████████████████

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 ██████████. ██████████-██████████ represented the Appellant. Her witness was ██████████ from ██████████ home improvements. ██████████, appeals review officer, represented the department. Her witness was ██████████.

PRELIMINARY MATTER

At the threshold of hearing the Department moved for dismissal owing to an untimely appeal. The Appellant produced a written time line and testimony that she had been in contact with Department employee ██████████ throughout the pursuit of this request. The motion to dismiss which was taken under advisement at hearing is now denied by the ALJ as the Appellant has adequately demonstrated timely appeal.

ISSUE

Did the Department properly terminate the Appellant's Physical Disabilities Services (PDS)?

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 ██████████ Medicaid beneficiary. (Appellant's Exhibit #1)
- 2) The Appellant suffers from quadriplegia and "multiple impairments." (Appellant's Exhibit #1)

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- 3) The Appellant's representative testified that she seeks the installation of ramp for her daughter via the PDS program. (See Testimony and Appellant's Exhibit #1 – throughout)
- 4) The Appellant's representative said her daughter was wrongfully denied PDS after working with Adult Services Worker, Sheila Adams. (Appellant's Exhibit #1, p. 2)
- 5) The Department notified the Appellant via DHS 1212 Advance Negative Action Notice that PDS services were being terminated effective ██████████
██████████ owing to lack of necessity.
- 6) The Department witness verified that additional requested information was never provided to the Department. (See Testimony of ██████████)
- 7) On ██████████, the Appellant said she was still in telephone contact with ASW ██████████, who was not present for hearing.
- 8) 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.

Physical Disability Services are provided to help physically disabled adults achieve self-sufficiency or self-support. These services must be reviewed by an adult service worker and satisfy all requirements for eligibility:

PHYSICAL DISABILITY SERVICES - INTRODUCTION

The original and ongoing purpose of this service is to assist adults with physical disabilities to function as independently as possible. The focus of physical disability services is on those adults who have experienced one or more physically limiting conditions, injuries, or characteristics that result in the need for one or more of the services defined in this manual in order to facilitate self-sufficiency or self-support. The basic assumption is that such a limitation need not inhibit a person's ability to function, grow, and experience life independently. Rather, the key may be to identify and make possible an alternative means of fulfillment. This service has the support of various advocacy groups, other agencies and departments. It allows the department to provide services to an underserved population. It can also be instrumental in stimulating funding for personal assistance

services to persons with disabilities who can not access employment or maintain themselves in employment.

DESCRIPTION

Physical disability services (PDS) are those necessary services and expenditures targeted for medically stable persons 18 years of age or older who have functional limitations which are physical in nature.

Expenditures may be authorized in the following areas:

- Assessment.
- Training.
- Counseling.
- Clinical services.
- Equipment aids.
- Mobility devices.
- Communication aids.
- Home modifications.
- Vehicle modifications.
- Adjunct services.

. . . .

The clients eligible for these services are medically stable and mentally capable of participating in services planning. The only exception is a person who, as a result of a physical condition, is experiencing mental and emotional deficits. Specifically, this would include those clients who have diminished cognitive abilities due to a head injury. Clients with mental retardation or mental illness as a primary diagnosis are not eligible. The adult services worker will authorize services only after completing the assessment and services plan. . . .

REQUIREMENTS [for eligibility]

Eligibility for PDS is determined by the local office adult services worker and is based upon four criteria:

- Medicaid eligibility.
- Age is 18 years or older.
- Certification of physical disability.
- Necessary services.

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A client must meet all four criteria and be an active ILS case before PDS is authorized. . . . (Emphasis supplied)

Adult Service Manual (ASM), §331, pages 1-3, June 1, 2007

The Department witness, Supervisor Jasina, testified that necessary information was not timely received by the Department before funding for the PDS program was exhausted for [REDACTED].

The Appellant's representative testified that she had been in touch with service worker Adams and thought she had additional time to meet program requirements as she underwent an unrelated medical emergency.

On review, as stated in the preamble to the PDS program and as listed in the eligibility requirements this program is an adult oriented service. Policy requires that the beneficiary be 18-years of age or older to qualify for services/funding. As it was clearly stated and acknowledged in the proofs today the Appellant is a [REDACTED].

While there may be no dispute about disability or future eligibility – her present status as a minor precludes further consideration for the PDS program.

The Department's decision to terminate PDS services was appropriate.

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 PDS for lack of program eligibility.

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]

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Date Mailed: 1/6/2010

***** 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.