

**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. 2011-11966 HHS
Case No. 9171840

██████████

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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, appeared on her own behalf. ██████████ represented the Department. ██████████ (worker), ██████████, and ██████████, were present as Department witnesses.

ISSUE

Was the Department's ██████████ Services and Payment Approval Notice proper?

FINDINGS OF FACT

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

1. The Appellant is ██████████ Medicaid beneficiary, who suffers from the following medical conditions: knee pain, diabetes, and severe back pain. (Exhibit 1, page 13)
2. The Appellant asserts that she applied for HHS in ██████████. (Testimony of ██████████)
3. On ██████████, the Appellant's physician completed a DHS-54A medical needs form, certifying the Appellant's need for HHS. (Exhibit 1, page 5)
4. On ██████████, the Appellant's physician completed a second DHS-

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- 54A medical needs form, certifying the Appellant's need for HHS. (Exhibit 1, page 4)
5. On [REDACTED], the Appellant was referred to the HHS program. (Exhibit 1, page 8)
 6. On [REDACTED], the worker sent the Appellant an introductory letter, as well as a DHS-54A medical needs form. (Exhibit 1, page 7)
 7. On [REDACTED], the Appellant met with the worker at the Department of Human Services office to inquire about the status of her case. At that time, the Department received a completed application and another medical needs form was printed. (Exhibit 1, pages 7 and 9; Exhibit 2, pages 4-5; Exhibit 3, pages 3-4)
 8. An initial assessment was conducted on [REDACTED]. At that time, the worker determined that the Appellant needs assistance with the following tasks: dressing, transferring, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, pages 9 and 12)
 9. On [REDACTED], the Department issued a Services and Payment Approval Notice, advising the Appellant that HHS payments had been authorized in the amount of \$ [REDACTED] per month, effective [REDACTED], the date of the application. (Exhibit 1, pages 6-7)
 10. On [REDACTED], the Department received the Appellant's Request for Hearing. (Exhibit 1, pages 2-3)

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The purpose of HHS is to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a health professional and may be provided by individuals or by private or public agencies.

The Adult Services Manual (ASM 362), 12-1-2007, page 1 of 5, addresses when Home Help Services can be authorized:

GENERAL SERVICES REQUIREMENTS

The client must sign an Adult Services Application (DHS-390) to receive ILS. An authorized representative or other person acting for the client may sign the DHS-390 if the client:

- Is incapacitated, **or**
- Has been determined incompetent, **or**
- Has an emergency.

A client unable to write may sign with an “X”, witnessed by one other person (e.g., relative or department staff). Adult services workers must not sign the services application (DHS-390) for the client.

The Adult Services Manual (ASM 363) 9-1-2008, pages 1 of 24, also addresses the need for a signed application before HHS can be authorized:

APPLICATION FOR SERVICES

The client must sign the DHS-390, Adult Services Application (RFF 390) to receive independent living services. An authorized representative or other person acting for the client may sign the DHS-390, **if** the client:

- Is incapacitated.
- Has been determined incompetent.
- Has an emergency.

A client unable to write may sign with an “X” witnessed by one other person (e.g. relative or department staff). Adult services workers must not sign the DHS-390 on behalf of the client.

In the present case, the Department asserts that it properly authorized the Appellant’s HHS payments back to the first date it could do so—the day the Department received the Appellant’s HHS application. The Department witnesses testified that they had not received any prior applications from the Appellant and that the only entry in their log for the Appellant was on ██████████ when they received her application.

The Appellant, on the other hand, testified that she submitted two applications to the Department before the one that she filled out on ██████████, and she, therefore, asserts that she is entitled to HHS payments back to the date that she filed her first application—██████████.

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The Appellant bears the burden of proving by a preponderance of evidence that the Department's action was not proper. The Appellant failed to meet her burden here. The Appellant referred this Administrative Law Judge to two DHS-54A medical needs forms that were completed by her physician in [REDACTED] as evidence of her filing applications before [REDACTED]. However, she presented no evidence to support that she provided a signed application on those dates. The application and the medical needs form are two different documents. And the medical needs form is used for other Department programs. Therefore, the Department's possession of the Appellant's completed medical needs forms does not automatically support that an HHS application was also completed and received by the Department.

The above-cited Department policy requires a signed Adult Services Application (DHS 390) before a HHS payment can be authorized. Here, the evidence supports that the Department received the Appellant's application on [REDACTED]. And the Department approved the Appellant's HHS payments retroactively to [REDACTED]. Pursuant to policy, the Department was not authorized to issue payments before that date. Therefore, the Department's action was proper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's [REDACTED] Services and Payment Approval Notice was proper.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 4/4/2011

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***** 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.