STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Docket No. 2011-32624 HHS
Case No. [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]. Appellant appeared and testified on her own behalf. [redacted], Appellant's chore provider, also testified on her behalf. [redacted], represented the Department of Community Health. [redacted], Adult Services Worker (ASW) from the [redacted] DHS-HHS Office, appeared as a witness for the Department.

ISSUE

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

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 woman who has been diagnosed by a physician with depression/anxiety, pulmonary hypertension, back pain, uncontrolled diabetes, arthritis, hypertension (HTN), dysfunctional uterine bleeding, a torn meniscus, dissociative identity disorder, and vision loss/legal blindness. (Exhibit 1, pages 20-22).

2. Appellant had been receiving 56 hours and 40 minutes of HHS per month, with a care cost of [redacted] per month. (Exhibit 1, page 19)

3. Beginning on [redacted] Appellant's Medicaid scope of coverage changed and she had a monthly deductible/spend-down of [redacted] (Exhibit 1, page 22).

4. On [redacted], ASW [redacted] sent Appellant an Advance Negative Action Notice stating that Appellant had not met her spend-down

since it began on [redacted]. The notice also provided that Appellant's HHS would be terminated [redacted] unless there were changes. (Exhibit 1, pages 9, 15-15-17).

5. On [redacted], the Department received Appellant's Request for Hearing. In that request, Appellant states that does not understand when she has a spend-down and that she continues to need HHS. (Exhibit 1, pages 4-8).

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 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.

Adult Services Manual 362 (12-1-07) (hereinafter "ASM 362") and Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") address the issue of eligibility for HHS:

> **Home Help Services (HHS)**
>
> **Payment** related independent living services are available if the client meets HHS eligibility requirements. Clients who may have a need for HHS should be assisted in applying for Medicaid (MA). Refer the client to an eligibility specialist. Cases pending MA determination may be opened to program 9 (ILS). HHS eligibility requirements include all of the following:
>
> - The client must be eligible for Medicaid.
> - Have a scope of coverage of:
>   - 1F or 2F,
>   - 1D or 1K, (Freedom to Work), **or**
>   - 1T (Healthy Kids Expansion).
> - The client must have a need for service, based on
>   - Client choice, **and**
>   - Comprehensive Assessment (DHS-324) indicating

a functional limitation of level 3 or greater in an ADL
or IADL.

- Medical Needs (DHS-54A) 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.

(ASM 362, pages 1-2 of 5)

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those which the department is paying for through Title XIX (Medicaid) funds. The client must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the client's Medicaid/Medical aid status.

The client may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA deductible obligation has been met.

The client must have a scope of coverage of:

- 1F or 2F, **or**
- 1D or 1K (Freedom to work), **or**
- 1T (Healthy Kids Expansion).

Clients with eligibility status of 07 (Income scale 2-Non MA) and scope of coverage 20 or 2B are **not** eligible for Medicaid until they have met their MA deductible obligation.

An ILS case may be opened (service program 9) to assist the client in becoming MA eligible. However, do **not** authorize HHS payment prior to the MA

> eligibility date. The payment must be prorated if the eligibility period is less than the full month. To prorate, divide the monthly care cost by the number of days in the month. Then, multiple (sic) that daily rate by the number of eligible days.
>
> **Note**: A change in the scope of coverage by the eligibility specialist (ES) will generate a DHS-5S for cases active to services programs 1, 7, and 9.

(ASM 363, page 7 of 24)

The Department must implement its programs in accordance with its policies. The Department policy listed immediately above mandates that a person must be eligible for Medicaid with a scope of coverage 1F or 2F; or the monthly spend-down must be met, in order to receive Home Help Services.

Here, the material facts are not in dispute. Since [redacted], Appellant has had a monthly deductible that must be met before her Medicaid was active and she has never met that monthly deductible. (Exhibit 1, pages 15-18, 22; Testimony of ASW [redacted]). The Department provided credible evidence that the Appellant's Medicaid was not active at the time the ASW sent the notice of termination (Exhibit 1, pages 9, 15-18, 22; Testimony of ASW [redacted]) and Appellant must be eligible for Medicaid in order to receive HHS. Accordingly, the Department's termination must be affirmed.

The real issue in this case is not properly before this court. Appellant stated that she wished to dispute her change in Medicaid eligibility and the calculation of her spend-down. It was explained that the Department of Human Services (DHS) office has jurisdiction over eligibility issues, not the Department of Community Health (DCH). Appellant has been advised to file a hearing request in the appropriate forum so that a separate hearing can be scheduled to address the Medicaid spend down/deductible determination with the DHS. ASW [redacted] also advised her to speak with her Medicaid worker and, if that is not helpful, the worker's supervisor and district manager. Appellant said she would file a request for hearing with DHS regarding Medicaid eligibility and, because Appellant's request for hearing also included the issues of DHS Medicaid eligibility and the amount of spend-down, Appellant's 90-day time period for requesting a hearing with DHS should be extended, but not longer than 90 days from the date of this hearing.[1]

[1] It appears that Appellant has already filed a Request for Hearing with DHS regarding her issues (Exhibit 1, page 14), but Appellant testified that she has never been contacted about any hearing (Testimony of Appellant).

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated Appellant's Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 7/11/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.