

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:

Docket No. 2011-29637 HHS
Case No. [REDACTED]

[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], the Appellant, appeared without representation. Her witness was [REDACTED], Case Manager, [REDACTED] Appeals Review Manager, represented the Department. Her witness was [REDACTED], ASW.

ISSUE

Did the Department properly terminate Home Help Services (HHS) owing to lack of medical certification?

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 [REDACTED]-year-old Medicaid beneficiary and SSI recipient. (Appellant's Exhibit #1)
- 2) The Appellant is afflicted with degenerative disc disease, fibromyalgia, HTN, COPD, GERD, CAD and Bipolar disorder. (Department's Exhibit A, pp. 6, 10 and See Testimony of the Appellant)
- 3) The Appellant testified that she was terminated from the HHS program because her doctor inadvertently erred in the completion of the DHS 54A. (See Testimony of Appellant and Appellant's Exhibit #1)
- 4) The ASW conducted an in-home assessment/annual review of the Appellant on [REDACTED]. (Department's Exhibit A, p. 7)
- 5) The Appellant has been receiving Home Help Services since "at least [REDACTED]." (See Appellant's Exhibit #1 and Department's Exhibit A, p. 8)

- 6) The Appellant's medical needs have been certified three (3) times since ██████████. (Department's Exhibit A, p. 6)
- 7) The Appellant was advised of the termination of HHS by Advance Negative Action notice on ██████████. (Department's Exhibit A, p. 3)
- 8) The effective date of the termination of services was retroactive dating back to ██████████. (Department's Exhibit A, p. 3)
- 9) The request for hearing on the instant appeal was received by the Michigan Administrative Hearing System 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.

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 certified¹ by a medical professional.

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/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer's social security card.

¹ ASM 363 - throughout

- 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 re-determination.
- 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.

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

Time and Task The worker will allocate time for each task assessed a rank of 3 or higher, based on interviews with the client and provider, observation of the client's abilities and use of the reasonable time schedule (RTS) as a guide. The RTS can be found in ASCAP under the Payment module, Time and Task screen. When hours exceed the RTS rationale must be provided.

Requirements:

- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- A new medical needs (DHS-54A) certification, if home help services are being paid.

Note: The medical needs form for SSI recipients will **only** be required at the initial opening and is no longer required in the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and then annually thereafter.

- A face-to-face meeting with the care provider, if applicable. This meeting may take place in the office, if appropriate.

(Emphasis supplied)

Adult Service Manual (ASM), §363, pp. 2, 3 of 23, 9-1-2008.

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The Department witness testified that she terminated the Appellant's HHS benefits for lack of certification from the Appellant's physician. Termination of benefits by advance negative action notice [DHS 1212] was sent [REDACTED], following a home visit of [REDACTED]. The effective date of the termination was [REDACTED] [Department's Exhibit A, page 3].

The ASW said it was "policy" to issue only one DHS 54A form per consumer – "to prevent doctor shopping." The Appellant testified that her physician had erred in completing the form and told her he would redo the document correctly – but the Department would not provide another form.

The Appellant's appeal did not result in the continuation of HHS during pendency of appeal because [according to the ASW] it was late beyond "10 days." The Appellant's request for hearing was time stamped received by the Administrative Tribunal on [REDACTED].

On review, the Department incorrectly observed that policy required issuance of only one DHS 54A form per consumer. While the prevention of doctor shopping is a worthy goal, no such document management policy exists. However, the Department does make exceptions to the execution of DHS 54A by way of established Adult Service Manual policy. If they had wanted to limit the various offices to the issuance of only one DHS 54A form per consumer – presumably they would have said so. [See ASM 363, at page 9 of 24]

Furthermore, the application of retroactive "effective date" ([REDACTED]) renders the Appellant's request for continuation of services during appeal nugatory. Faced with a retroactive termination of services it was impossible for the Appellant to request a hearing in a timely manner. Since the Appellant had been receiving certified services dating back to [REDACTED] [Department's Exhibit A, page 6] a second look at the surrounding circumstances might have saved the parties the exercise of appeal.

It is the province of the ASW to determine eligibility for services; the ASM requires an in-home assessment of the prospective and existing HHS recipients. It is not the province of the ASW to frustrate the Appellant's access to services on appeal, in the absence of fraud, by establishing a retroactive termination date. Furthermore, the discovery of an error on review of the medical needs form was easily resolvable between the parties prior to the exercise of appeal.

The Appellant preponderated her burden of proof that the Department erred by terminating her HHS via a retroactive effective date. The evidence further established that while the physician did mark "NO" on the certification of services check box – the Appellant's proofs preponderated that this was a simple clerical error.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly terminated the Appellant's HHS.

² Retroactive advance notice is not permitted. R 400.902; 400.903; 400.904.


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IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

IT IS FURTHER ORDERED that:

The Department provide the Appellant's physician with another DHS 54A.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

CC:



Date Mailed: 7/1/2011

***** 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.