

**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:

██████████,

Appellant

Docket No. 2011-8123 HHS
Case No. 8289395

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's mother, ██████████, was present for the hearing on behalf of the Appellant. ██████████, Manager of the Appeals Section, represented the Department. ██████████, Adult Services Worker (worker), and ██████████, appeared as witnesses for the Department.

ISSUE

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

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 a Medicaid beneficiary.
2. The Appellant is a ██████████ man, who suffers from autism and severe anxiety. (Testimony ██████████)
3. In ██████████, the worker became aware that the Appellant's fiscal intermediary, Community Living Network, was also listed as the Appellant's chore provider, which is contrary to policy. (Testimony of ██████████)
4. Based on this information, the worker issued an Advance Negative Action Notice on ██████████, informing the Appellant that his HHS payments were being reduced to \$ ██████████ per month, effective ██████████

██████████. Specifically, the Appellant's mother and chore provider would no longer be paid at the agency rate of \$██████████ per hour. Rather, she would be paid at a rate of ██████████ per hour. (Exhibit 1, pages 4-6)

5. On ██████████, the Michigan Administrative Hearing System received the Appellant's Request for Hearing.

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.

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 physician and may be provided by individuals or by private or public agencies.

The Adult Services Manual (ASM 363 9-1-2008), page 15 of 24 addresses chore provider selection as follows:

Provider Selection

The client has the right to choose the home help provider(s). As the employer of the provider, the client has the right to hire and fire providers to meet individual personal care service needs.

However, there are some limitations on this right. A fiscal intermediary may not be named as an HHS chore provider: The Department of Community Health, Medicaid Provider Manual, Mental Health/Substance Abuse, Section 17.3.0, October 1, 2010, page 116, provides, in pertinent part, as follows.

Neither providers of other covered services to the beneficiary, family members, or guardians of the beneficiary may provide fiscal intermediary services to the beneficiary.

The Appellant's mother testified that she is confused and does not understand why this is happening. She stated that she does a lot for her son, and the State would pay more money if he was to be put in a home. She stated that she gave up her life to take care of her son.

Here, there is no dispute that, contrary to policy, the Appellant's fiscal intermediary, Community Living Network, was also listed as the Appellant's HHS chore provider. Accordingly, the Department's reduction in this case was proper.

However, the Department's reduction of payments without notice was not proper. The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

§ 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

- (a) The agency has factual information confirming the death of a recipient;
- (b) The agency receives a clear written statement signed by a recipient that—

- (1) He no longer wishes services; or
- (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
- (c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
- (d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
- (e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
- (f) A change in the level of medical care is prescribed by the recipient's physician;
- (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or
- (h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

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- (a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
- (b) The facts have been verified, if possible, through secondary sources.

While the [REDACTED] Advance Negative Action Notice clearly failed to provide the Appellant with advance notice that his HHS payments would be reduced, this error does not change the outcome of this case. The Department agreed to reinstate the former payment amount until [REDACTED], and this Administrative Law Judge lacks the constitutional or equitable powers required to order the Department to pay for HHS services at the higher agency rate, when it would be contrary to policy to do so.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS payments.

IT IS THEREFORE ORDERED THAT:

The Department's reduction is AFFIRMED.

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

cc:



Date Mailed: 5/12/2011

***** 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.