

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-22416 HHS

██████████

██████████

██████████

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 ██████████. ██████████ mother/choreprovider appeared on behalf of the Appellant. Her witnesses were the Appellant and his brother ██████████. ██████████, Appeals Review Officer, represented the Department. Her witness was ██████████, ASW.

PRELIMINARY MATTER

The admission of Appellant's (proposed) Ex. #2 – a prescription from Dr. ██████. M.D. noting the need for medication and dressing assistance was taken under advisement at hearing. Since the document appears to have been prepared on ██████████ and was not operative at the time of assessment - it is not admitted.

The Appellant is advised, however, that if this represents a change in condition the Appellant must advise the ASW and seek reassessment, as necessary.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services (HHS) for lack of demonstrating a need for hands on assistance with an Activity of Daily Living (ADL) at a ranking of "3" or greater?

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 disabled ██████-year old Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is identified as "mentally challenged," with MR, psychosis NOS and M. Deform [sic]. (Appellant's Exhibit #1 and Department's Exhibit A, page 17)
3. The Department witness testified that she did not explain the implication of the new policy requiring the recipient to utilize at least one ADL with a ranking of "3" or greater. (See Testimony of Jernigan, *Contra* Department's Exhibit A, at page 14)
4. The Department's witness (ASW Jernigan) testified that she observed that the Appellant required assistance with IADLs on face-to-face assessment conducted on ████████████████████. (Department's Exhibit A, page 15)
5. The Appellant's choreprovider said that the Appellant needed help with the taking of medication, cooking, cleaning, laundry and shopping. (See Testimony of ██████████)
6. The Appellant testified that he needs help with bathing 90 percent of the time. (See Testimony of Appellant)
7. The Appellant receives some service from the Community Mental Health. (See Testimony)
8. The Appellant's representative said there was no discussion of the new ADL policy during the in-home assessment. (See Testimony of ██████████)
9. The Appellant was advised of the termination of HHS by Advance Negative Action notice on ████████████████████, to be effective ████████████████████. (Department's Exhibit A, p. 5)
10. The request for hearing on the instant appeal was received by the Michigan Administrative Hearing System on ████████████████████

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 certified by a medical professional.

COMPREHENSIVE ASSESSMENT

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment must be completed on all open independent living services cases. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information must 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 client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual redetermination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.

(Emphasis supplied)

Adult Service Manual (ASM), §120, page 1 of 6, 11-1-2011.

Changes in the home help eligibility criteria:

Home Help Eligibility Criteria

To qualify for home help services, an individual must require assistance with at least one activity of daily living (ADL)

assessed at a level 3 or greater. The change in policy must be applied to any new cases opened on or after October 1, 2011, and to all ongoing cases as of October 1, 2011.

Comprehensive Assessment Required Before Closure

Clients currently receiving home help services must be assessed at the next face-to-face contact in the client's home to determine continued eligibility. If the adult services specialist has a face-to-face contact in the client's home prior to the next scheduled review/redetermination, an assessment of need must take place at that time.

Example: A face-to-face review was completed in August 2011; the next scheduled review will be in February 2012. The specialist meets with the client in his/her home for a provider interview in December 2011. Previous assessments indicate the client only needing assistance with instrumental activities of daily living (IADL). A new comprehensive assessment must be completed on this client.

If the assessment determines a need for an ADL at level 3 or greater but these services are **not** paid for by the department, or the client refuses to receive assistance, the client would **continue** to be eligible to receive IADL services.

If the client is receiving only IADLs and does **not** require assistance with at least one ADL, the client no longer meets eligibility for home help services and the case must close after negative action notice is provided.

Each month, beginning with October, 2011, clients with reviews due who only receive IADL services must take priority.

Negative Action Notice

The adult services specialist must provide a DHS-1212, Advance Negative Action notice, if the assessment determines the client is no longer eligible to receive home help services. The effective date of the negative action is ten business days after the date the notice is mailed to the client.

Right to Appeal

Clients have the right to request a hearing if they disagree with the assessment. If the client requests a hearing within

ten business days, do not proceed with the negative action until after the result of the hearing.

Explain to the client that if the department is upheld, recoupment must take place back to the negative action date if payments continue. Provide the client with an option of continuing payment or suspending payment until after the hearing decision is rendered.

If the client requests a hearing after the 10-day notice and case closure has occurred, do not reopen the case pending the hearing decision. If the department's action is reversed, the case will need to be reopened and payment re-established back to the effective date of the negative action. If the department's action is upheld, no further action is required.

Adult Service Bulletin (ASB) 2011-001;
Interim Policy Bulletin Independent Living Services (ILS)
Eligibility Criteria, pp. 1–3, October 1, 2011

The Department witness testified that she terminated the Appellant's HHS benefits because the Appellant's choreprovider/mother did not identify a need for an ADL for the Appellant. At hearing the Appellant's representative focused on the IADLs of cooking, laundry, shopping and cleaning chore services for her mentally retarded █████-year old son.

Derivative to the HHS grant were the topics of medication administration, dressing and bathing. The rationale for denying the IADL of medication was referenced as not requiring hands on service – but this was not addressed in terms of ranking by the Appellant's representative. Similarly, the Appellant, a mentally retarded █████-year-old man, failed to testify in terms of ranking on the topic of how he fails to adequately bathe himself – other than to say he needs help.

When asked by the Appeal's Review Officer if she explained the implications of the new policy to the Appellant's representative the ASW said, "No."

The ASW said that she knew what the outcome might be on inventory of the personal chore queries while seated at the family dinner table. I believe that suggests that she pre-judged the results of the assessment and did not actively listen thus defeating the intent of the Department's mission statement in addition to voiding the results of the comprehensive assessment required under ASM 120.

On cross examination the Appellant's representative flatly denied that the ASW conducted a itemized review of ADLs.

As an impartial reviewer the ALJ is required to review the evidence in a neutral fashion. While I appreciate the ASW's candor in admitting that the policy implications were not explained to the Appellant's representative at the face-to-face assessment – that raises more questions than it answers.

It also presents a two-part due process problem for the Department – the Appellant likely focused on the more exigent IADLs owing to the vital need for the mentally retarded Appellant, but more importantly the lack of a face-to-face explanation on the implications of no ADLs – *all of your HHS benefits will terminate* – frustrates the Appellant's ability to marshal the necessary information and questions for hearing and further assessment.

The Department is reminded that the ASW role, under policy, is that of honest broker and to act as an advocate by informing the client on how to make the best possible use of available resources. See ASM 100 and 102.¹

In order to have meaningful participation in the fair hearing process the Appellant has to understand what he is up against – this was not a comprehensive review of a longstanding grant of HHS. It is black letter law that the hearing officer must tailor the hearing to the capacity of those to be heard.² How is that possible when the worker has hidden key information during the comprehensive assessment?

- Full disclosure is fundamental to the fair hearing process particularly for the public benefit recipient.

It is just as likely that the Appellant's representative discarded testimony concerning the lower ranked ADLs for the vital IADLs as the focus of her answers and the preparation of the Appellant's case for fair hearing – what would she have done had she realized beforehand that the new ADL policy would result in the defacto termination of all HHS?

¹ The mission statement is broadly worded: ...[T]o accomplish this vision, DHS will:

- Act as resource brokers for clients.
- Advocate for equal access to available resources.
- Develop and maintain fully functioning partnerships that educate and effectively allocate limited resources on behalf of our clients. (ASM 100 page 1 of 2) ... As advocate, the specialist will:
 - Assist the client to become a self-advocate.
 - Assist the client in securing necessary resources.
 - Inform the client of options and educate him/her on how to make best possible use of available resources...

(ASM 102)

² *Goldberg v. Kelly*, 397 US 254, 269 (1970)

- The Appellant receives some services from the CMH – will there be time to coordinate available replacement resources? See Coordination [] Partnerships, ASM 125.

At a minimum, the ASW failed to conduct a comprehensive assessment. More broadly I find that the Appellant was denied meaningful and knowing participation at both the in-home assessment and then the hearing for lack of an explanation on the defacto termination implicit in the Department's new HHS policy.

If the Department is fearful that the Appellant will lie or embellish a need for a personal care service on in-home assessment then they will have to conduct a more searching review - something they have never shied away from in the past.

It is the province of the ASW to determine eligibility for services; the ASM requires an in-home, *comprehensive* assessment of HHS recipients. Based on new policy an HHS recipient must utilize at least one (1) ADL requiring hands-on service at the three (3) ranking or higher in order to remain eligible for HHS.

- This was never explained to the Appellant or his representative.

On review, based on the testimony of the ASW, I find that she failed to comprehensively assess or observe the Appellant and his need for ADLs on in-home assessment and that her decision to not explain the broader implications of the assessment later operated to frustrate the Appellant 's proofs during the fair hearing process.

While the assessment and testimony of the ASW is generally afforded significant weight by this reviewer – in this instance the ASW first based her decision to terminate on her admission that she knew what the what the outcome might be³ – thus, an incomplete observation of the Appellant.

The Appellant has preponderated his burden of proof to establish that the Department erred in its assessment – the comprehensive assessment was incomplete.

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.

³ See testimony of ASW; "...knowing what the outcome might be... for purposes of eligibility "

[REDACTED]
Docket No. 2012-22416 HHS
Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

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

cc:

[REDACTED]

Date Mailed: _____5-4-12_____

***** 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.