

**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. 2012-25269 HHS

██████████

██████████

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 ██████████. The Appellant appeared without representation. Her witness was her choreprovider, ██████████ ██████████ Appeals Review Officer, represented the Department. Her witnesses were: ██████████ ██████████, ASW and ██████████, ASW supervisor.

ISSUE

Did the Department properly terminate the 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. The Appellant is a ██████ year-old Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with "end stage renal disease" she undergoes therapeutic dialysis 3 times a week. (See Testimony and Departments Exhibit A, page 10)
3. The Appellant alleged in her petition that her home visit was conducted on a day when she was ill owing to the after effects of dialysis. (Appellant's Exhibit #1)
4. The Appellant testified at hearing that she could not honestly remember if the home visit took place on a dialysis day – or not, but that she generally feels worse the day after. (See Testimony)

5. The Department's witness (ASW Smith-Robinson) testified that she believed the Appellant was seated during her assessment and that she did not move around her in her environment. (See Testimony)
6. The ASW conducted the in-home assessment/annual review of the Appellant on ██████████ – ██████████. (See Testimony and Department's Exhibit A, at pp. 5 and 9)
7. The Appellant has been receiving Home Help Services since at least ██████████ (Department's Exhibit A, p. 9)
8. The Appellant was advised of the termination of HHS by Advance Negative Action notice on ██████████, to be effective ██████████. (Department's Exhibit A, pp. 2, 5)
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 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 she did not identify a need for personal care services. She explained policy developments and advised the Appellant that she would be terminated from the Home Help program for lack of need with hands on assistance with her ADLs.

At hearing the Appellant explained that she wasn't feeling well on the date of the assessment – a result of her dialysis and that she generally had not needed assistance with personal care except for transferring - which she did not understand to be an ADL. See Testimony

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.

On review, based on the testimony of the ASW who said that she did not observe the Appellant move around during her in home assessment – but that she recalled the Appellant remained seated and based on the credible testimony of the Appellant I find that the Appellant has preponderated her burden of proof that she required at least one ADL – that of Transferring. This ADL should have been identified and added to the Appellant's existing chore services and her HHS continued.

The Appellant is reminded that it is her ongoing duty to advise the ASW of recent medical developments or changes in medical condition both for assessment and reassessment.

On review, although not required, the Department's case was marred by the omission of the DHS-54A. Absent production of the DHS-54A the ALJ's ability to test the weight of the assessment is greatly reduced. It was unknown at hearing if her physician certified a need for assistance with transferring or mobility – for instance.

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Docket No. 2012-25269 HHS
Decision and Order

It is the province of the ASW to determine continued eligibility for services. The ASM requires an in-home assessment of prospective and existing HHS recipients. While the assessment of the ASW is generally afforded significant weight on review – in this instance the ASW first based her decision to terminate on her incomplete observation of the Appellant in her home environment – where she did not demonstrate ability to transfer. Absent medical evidence to the contrary I believe this assessment merits reversal and reassessment.

The Appellant has preponderated her burden of proof to establish that the Department erred in its assessment that the Appellant did not require any assistance with her ADLs. Thus, the ASW's determination failed for lack of support against the otherwise credible testimony of the Appellant.

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.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

IT IS FURTHER ORDERED that:


The Department shall reinstate the Appellant's HHS with the addition of the ADL of Transferring.

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

cc:

[REDACTED]

Date Mailed: _____ 4-18-12 _____


Docket No. 2012-25269 HHS
Decision and Order

***** 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.