

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-35520 HHS

Case No. ██████████

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 was present and testified. He was represented by ██████████ CMH case manager. ██████████ Appeals Review officer, represented the Department. Her witness was ██████████.

PRELIMINARY MATTER

At hearing the Appellant offered ██████████ medical documents prepared in ██████████. The admission of these documents was taken under advisement. On review, the exhibit is not admitted for lack of relevance as the in-home assessment took place in early January.

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 ██████████ Medicaid beneficiary. ██████████
2. The Appellant is afflicted with "schizo-affective disorder, obesity, Bi-polar disorder and depression." ██████████
██████████

3. The Appellant alleged in his petition that he cannot bathe, cook, clean or groom himself. He added that he has recently lost 75-pounds. [REDACTED]
[REDACTED]
4. The Appellant testified at hearing that he did not tell the truth about his frequency of showering because he was afraid someone would “take [him] away to Kalamazoo and lock [him] up.” [REDACTED]
5. The Department’s witness [REDACTED] testified that she observed no adaptive equipment, unsteady gait or guarded movement in the Appellant during the course of her comprehensive assessment. [REDACTED]
[REDACTED]
6. The ASW acknowledged that the termination date was posted retroactively in error and that it should have read [REDACTED]
[REDACTED]
7. The Appellant’s representative said that because of the retroactive termination they were unable to gather medical evidence in time for the hearing. [REDACTED]
8. The Appellant was advised of the effective termination date of HHS by Advance Negative Action notice on [REDACTED] following the in-home assessment conducted on [REDACTED]
[REDACTED]
9. The request for hearing on the instant appeal was received by the Michigan Administrative Hearing System on [REDACTED]
[REDACTED]

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 he 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 he was fearful of being removed from the community and that he likes to have some standing by [in the shower area] to assist – if necessary.

His representative made the point that the Appellant had lost 75 pounds, in large part, owing to the supervised IADL of meal preparation and that the Appellant may have overstated his ability on in-home assessment. 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.

The ASW said that she did not observe any physical inability in the Appellant to perform his ADLs. This ameliorates against any perception that he might have exaggerated his abilities on assessment.

By losing 75 pounds, [a great accomplishment] the Appellant is now a victim of his own success. If he believes, somehow, that this has resulted in a demonstrable change in condition he should advise his ASW immediately and seek reassessment. To this end although the Appellant was, I believe, competently represented by ██████████ – the Department should reinstate his Home Help Services for the ten-day period they were inadvertently discontinued.

The Appellant is reminded that it is his duty to advise the ASW on medical developments or changes in condition.

On review, the ASM requires an in-home assessment of prospective and existing HHS recipients. The observations of the ASW are generally afforded significant weight on review by the ALJ absent credible, contradictory evidence. I thought the Appellant's assessment was properly drawn by the ASW on [REDACTED], although the 10-day notice was posted in error.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED** in part and **REVERSED** in part.

IT IS FURTHER ORDERED that:

The Department shall reinstate the Appellant's HHS for the improperly noticed 10-day period.

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

cc:

[REDACTED]

Date Mailed: 5-21-2012

***** 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.