

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. 2012-21759 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 appeared without representation. He had no witnesses. ██████████, R.N., Appeals Review Officer, represented the Department. Her witnesses were ██████████, ASW Supervisor and ██████████, ASW.

PRELIMINARY MATTER

The admission of the Appellant's Exhibit #2 was taken under advisement at hearing. The document is hereby admitted but afforded little weight as there was no dispute that the Appellant was disabled.

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 disabled ██████-year old Medicaid beneficiary. (Appellant's Exhibit #1)
- 2) The Appellant alleges disability through anxiety, HTN, depression, bulging discs in his back, COPD, osteopenia and "something new." (See Department's Exhibit A, page 11 and See Testimony of Appellant)

- 3) The Department's representative said that the Appellant needs no assistance with ADLs based on her observations during their face to face in home assessment conducted on ██████████. Absent a need for ADL service she explained that owing to new policy he would be terminated from the HHS program. (Department's Exhibit A, pages 2 and 5)
- 4) The Appellant said that on assessment day he was on a new pain medication – and consequently might have demonstrated better physical movement than actually existed. He said he has assistive devices stored at various locations throughout his residence. (See Testimony of Appellant)
- 5) On ██████████, the ASW sent the Appellant an Adequate Negative Action Notice informing him that services would be terminated on December 30, 2011. (Department's Exhibit A, page 2 and 5)
- 6) The Appellant's further appeal rights were contained in the Advance Negative Action Notice.
- 7) The Appellant's petition for hearing was received by the Michigan Administrative Hearings 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.

....

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 on in-home assessment she observed the Appellant had no need for ADL assistance. 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. She added that even though the Appellant had demonstrated a need for ADLs in the past - based on her most recent assessment those services were no longer necessary.

At hearing the Appellant explained that he was on a new pain medication – Lortab – which might have allowed him to present as more mobile and agile than reality would demonstrate. He said he “...is a mess” – and has difficulty walking and has been falling down a lot recently. He said he explained to the ASW that he had a recent medical examination and was awaiting the result. Indeed, a new medical needs form shows a heretofore undisclosed diagnosis of Parkinson’s. The Appellant acknowledged that he gets some assistance from CMH, but that he needs help getting into and out of the bath.

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 Appellant failed to preponderate his burden of proof that the Department erred in terminating his HHS, because at the time of assessment he demonstrated no need for assistance in the eyes of the ASW. It would appear, based on the testimony and the evidence that the Appellant has some newly acquired affliction¹ which may or may not merit reassessment. He should advise his ASW of this change in condition and seek reassessment as necessary.

Furthermore, it is unclear whether the ASW complied with advising the Appellant of his payment options pending receipt of this decision. The ASW is reminded that both ASM 150 and the new interim policy require forewarning of the Appellant regarding payment and recoupment when the Appellant timely appeals to the Michigan Administrative Hearing System.

¹ Believed to be Parkinsons.

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Since the Appellant, by virtue of this assessment, has now exhausted his available services under the HHS program it is incumbent on the ASW to advocate for the Appellant in receiving CMH sponsored Community Living Supports (CLS) to address the needs articulated by the Appellant at hearing. [ASM 125, Coordination With Other Services, pp. 1, 2 of 10, November 1, 2011]

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**.

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

cc:



Date Mailed: 3/16/2012

***** 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.