

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. 2012-27862 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 ██████████ 2. The Appellant appeared, represented himself and testified. ██████████ represented the Department of Community Health (Department). ██████████ testified for the Department. ██████████, Adult Services Supervisor, testified for the Department the Appellant's Home Help Services provider agency owner Renee Foster testified for the Appellant.

ISSUE

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

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 who resides alone in his rented Detroit, Michigan home.
2. Emmanuel House, Inc. owns the Appellant's rental home. The Appellant leases the home from Emmanuel House.
3. Emmanuel House is the Appellant's approved HHS provider agency.
4. On ██████████ ██████████, Inc. executed a contract with ██████████ ██████████ to provide Medicaid funded personal care services to the Appellant.

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5. The Appellant has been diagnosed with chronic pain, prostate cancer, COPD and congestive heart failure. The Appellant is wheelchair bound, has a super pubic catheter and a feeding tube.
6. The Appellant was approved for and is receiving ██████████ per month of Home Help Services (HHS) for assistance with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs), of bathing, grooming, dressing, toileting, mobility, housework, laundry, shopping, and meal preparation.
7. On ██████████, the Appellant's Adult Services Worker, Robert Boyer, was informed by his supervisor Diane Stewart Solomon, that the Appellant was residing in an unlicensed adult foster care home and that HHS could not be authorized.
8. On ██████████ sent the Appellant an Advance Action Notice which informed the Appellant that effective ██████████, the Appellant's HHS would be terminated.
9. 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.

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

The Department of Community Health HHS Medicaid policy is found in the Department of Human Services Adult Services Manual (ASM) at ASM 100- 170. The Department of Human Services issued Interim Policy Bulletin ASB 2011-001 with an effective date of October 1, 2011. This Interim Policy limits HHS eligibility for Medicaid beneficiaries with a medical need for assistance with one or more ADLs at a ranking of 3 or higher. On January 1, 2012, the Department of Human Services issued Adult Services Manual 120 which incorporated the provisions of Interim Policy Bulletin ASB 2011-001.

ASM 120, page 1-3 provides that HHS policy for comprehensive assessments. ASM 120 provides in pertinent part:

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

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.
 - Use the DHS-27, Authorization To Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services cases; see SRM 131, Confidentiality.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services payment. Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking Medication.
- Meal preparation and cleanup.
- Shopping.
- Laundry.
- Light housework

Functional Scale

ADLs and IADLs are assessed according to the following five point scale:

1. Independent.
Performs the activity safely with no human assistance.
2. Verbal assistance.
Performs the activity with verbal assistance such as reminding, guiding or encouraging.
3. Some human assistance.
Performs the activity with some direct physical assistance and/or assistive technology.

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4. Much human assistance.
Performs the activity with a great deal of human assistance and/or assistive technology.
5. Dependent.
Does not perform the activity

Home help payments may only be authorized for needs assessed at the level 3 ranking or greater. An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

ASM 120

The evidence presented shows that there is no dispute that the Appellant has a medical needs for ██████████ per month of Home Help Services (HHS) for assistance with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs), of bathing, grooming, dressing, toileting, mobility, housework, laundry, shopping, and meal preparation. The undisputed evidence shows that the Appellant leases his home from ██████████ is the Appellant's HHS provider agency. Also there is no dispute that Appellant's leased home is not licensed as an Adult Foster Care Home by the Department of Human Services.

██████████ the Appellant's Adult Services Worker testified that on ██████████ he was informed by his supervisor, ██████████, that the Appellant was residing in a home leased to him by ██████████ was the Appellant's approved HHS provider agency. ██████████ testified that DHS policy does not permit the authorization of HHS payments for beneficiaries who are renting housing owned by the HHS provider agency providing HHS to the beneficiary.

██████████ testified that the Appellant's rental home is an unlicensed home leased to the Appellant by the ██████████ ██████████ also testified that ██████████ is the Appellant's approved HHS provider agency. Finally ██████████ testified that DHS policy ██████████ allows HHS payments for Supported Independent Living settings such as the Appellants when the leasehold is owned by some person other than the HHS provider. ██████████ testified that the Appellant has a medical need for HHS and HHS may be authorized if the Appellant

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selects a HHS provider other than Emmanuel House and the provider is approved by DHS staff. DHS policy at ASM 125 provides in pertinent part:

Many clients are eligible for home help services while also receiving mental health services through the local community mental health services programs (CMHSPs) or prepaid inpatient health plans (PIHPs).

Clients who live in unlicensed settings where home help services may be provided, include:

- Own home/apartment, either living alone or with roommates or relatives. Client's name is on the lease or mortgage.
- Home of a family member.
- Supported independent setting (formerly called SIP homes). The lease is held by an individual that is **not** also the provider of other services such as home help.

Adult Services Manual 125 p 1.

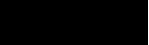
The Appellant testified that he needs assistance with his ADLs and IADLs and is satisfied with the care he is receiving from the Emmanuel House and from his provider Ms. Williams. The Appellant testified that he does not understand why HHS cannot be authorized.

The Appellant's lessor and HHS provider agency representative, ██████████, testified for ██████████. ██████████ testified that ██████████ was cleared by DHS licensing staff to operate without an Adult Foster Care license and that ██████████ is a contractor and not an employee of ██████████. ██████████ confirmed that ██████████ owns and is leasing the home to the Appellant and that E ██████████ is the Appellant's approved HHS provider agency. ██████████ testified that she does not feel that the Appellant's HHS services should be terminated.

In response to the Appellant's testimony, ██████████ testified that the Appellant has a medical need for HHS but HHS cannot be authorized when the Appellant is leasing his home and receiving HHS from the same person. ██████████ testified that the Appellant may select a non ██████████ HHS provider and if the provider is approved the Appellant's HHS services could be authorized.

The evidence presented shows that the Appellant has a medical need for HHS services and that HHS services were terminated because the Appellant's lessor and HHS provider are the same person. The undisputed evidence shows that ██████████ is both the Appellant's lessor and his HHS provider and shows that DHS policy prohibits the authorization of HHS under these circumstances.


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Therefore, based on evidence presented I find that  correctly applied HHS policy and properly terminated the Appellant's HHS.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly terminated the Appellant's Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Martin D. Snider
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: ____4-26-12_____

***** 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 March 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.