

**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:

Docket No. 2012-34259 HHS
Case No. [REDACTED]

[REDACTED]

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 [REDACTED]. The record was left open until [REDACTED] to accommodate receipt of exhibits. [REDACTED] appeared on the Appellant's behalf. He appointed [REDACTED] to represent the Appellant. She had no witnesses. [REDACTED] represented the Department. Her witnesses were [REDACTED].

ISSUE

Did the Department properly terminate Home Help Services payments to the Appellant?

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 [REDACTED] Medicaid beneficiary who was receiving [REDACTED] (Department's Exhibit A, pp. 2 and 5)
2. The Appellant is a person diagnosed with a closed head injury, MS, CP complex seizure disorder and bipolar disorder. He lives with his family, consisting of his [REDACTED], [REDACTED]. (Department's Exhibit A, p. 35 and 42)
3. On [REDACTED] [in response to ALJ [REDACTED] order issued [REDACTED] the Department conducted an in-home assessment. (See Testimony and Department's Exhibit A, p. 35)

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4. As of the date of in-home assessment there was no evidence that the Appellant was enrolled in MI Choice. (See Testimony)
5. Community Living Services (CLS) workers are present in the home. (See Testimony)
6. The Appellant and family were found to be uncooperative. The ASW determined that the Appellant needed no assistance with any ADL – even though she observed and noted a tremor in his right hand. (Department’s Exhibit A, pp. 2 and 37)
7. The ASW reported and testified that the Appellant refused to show his room and that the home was generally “...unclean and cluttered and smelled bad.” (See Testimony and Department’s Exhibit A, pp. 2 and 36)
8. The Appellant said his [REDACTED] “...did nothing for him.” (See Testimony of [REDACTED])
9. On [REDACTED] the Department issued an Advance Negative Action Notice to the Appellant indicating that his Home Help Services payments would terminate effective [REDACTED], for lack of demonstrating a need for any ADL with a ranking of (3) three or greater. (Department’s Exhibit A, pp. 2 and 30)
10. The Appellant’s further appeal rights were contained in the Advance Negative Action Notice.
11. On [REDACTED] the instant appeal was received by the Michigan [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 physician and may be provided by individuals or by private or public agencies.

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.

Furthermore, the Medicaid Provider Manual (MPM) and the Adult Service Manual (ASM) directs the CMH, DHS and service users with the following criteria regarding CLS and coordination of services:

Community Living Supports (CLS)

Community Living Supports are used to increase or maintain personal self-sufficiency, facilitating an individual's

achievement of his goals of community inclusion and participation, independence or productivity. The supports may be provided in the participant's residence or in community settings (including, but not limited to, libraries, city pools, camps, etc.).

Coverage includes:

- Assisting, reminding, observing, guiding and/or training in the following activities:
 - meal preparation
 - laundry
 - routine, seasonal, and heavy household care and maintenance
 - activities of daily living (e.g., bathing, eating, dressing, personal hygiene)
 - shopping for food and other necessities of daily living

CLS services may not supplant state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance appears to be needed, the beneficiary must request Home Help and, if necessary, Expanded Home Help from the Department of Human Services (DHS). CLS may be used for those activities while the beneficiary awaits determination by DHS of the amount, scope and duration of Home Help or Expanded Home Help. If the beneficiary requests it, the PIHP case manager or supports coordinator must assist him/her in requesting Home Help or in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the findings of the DHS assessment.

. . . . [Omitted by ALJ]

CLS assistance with meal preparation, laundry, routine household care and maintenance, activities of daily living and/or shopping may be used to complement Home Help or Expanded Home Help services when the individual's needs for this assistance have been officially determined to exceed DHS's allowable parameters. CLS may also be used for those activities while the beneficiary awaits the decision from the Fair Hearing of the appeal of a DHS decision. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help or Expanded Home Help. (Emphasis supplied)

MPM, Mental Health [], April 1, 2012, pp. 108-109

COORDINATION [] PARTNERSHIPS:

The adult services specialist has a critical role in developing and maintaining partnerships with community resources.

To facilitate these partnerships the adult services specialist will:

- Advocate for programs to address the needs of clients.
- Emphasize client choice and quality outcomes.
- Encourage access and availability of supportive services.

Work cooperatively with other agencies to ensure effective coordination of services.

Coordinate available resources with home help services in developing a services plan that addresses the full range of client needs.

Do **not** authorize home help services if another resource is providing the same service at the same time.

ASM §125, Coordination... November 1, 2011, page 1 of 10.

The Department witness testified that she believed the Appellant's environment was "not clean, it was cluttered and smelled bad." When she spoke to the Appellant he said his ██████████ "did nothing for him." The ASW was not allowed entry into the Appellant's room and she testified about observed anger issues in the home.¹

¹ It is a fair observation that the parties have litigated many times.

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All the ASW could conclude based her abbreviated visit - was that the [REDACTED] [REDACTED] was providing supervision services. That is a level of service not covered under the Home Help program.

Clearly, the comprehensive assessment did not occur. Policy mandates completion of the comprehensive assessment – “as often as necessary.” *Supra*.

- If worker safety is a concern it is axiomatic that when such issues are present - it is the employer’s duty to provide safe passage for their worker.
- If the environment is unhygienic or an exploitive environment presents in relation to a protected adult – it is the ASW’s duty to report the suspected misconduct to the authorities, Adult Protective Services. ASM 205

The Appellant’s representative said she provides many hands-on services including; toileting, inserting twice daily suppositories, cleaning up feces, bathing and dressing her son - including the administration of many medications. The Appellant’s representative said that she did not inform the ASW of any of these hands-on services - “...because they left.”

On review, although important, the issue before this ALJ is not whether the Appellant requires a more restrictive environment, but whether his environment is hygienic and the home help chores are being provided – as billed.

Avoidance of duplicated service in an important goal – but completion of the comprehensive assessment is the threshold event from which all evaluations are based. A decision to terminate HHS benefits for lack of demonstrating a need for an ADL with a ranking of 3 or greater cannot be reached without it.

The worker is required to perform a face-to-face comprehensive assessment in the Appellant’s home when needed or at specified intervals.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department failed to provide a comprehensive assessment of the Appellant.

IT IS THEREFORE ORDERED that:

The Department’s decision is REVERSED.


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IT IS FURTHER ORDERED that:

The Department shall reinstate HHS benefits and then conduct a Comprehensive Assessment pursuant to ASM 120.

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

cc:



Date Mailed: _____

***** NOTICE *****

The Michigan Administrative Hearing System 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 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.