

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 2013-25389 HHS

██████████

██████████

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 on ██████████ ██████████. The Appellant appeared and was represented by ██████████. Her witness was ██████████ choreprovider. The Department was represented by ██████████ Appeals Review Officer. Her witness was ██████████, ASW.

ISSUE

Did the Department properly deny the Appellant's request for 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-SSI beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with; fibromyalgia, right elbow pain, lumbar radiculopathy, knee arthritis, cervical spondylosis, bilateral CTS, migraines, TMJ, tinnitus, complaints of swallowing difficulty and chronic low back pain. (See Testimony and Department's Exhibit A, pp. 6, 7, 10 and 13)
3. The Appellant said that she takes many pain medications every day and has good days and bad days. Some days, she explained, it is difficult to open a pop bottle or get into the shower – on another day - it is not so difficult. Her representative believes that the assessment took place on a "good day." (See Testimony)
4. The Appellant testified that she has deteriorated rapidly between ██████████

██████████ and “now.”¹ (See Testimony)

5. She references ██████████ and ██████████ treatment assessments for supporting evidence of her declining condition. (Department’s Exhibit A, pp. 6, 7)
6. The Department witness testified that she made contact with the Appellant on ██████████ for the above referenced in-home assessment. While there, the Appellant did not demonstrate a need for hands-on services for any ADL at a ranking of 3 or greater. (See Testimony and Department’s Exhibit A –throughout)
7. The Department witness, ASW ██████████, sent the Appellant an Adequate Negative Action Notice (DHS 1212-A) on ██████████ “denying” services. (Department’s Exhibit A, pages 2 and 8)
8. The Appellant’s further appeal rights were contained therein.
9. The request for hearing on the instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████

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:

¹ The date of hearing is ██████████

- 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 5, 5-1-2012.

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 with a ranking of 3 or greater – including the ADLs grooming and bathing.² The Department's witness, ASW Mills, explained policy developments and advised the Appellant that she would be denied the Home Help Program for lack of demonstrated need with hands-on assistance with any ADL.

The Appellant testified that she needs help because of the adverse and severe reaction to fibromyalgia and unrelated pain issues. She is concerned because she does not see herself improving and in fact has had erosion of symptoms post assessment. Her witness verified the difficulty she has raising her hands over her head, brushing her hair and now - a tendency to fall.

Much of the Appellant's evidence touched upon increased symptomology. Fibromyalgia is a slippery diagnosis. The severe symptoms can come and go - so I found the testimony that the Appellant was assessed on a "good day" to be credible. Yet, even the Appellant's medical evidence did not support hands-on assistance with any ADL.

The ALJ understands the significance of the Appellant's pain pallet – something needs to be done and the Appellant seems to be approaching her dilemma with appropriate medical interventions. Even so, the HHS program has as its threshold requirement the demonstration of need for hands-on assistance with at least one activity of daily living with a ranking of three (3) or greater. The Appellant did not demonstrate such need on the date of in-home assessment.

Based on the Appellant's testimony she implies a recent and significant change in condition by way of additional diagnoses. This information should be presented to her ASW for consideration of reassessment based on a change of condition theory.

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.

While the pain complaint is troublesome, without equitable powers the ALJ has no authority to alter HHS policy and observes that the *Interim Policy* adopted in ██████████ of ██████████ makes no exception for the provision of HHS - absent satisfaction of the ADL requirement at a ranking of 3 or greater.

² However, the Appellant was ranked at a level 2 for both of these ADLs.

The Appellant failed to preponderate her burden of proof that the Department erred in denying her HHS, because at the time of assessment she demonstrated no physical need for assistance.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's HHS. At the time of the assessment the Appellant did not demonstrate need for hands-on assistance with any ADL at a ranking of (3) three or greater.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.


/s/

Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

DM/skb

cc:



Date Signed: 

Date Mailed: 

***** NOTICE *****

The Michigan Administrative Hearings 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 Hearings 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.