

**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) 373-4147

IN THE MATTER OF:

██████████,

Appellant

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Docket No. 2013-10916 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 and was represented by ██████████, CMH casemanager. His witnesses were ██████████, choreprovider and ██████████, choreprovider. ██████████, Appeals Review Officer, represented the Department. Her witness was ██████████, ASW.

The Appellant is deaf. The interpreter for this hearing was ██████████, Interpreter Network.

**PRELIMINARY MATTER**

The initial petition in this matter was scheduled for hearing on ██████████. Upon the Appellant's representation that his guardian was neither present nor notified of the hearing- the matter was rescheduled and subsequently discovered that the Appellant was his own guardian. The instant matter was set for hearing on ██████████ – his CMH witness now appearing as his representative.

**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. At the time of hearing the Appellant is a ██████-year old Medicaid-SSI beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with sensorineural hearing loss, DD, emotional lability – he is hydrocephalic. (Department's Exhibit A, p. 11)

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3. On [REDACTED], the ASW conducted an in-home assessment for the Appellant that led to a termination of services effective [REDACTED]. (Department's Exhibit A, pp. 2 and 5)
4. On [REDACTED] the ASW sent the Appellant an advance negative action notice informing him that HHS would be terminated for failure to demonstrate need for hands-on care with at least one activity of daily living (ADL) with a ranking of three (3) or greater. (Department's Exhibit A, pp. 2, 5-7)
5. The Appellant's further appeal rights were contained therein.
6. The appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED]. (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.

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Adult Service Manual (ASM), §120, page 1 of 5, 5-1-2012.

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### **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.

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#### **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.

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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.

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Adult Service Bulletin (ASB) 2011-001;  
*Interim Policy Bulletin Independent Living Services (ILS)*  
Eligibility Criteria, pp. 1–3, October 1, 2011

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The Department witness testified that she terminated the Appellant's HHS based on her observations during the in-home assessment conducted on ██████████. She testified that the Appellant, his providers and an interpreter were present for the assessment. She opined that the Appellant, on the date of in-home assessment, was responsive, required no adaptive equipment and did not request the addition of any previously unaddressed ADL.

She testified that with the exception of dressing the Appellant was ranked at a "level one (1) – no assistance required." She ranked dressing a level two (2) "...able to dress self, but requires reminding or direction in clothing selection."

The Appellant's representative disputed the termination of HHS and the rankings assigned to the ADLs and the IADLs. He said his "general sense was that essential questions" were not asked and that the Appellant required hands-on assistance for the areas described by his witnesses.

On review of the testimony provided by the Appellant's witnesses [choreproviders King and Fear] the only ADL or IADL suggesting a higher level of care was the IADL of laundry<sup>1</sup> and the ADL of mobility – for negotiating of stairs.

The ASW testified, however, that the issue of "stairs" was never broached by the Appellant or his providers during the in-home assessment and that based on her observations of his movement during the assessment she concluded that he had no issue with either mobility or transferring.

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<sup>1</sup> Not a threshold qualifier for HHS.

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The Appellant's witness testified in opposition stating that he needs help with stairs because "he walks very slowly and looks afraid" when negotiating stairs. They added that there were 15 stairs in the home – but there was no evidence that he required hands-on assistance to use the stairs at the time of the assessment.

Furthermore, there was no evidence to suggest a change in condition or a recent deterioration of the Appellant's physical condition to *now* require hands-on assistance with the ADL of mobility or transferring.

As for the non-threshold qualifier of the IADL of laundry – the Appellant's witnesses testified that the Appellant needed hands-on assistance with this chore because of his "bad memory" and a "bad back." Witness King said when he bends over the washing machine and his back hurts "...that's when I take over."

The remainder of the Appellant's case centered on the necessary technology in the Appellant's home to augment his impaired hearing and related disability issues and that these tasks require maintenance by the choreproviders – because it is too time consuming to talk the Appellant through the technical chores – like changing batteries; operating volume switches, sterilizing durable medical equipment or preparing nutritionally balanced meals, etc.

The following item[s] summarizes the ADL/IADL rankings assigned to the Appellant on in home assessment:

- Bathing\* was properly ranked at a level "1."
- Grooming\* was properly ranked at a "level #1."
- Dressing\* was properly ranked a "level 2."
- Toileting\* was properly ranked at a "level 1."
- Transferring\* was properly ranked at a "level 1."
- Continence was properly ranked at a "level 1"
- Eating\* was properly ranked at a "level 1."
- Respiration was properly ranked at a "level 1."
- Mobility\* was properly ranked at a "level 1."
- Medication was properly ranked at a "level 2."
- House work was properly ranked at a "level 4."
- Laundry was properly ranked at a "level 5."
- Shopping was properly ranked at a "level 4."
- Meal preparation was properly ranked at a "level 3." Note: [\* indicates ADL]

Unfortunately for the Appellant none of these items [activities of daily living] suffice to qualify the Appellant at a ranking of three "3" or greater – even though several of his IADLs rank at level 3, 4 or 5.

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To qualify for HHS – the Appellant must establish eligibility or ongoing need with a threshold ADL qualifier [with a ranking of three “3” or greater] with at least one ADL; eating, toileting, bathing, grooming, dressing, transferring or mobility.

Based on the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was adequate. The ASW said that the Appellant appeared to be responsive and without physical limitations or a need for assistive devices.

It is the province of the ASW to determine eligibility for services; the ASM requires an in-home 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.

Since the Appellant 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 monitoring and supervision needs articulated by the Appellant’s choreproviders at hearing. [ASM 125, Coordination With Other Services, pp. 1, 2 of 10, November 1, 2011]

The Appellant’s objections as to inadequate rankings for activities of daily living were noted – but would require additional medical support or evidence of some significant change in condition to merit reassessment – outside of stated intervals.<sup>2</sup>

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 with an ADL with a ranking of “3” or greater.

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<sup>2</sup> As always – if there are new developments it is incumbent on the Appellant to contact the ASW for reassessment - as the comprehensive assessment must be completed at six month and annual intervals or “as often as necessary.” ASM 120.

**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**.

/s/ \_\_\_\_\_

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

[REDACTED]  
cc: [REDACTED]

Date Signed: 9/18/2013

Date Mailed: 9/18/2013

**\*\*\* 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.