

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

Docket No. 2013-17383 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. Her witness was ██████████, Appeals Review Officer, represented the Department. His witness was ██████████, ASW.

PRELIMINARY MATTER

At hearing the Appellant brought additional evidence; Appellant's Exhibit 2 (DHS-54A) Medical Needs forms dated ██████████ and ██████████. Since the Department relied on these forms in the production of its assessment and negative action they were admitted on fax receipt.

On review, post hearing, they carried little weight in support of the Appellant.

ISSUE

Did the Department properly deny the Appellant's HHS for lack of demonstrating need for an ADL with a ranking of three (3) or greater?

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 beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with; postpartum cardiomyopathy, back spasms, LBP, headache, dizziness, and depression. (See Testimony and Department's Exhibit A, page 9 through 13)

3. The Appellant said that she is experiencing dizziness [post assessment] and that she ran out of oxygen. Her witness said that she helps her with showering and dressing and that her niece "...has good days and bad days – but that she is there for her." (See Testimony)
4. The Appellant's witness also testified that the Appellant suffers from depression – so she takes her shopping. (See Testimony)
5. The Department's witness testified that although the Appellant's pain specialist suggested assistance with the ADL of dressing - she observed the Appellant and concluded based on her observation and the comment of the Appellant that she then had no need for hands-on assistance¹ with the ADL of dressing. (See Testimony of ██████████ and Department's Exhibit A, page 10)
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 identify 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 Ferguson, sent the Appellant an Adequate Negative Action Notice (DHS 1212-A) on ██████████, "denying" services effective ██████████. (Department's Exhibit A, pages 2 and 5)
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.

¹ She added that the Appellant, on ██████████, simply required extra time to get dressed – owing to SOB. See Testimony of Ferguson.

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.

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 ADL of dressing. The Department's witness, ASW Ferguson, explained policy developments and advised the Appellant and her choreprovider that she would be terminated from the Home Help Program for lack of demonstrated need with hands-on assistance with any ADL.

While the Appellant's witness testified in support of the idea that the Appellant had "good days and bad days..." at the time of the assessment the credible observations of the ASW and her evidence was found to be controlling by the Administrative Law Judge – based on this record.

The Appellant's testimony suggests that there has been a post assessment change in condition that has resulted in the previously undisclosed afflictions of "dizziness and depression." If these are indeed new symptoms the Appellant should seek medical attention and inform her ASW on these developments.

At hearing, the Appellant's witness explained that she was "there for her..." and that she helped a lot with "...dressing" the Appellant.

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 ASW found her to not rank at a level 3 or greater for the ADL of dressing – although the Appellant's physician thought otherwise. Absent error the ASW's face-to-face assessment is controlling on comprehensive assessment.

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.²

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**.

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

cc:

[REDACTED]

Date Mailed: 3/6/2013

***** 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.

² Since the Appellant, post assessment, has new evidence of an apparent change in condition she should report that development to the ASW for consideration of a reassessment. See Appellant's Exhibit 2 and Testimony of [REDACTED].