

**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. 2013-35604 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 Tuesday July 23, 2013. Attorney, ██████████ ██████████ appeared on behalf of the Appellant, who was present and testified. Her witness was her daughter, ██████████ ██████████, R.N., Appeals Review Officer, represented the Department. Her witness was ██████████ ASW and ██████████ ASW, supervisor.

**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. The Appellant is a ██████-year-old Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant alleges disability through bipolar disorder, ADHD, HTN, CTS, and pain. (See Testimony, Appellant's Exhibit #1, Department's Exhibit A, page 11 and Joint Exhibit B)
3. The Department's witness, ASW ██████████, testified that she observed the Appellant and that she did not appear to need assistance with any ADL. She further reported that the Appellant used a wrist brace on occasion but was otherwise independent in the provision of her ADLs. (See Testimony and Department's Exhibit A, p. 12)
4. The Department witness testified that she made contact with the Appellant on ██████████, for an in-home assessment. While there, the Appellant did not identify a need for hands-on services for any ADL. She reported that she did all of her own ADLs. (See Testimony of ██████████, Department's Exhibit A, pages 2, 16 and 17)

5. The Department witness sent the Appellant an Advance Negative Action Notice on ██████████, terminating services effective ██████████. (Department's Exhibit A, pp. 2, 12)
6. The Appellant's further appeal rights were contained in the Advance Negative Action Notice.
7. The request for hearing on the instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████. (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.

....

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

\*\*\*

██████████  
**Docket No. 2013-35604 HHS**  
**Hearing Decision & Order**

The Department witness testified that on in-home assessment she observed the Appellant had no need for ADL assistance – although she might have needed assistance with bathing in the past owing to a seizure condition. The ASW testified that the Appellant reported her independence with all activities of daily living. The ASW’s observations on comprehensive assessment confirmed the Appellant’s statement.

She explained policy developments and advised the Appellant that she would be terminated from the Home Help Services program for failing to meet the threshold requirement of demonstrating need with hands-on assistance for ADLs at a ranking of three “3” or greater.

The Appellant explained that the ASW “knew” historically that she had wrist problems following CTS surgery in ██████████. At hearing she explained that her hands did not work properly, she lacked grip and overhead function and suffered with severe referred pain owing to the negative sequela of her CTS surgery.<sup>1</sup> She said that she needed help washing her hair, grooming, dressing and bathing – items heretofore not addressed by HHS. The Appellant said she is treated for bipolar disorder, ADHD and manic depression – conditions which she believes to aggravate her physical complaints [pain] leading to her summation of “...good days and bad days.”

Her daughter’s testimony was cumulative to the Appellant’s for explanation of ADL needs, but she added that her mother’s present condition was aggravated following the termination of services – because “...she [her mother] tried to do too much.” She added that the Appellant’s former choreprovider did assist the Appellant with bathing – a chore she observed when she would come to visit her mother.

At hearing, there was no medical evidence by way of relevant DHS 54A medical needs form certifying a need for hands-on assistance with any ADL, except for the post assessment certification by ██████████ who, a year earlier, only referenced bathing owing to a seizure history. The DHS 54A medical needs forms submitted by ██████████ failed to certify any need for assistance in ██████████. [See Joint Exhibit B – throughout].

At the time of assessment, the Appellant failed to demonstrate a need for home help services by demonstrating a need for any activity of daily living (ADL) with a ranking of three (3) or greater.

Irrespective of the Appellant’s reported need for IADLs [laundry, meal preparation, shopping, etc.] the ALJ has no authority to award or continue HHS benefits unless the threshold ADL requirement is met. In this case the evidence preponderates that this threshold requirement was not met during the comprehensive assessment.

At hearing the Appellant’s counsel made a persuasive argument for a recent aggravation of a previously quiescent medical condition [CTS] that could merit some attention on a new referral. However, today the Appellant failed to preponderate her

---

<sup>1</sup> A change in condition should be brought to the attention of the ASW.

**Docket No. 2013-35604 HHS**  
**Hearing Decision & Order**

burden of proof that the Department erred in terminating her HHS for lack of establishing continued eligibility on [REDACTED] by way of demonstrating a need for hands-on care for an ADL with a ranking of three "3" or greater.

On review, it is the province of the ASW to determine continued 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 Appellant failed to demonstrate such need.

The Appellant failed to preponderate her burden of proof that the Department erred in terminating her HHS, because at the time of assessment she demonstrated no inability to perform her ADLs.

**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.

ls\ \_\_\_\_\_

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

cc: [REDACTED]

Date Signed: August 20, 2013

Date Mailed: August 20, 2013

**Docket No. 2013-35604 HHS**  
**Hearing Decision & Order**

**\*\*\* 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.