

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. 2013-47829 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 ██████████. ██████████ appeared on behalf of his brother. He had no witnesses. ██████████, Appeals Review Officer, represented the Department. Her witnesses were ██████████, ASW and ██████████, ASW supervisor and ██████████ R.N., MDCH/complex care reviewer.

ISSUE

Did the Department properly reduce 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 disabled, ██████-year-old, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with the sequela of quadriplegia with open wounds to the feet and a decubis ulcer at the base of the spine. (See Testimony, Appellant's Exhibit 1 and Department's Exhibit A, pp. 10 and 17)
3. On ██████████, the ASW conducted an in-home assessment for the Appellant. (See Testimony of ██████████)
4. On ██████████, the ASW sent the Appellant a DHS 1212-Advance Negative Action notice informing him that his request for EHHS would be denied and that HHS would be reinstated at the new proposed amount of \$██████████ – just under the \$██████████ EHHS threshold. (Department's Exhibit A, pp. 2 and 8, 9, 18 and 19)

5. The effective date of the reduction in services was *retroactive* to April 1, 2013¹. His further appeal rights were contained therein. (Department's Exhibit A, page 7)
6. The ASW advised the Appellant that his EHHS was reduced below the \$ █████ jurisdictional limit following a complex care review by MDCH complex care reviewer, █████, R.N., issued █████, wherein the Appellant's complex care EHHS was reduced from \$ █████ per month to \$ █████ per month. (Department's Exhibit A, pp. 18-28 and 32, 33 and See Testimony)
7. 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.

¹ Absent fraud – a prohibited practice under 42 CFR 431.214

- 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.

Expanded Home Help Services (EHHS)

Expanded home help services exists if all basic home help services eligibility criteria are met and the assessment indicates the client's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level of \$549.99.

[Michigan Department of Community Health Approvals]

When the client's cost of care exceeds \$1299.99 for any reason, the adult services specialist must submit a written request for approval to the Michigan Department of Community Health (MDCH).

Follow the Procedures for Submitting Expanded Home Help Requests found on the Adult Services Home Page. Submit the request with all required documentation to:

Michigan Department of Community Health
Long Term Care Services Policy Section
Capital Commons Building, 6th Floor
P.O. Box 30479
Lansing, MI 48909

MDCH will provide written documentation (DCH-1785) of approval. A new request must be submitted to the Michigan Department of Community Health whenever there is an increase in the cost of care amount. A new request is not require [sic] If [sic] the cost of care decreases below the approved amount set by MDCH.

Note: If an expanded home help case closes and reopens within 90 days and the care cost remains the same, a new MDCH approval is not required

Adult Service Manual (ASM), §120, *Supra*.

The Department witness testified that on in-home visit she assessed the Appellant and determined the level of care necessary to meet the Appellant's needs. Since that assessment took the HHS total cost of care above local maximums, the matter was properly referred to the Department of Community Health for EHHS assessment on [REDACTED].

The ASW testified that she contacted the Department of Community Health when they learned that the Appellant's EHHS approval request had not been submitted in a "timely manner." When asked "how untimely" by the ALJ the witness stated "2001." [See Department's Exhibit A, at pp. 18 and 29]

The following item summarizes the ADL reduction and the ALJ's observation:

- Grooming was correctly increased owing to the need for lotion application not accounted for under specialized skin care. It was increased from 15 minutes a day to 20 minutes a day.
- Specialized skin care "turning the Appellant" was improperly reduced. At the recommendation of the Department's complex care reviewer, Darlene Murphy R.N., the ALJ would reinstate the time allotment for this item of hands-on care to the level in place on [REDACTED].

The following item summarizes the ADL reduction and the ALJ's agreement:

- The Appellant's bowel program was reduced to reflect the reality that waiting for a bowel movement is not hands-on care. The time allotment was properly reduced from an hour and a half every two days to 40 minutes every two days.
- Transferring was properly reduced owing to the expediency of the choreproviders lift technique and the fact that a Hoyer lift is *not* utilized. The time allotment was properly reduced from 30 minutes a day to 20 minutes a day.
- Mobility was reduced to reflect the reality of the Appellant's use of a wheelchair. The time allotment was properly reduced from 30 minutes a day to 5 minutes a day.

On review of the testimony it is unclear to this reviewer how an EHHS review could go unattended for 12-years, but I commend the Department for its candor in acknowledging the oversight. [See Department's Exhibit A, at page 29]

I thought the Appellant's representative properly summarized his complaint about "turning" his brother in his testimony on appeal. He testified credibly that he understood and could accept all of the reductions imposed by complex care reviewer – ██████████ – except for the reduction in turning of his brother given his frail habitus.

The Department's witness, ASW ██████████, acknowledged² the open wounds on the Appellant's hips, feet and spine. ██████████ volunteered in her credible testimony that she did not "...see the Appellant or talk with the provider" – but made her assessment based on typical standards. She said she "...hoped the judge would consider" the provider's assessment of the turning duty.

The ALJ accepted ██████████'s invitation and finds that the turning of the Appellant as described by the provider was the reality for this decubitus ridden man - turned every two hours by his brother "...not like a sack of potatoes – because [he knew] if the situation were reversed [he] would receive the same care." He added, of course, that there were doctor orders mandating that frequency of rotation.

██████████'s testimony correctly recognized the medical necessity of a deviation from a blind standard of care in this instance – based, in part, on the descriptive testimony of the Appellant.

Because the Department could not support its reduction of the hands-on care item on specialized skin care [turning the Appellant] at hearing the Appellant has preponderated his burden of proof on that sole task. The Appellant's representative accepted the remaining time and task adjustments in his testimony.

² As did ██████████ in her Exhibit B.

Based on the record established today, the Department improperly assessed the Appellant on EHHS.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly reduced the Appellant's EHHS.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

IT IS FURTHER ORDERED that:

The Department shall initiate the reinstatement of the Appellant's time and task [3 hours a day] for specialized skin care that was in place on [REDACTED].

/s/

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

[REDACTED]
cc:

[REDACTED]

Date Signed: 9/5/2013

Date Mailed: 9/5/2013

Docket No. 2013-47829 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.