

**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. 2013-56615 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.*, and upon a Request for Hearing filed on behalf of the minor Appellant.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother, appeared and testified on Appellant's behalf. ██████████, social worker/case manager, and ██████████, social worker, from ██████████, Inc., also testified as witnesses for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, testified as witnesses for the Department.

ISSUE

Did the Department properly terminate 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. Appellant is a ██████ year-old female who has been diagnosed with spinal muscular atrophy, restricted airway disease, gastroesophageal reflux disease, sleep apnea, central sleep disorder, and scoliosis. (Respondent's Exhibit A, pages 13, 16).
2. Appellant was referred to the Home Help Program on ██████████. (Respondent's Exhibit A, page 14).
3. On ██████████, ASW ██████████ conducted a home visit and assessment with Appellant and Appellant's mother. (Respondent's Exhibit A, page 13).
4. Following that assessment, ASW ██████████ authorized Appellant for 68 hours

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and 14 minutes of HHS per month, with a total monthly care cost of \$██████████ per month. Assistance was authorized for the tasks of bathing, grooming, toileting, transferring, mobility, eating, suctioning, and meal preparation. (Respondent's Exhibit A, page 4).

5. The notice of approval was sent on ██████████, but was made effective as of ██████████. (Respondent's Exhibit A, page 4).
6. ASW ██████████ also enrolled Appellant's mother as the home help provider. (Respondent's Exhibit A, page 19).
7. However, Appellant's mother was never intended to be the home help provider and, due to her own disabilities, is unable to provide some or all of the necessary assistance. (Testimony of ██████████).
8. Accordingly, while Appellant's mother was her enrolled provider, another person has been providing the HHS. (Testimony of ██████████).
9. The HHS payments issued in Appellant's and Appellant's mother's name have been forwarded to the person providing the services. (Testimony of ██████████).
10. Subsequently, Adult Services Supervisor Davis reviewed Appellant's case and determined that HHS could not be approved because Appellant was under ██████████ years-old and Appellant's mother is legally responsible for providing care and support to Appellant. (Testimony of ██████████).
11. On ██████████, the Department sent Appellant written notice that her HHS would be terminated on ██████████. (Respondent's Exhibit A, page 5).
12. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (Respondent's Exhibit A, page 3).
13. Giving the timing of that request, the termination of Appellant's HHS has not yet been implemented and payments have been continued while this appeal has been pending. (Testimony of ██████████).

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.

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Home Help Services 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 physician and may be provided by individuals or by private or public agencies.

Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101") addresses the issues of what services are included in Home Help Services and how such services are assessed. In part, ASM 101, pages 1-3 of 4, provides:

Home Help Payment Services

Home Help Services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home Help Services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home Help Services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, Intermediate Care Facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.

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- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

An individual must be assessed with at least one Activity of Daily Living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

* * *

Home Help Services for Minor Children

When providing for minor children, personal care services must be shown to be a necessary supplement to usual parental care, justified by the high service needs of the family. High service needs are those which arise from a physical, medical, emotional, or mental impairment of the minor child and which require significantly higher levels of intervention than those required by a child of the same age without similar impairments.

Example: It is expected that a one year old child would be incontinent due to age however, a 16 year old minor would likely have a medical or cognitive condition causing incontinence.

Children typically have responsible relatives (parents/adoptive parents) able and available to provide for their care needs. When responsible relatives are **unable** due to a medical condition, or **unavailable** due to employment or school, they can hire a provider to perform the activities of

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daily living and medication administration required during the parent's absence.

Note: A medical needs form must provide verification the responsible relative is unable to provide care. If the responsible relative is unavailable due to employment or school, they must provide a work or school schedule to verify they are unavailable to provide care.

The adult services specialist **must not** authorize approval for tasks that can be completed by the responsible relative during the time they are available.

Note: A legal guardian is **not** a responsible relative and can be paid to provide home help services to the minor child.

Payments are **only** for the amount of time related to the approved tasks and cannot include time for child care, supervision and monitoring.

The adult services specialist must evaluate whether day-care services are appropriate rather than home help services.

In this case, it appears that there was confusion regarding who would be providing the HHS and how that person would be reimbursed. Appellant's mother is Appellant's enrolled provider, but they never intended her to be the provider and she mistakenly enrolled as the provider. Another person has been providing the services and the payments, issued to Appellant and Appellant's mother, are being forwarded to that person.

While there has been confusion regarding the provider and not all of that confusion is the fault of Appellant's representative, the above policy makes clear that the current authorization of HHS is improper. The minor Appellant's mother cannot be her enrolled provider and Appellant cannot even receive HHS unless her mother (and any other responsible relative) is unable or unavailable to provide care.

Appellant's witnesses testified that Appellant's mother is disabled and unable to provide care. However, the above policy also requires that there must be a medical needs form providing verification that the responsible relative is unable to provide care. No such form has been provided in this case.

In the future, Appellant's mother may be able to demonstrate her inability to provide care and Appellant may receive HHS again. However, this Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time it made that decision. Here, the record clearly demonstrates that the current

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authorization of services violates the applicable policy and that the Department properly terminated Appellant's HHS.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department properly terminated Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: 9/13/2013

Date Mailed: 9/13/2013

***** 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.