

**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. 2013-9074 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 ██████████ ██████████, Disability Rights Advocate, represented the Appellant. ██████████, the Appellant, appeared and testified. ██████████, Durable Power of Attorney and primary caregiver, appeared as a witness for the Appellant. Florence Scott-Emuakpor, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services ("HHS") authorization?

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 Medicaid beneficiary who has been authorized for HHS.
2. The Appellant had a certified agency, Partners in Personal Assistance, as his enrolled HHS provider through ██████████. The Appellant's primary caregiver was working through this agency. (Exhibit 1, page 14; Testimony of Appellant and Caregiver)
3. The Appellant changed to having his primary caregiver as the enrolled HHS provider beginning ██████████. (Exhibit 1, page 14)
4. The Appellant's HHS authorization for assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, laundry, shopping, meal preparation and catheters or leg bags remained at

a total of 168 hours and 32 minutes per month when the enrolled HHS provider changed. (Exhibit 1, pages 10d and 11)

5. When the Appellant changed HHS providers, the HHS payment rate for his case was reduced from the set rate for ██████████ County for agency providers, \$ ██████ per hour, to the set rate for ██████████ County for individual providers, \$ ██████ per hour. (Exhibit 1, pages 10d-11 and 19)
6. On or about ██████████ the local Department of Human Services office requested an exception from the Department of Community Health to increase the individual provider rate to \$ ██████ per hour for the Appellant's HHS case. An email response denied the request for an increase indicating the policy that allowed for rate increases was terminated. (Exhibit 1, page 10c)
7. On ██████████, a Services and Approval notice was sent to the Appellant indicating an authorization of \$ ██████ effective ██████████ for the Appellant's primary caregiver as his provider at a rate of \$ ██████ per hour for Expanded Home Help Services ("EHHS") of the approved times and tasks totaling 168 hours and 32 minutes per month. This notice also stated the request for an increase to a rate of \$ ██████ was denied. (Exhibit 1, pages 8-10b)
8. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1 page 4)

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 Social Welfare Act, 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 physician and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM) 101, 11-1-11, addresses HHS payments:

Payment Services Home Help

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.

*Adult Services Manual (ASM) 101,
11-1-2011, Page 1of 4.*

Adult Services Manual (ASM) 140, 11-1-11, addresses payment authorizations, including EHHS:

MAXIMUM PAYMENT LEVELS

Home help payments **cannot** exceed established maximum levels. **All** payments to the client are included within the maximum level, even if the client has more than one provider. The service code for home help services is **0301**.

Home Help

The adult services specialist is allowed to approve a maximum of \$549.99 a month.

Expanded Home Help

Payment levels of \$550 - \$1299.99 a month must be approved by the supervisor.

Payment levels of \$1300 a month and over require prior Michigan Department of Community Health (MDCH) approval. The specialist **must** receive a copy of the Policy Decision (DCH-1785) from MDCH before submitting the authorization.

*Adult Services Manual (ASM) 140,
11-1-2011, Page 2 of 3*

Adult Services Manual (ASM) 135, 11-1-2011, addresses individual hourly rate for HHS providers:

INDIVIDUAL HOME HELP PROVIDER HOURLY RATE

Each local DHS office has an established individual home help provider rate. Specialists must **not** authorize above or below the established rate.

Cases with hourly rates above the established county rate must be substantiated by an approval letter (DCH-1785)

from the Michigan Department of Community Health. If there is **not** an approval from MDCH, the hourly rate must be lowered to the established rate of the county.

*Adult Services Manual (ASM) 135, 11-1-2011,
Page 7 of 7*

Adult Services Manual (ASM) 136, 11-1-2011, addresses agency HHS providers:

AGENCY DEFINITION AND CRITERIA

A home help services provider is eligible to be approved as an agency when either of the following criteria are met:

- A Medicaid enrolled home health agency.
- Has a Federal Tax Identification number, also known as Employer Identification Number (EIN), **AND** employs or (sub) contracts with two or more persons, not including the owner, to provide home help services.

Verification of Agency Status

The adult services specialist should instruct agencies to submit the required documentation for agency status approval to:

Michigan Department of Community Health
Long Term Care Services Policy Section
Capital Commons Building, 6th Floor
400 S. Pine Street
P.O. Box 30479
Lansing, Michigan 48909-7979
OR
Fax to 517-335-7959

Agencies will receive a determination letter from MDCH stating one of the following:

- The agency has met the criteria and is approved (agencies are often given provisional approval status).
- The agency has not met the criteria and is denied.
- The agency must submit additional information in order to meet the requirements.

MDCH will randomly select agencies and request documentation to review agency status. An agency must notify the adult services specialist within **10 business days** of any changes that may affect meeting the agency requirement.

Agency Approval List

A list of approved agencies is maintained on the Adult Services Home Page. If an agency is on the Home Help Agency List, their status as an approved agency extends to all counties.

*Adult Services Manual (ASM) 136, 11-1-2011,
Pages 1-2 of 5*

For ██████████, the individual provider rate is \$██████ per and the agency provider rate is \$14.40 per hour. Adult Services Manual (ASM) 138, 11-1-2011, Page 3 of 3.

The Appellant had a certified agency, Partners in Personal Assistance, as his enrolled HHS provider through ██████████. The Appellant's primary caregiver was working through this agency. (Exhibit 1, page 14; Appellant and Caregiver Testimony) The Appellant changed to having his primary caregiver as the enrolled HHS provider beginning ██████████. (Exhibit 1, page 14)

The Appellant's HHS authorization for assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, laundry, shopping, meal preparation and catheters or leg bags remained at a total of 168 hours and 32 minutes per month when the enrolled HHS provider changed. (Exhibit 1, pages 10d and 11)

When the Appellant changed HHS providers, the HHS payment rate for his case was reduced from the set rate for agency providers, \$██████ per hour, to the set rate for individual providers, \$██████ per hour. (Exhibit 1, pages 10d-11 and 19) The Appellant was still authorized for EHHS when the total month care cost was reduced to \$██████ (ASW and Adult Services Supervisor Testimony)

The Appellant and his caregiver testified that before he went to having an agency HHS provider, the Appellant was able to get an exception for his individual provider to be paid \$██████ per hour. The Appellant's caregiver prompted the change to an agency provider in hopes that they would be able to have additional qualified caregivers to assist the Appellant. Unfortunately, this did not occur and they could not get other qualified, trustworthy caregivers that would not hurt the Appellant through the agency. They are requesting the increase in rate to \$██████ per hour again to ensue the primary caregiver can continue to assist the Appellant and to try to find additional qualified caregivers to assist the Appellant. (Disability Rights Advocate, Appellant and Caregiver Testimony; Exhibit 2)

The HHS policy has changed over the years, and the policy used to have a process for requesting authorization for a rate increase for individual HHS providers. However, the HHS policy has been revised recently, and the current policy that went into effect November 1, 2011 does not allow for new exceptions to be granted for rate increases. The Adult Services Supervisor confirmed that the above cited language in Adult Services Manual (ASM) 135 addressing approval for cases with hourly rates above the established county rates only applies to existing HHS cases that already had a rate above the established county rate. (Adult Services Supervisor Testimony) Further, an ASW at the local Department of Human Services office requested an exception from the Department of Community Health to increase the individual provider rate to \$ [REDACTED] per hour for the Appellant's HHS case. On [REDACTED], the email response from the Department of Community Health denied the request for an increase indicating the policy that allowed for rate increases was terminated. (Exhibit 1, page 10c)

While this ALJ is sympathetic to the Appellant's circumstances, the current HHS policy does not allow for new exceptions to the established HHS provider rates to be granted. The Department applied the proper provider rate when he changed from an agency provider to an individual provider, resulting in a reduction to the total monthly care cost of the Appellant's HHS authorization.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS authorization when he changed from an agency provider to an individual provider based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

ls

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
Docket No. 2013-9074 HHS
Decision and Order

cc:

[REDACTED]

Date Mailed: 1/15/2013

***** 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.