

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 15-005747 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 ██████████.

Appellant did not appear. ██████████ appeared as Appellant's hearing representative. ██████████, owner of ██████████ appeared as witnesses on behalf of Appellant.

██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), appeared as a witness for the Department.

ISSUE

Did the Department properly suspend Appellant's Home Help Services ("HHS") application?

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 male beneficiary of the Medicaid and SSI Programs.
2. In ██████████, the Department opened an HHS case on behalf of Appellant with Chinok Home Care, an enrolled provider, as Appellant's provider. (Exhibit A.25; A.32).

3. Subsequent to case opening, the Department determined that Appellant pays room and board to his provider; Appellant's landlord is the owner of Chinok Home Care who also provides 'the ILS services to Appellant.' (Exhibit A.18).
4. On ██████████ the Department issued an Advance Negative Action Notice to Appellant suspending HHS services effective ██████████ for the following reason: "...provider chosen Chinok Home Care is not eligible to be your provider due to living (room/board) arrangement. Please choose another provider..." (Exhibit A.5).
5. Appellant's medical eligibility is not disputed.
6. On ██████████ Appellant filed a hearing request stating that ██████████ is a licensed facility. (Exhibit A.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.

As noted in the Findings of Fact, there is no issue here regarding Appellant's medical eligibility. Rather, the issue centers on eligibility requirements regarding Appellant's provider.

Specific to this issue, applicable policy and procedure regarding ASM 140 on Payment Authorizations with regard to provider selection states in part:

Note: An entity acting in the capacity of the client's fiscal intermediary is not considered the provider of home help and **must not** be enrolled as a home help provider; see ASM 135, Home Help Providers. ASM 135, page 1 of 9; Effective 12/1/2013.

The section in ASM 135 referenced above states in part:

- Fiscal Intermediary (FI).

Note: Fiscal intermediary services is defined by CMH as services that assist the client in meeting their goals of community participation and integration, independence or productivity, while controlling the client's individual budget and choosing staff who will provide the services and supports identified in the individual plan of service. The fiscal intermediary facilitates in the employment of service providers and is **not** the provider of direct hands on care services. ASM 135, page 1 of 9; Effective 12/1/2013.

At the administrative hearing, there was much discussion regarding adult foster care licensed facilities. However, this Administrative Law Judge notes that the policy used to support the Department's denial does not discuss foster care licensing, and thus, this ALJ does not find these discussions relevant to the issue at hand.

As noted in ASM 135 and 140, policy forbids payments to a provider when there is an arrangement between the beneficiary and the provider as one where the beneficiary pays room and board and the provider is thus classified as a "fiscal intermediary." In such situations, policy states that "the fiscal intermediary facilitates in the employment of service provides" and cannot be the provider of direct hands on care services. ASM 135, page 1.

The role of an ALJ is not to dispute the rationale or wisdom of policy; rather, the purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record.

In addition, the Department is under strict federal mandates to ensure that the evidence in a beneficiary's file is supported by necessary verifications. If not, the State of Michigan may be subject to substantial financial penalties. 42 CFR 435.914.

In this case, the Department presented credible and substantial evidence of having followed its policy and procedure herein. Appellant did not meet his burden to rebut the Department's evidence. Thus, this ALJ must uphold the 3/9/15 action taken by the Department.


[REDACTED]
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The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly suspended Appellant's Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's action is AFFIRMED.



Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

JS [REDACTED]

cc: [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

***** 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.