**STATE OF MICHIGAN**
**STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**
**FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2009-20575 HHS
Case No. [redacted]

## DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 [redacted]. [redacted] appeared and testified on her own behalf until she became too emotional and left the hearing. [redacted], represented the Department. [redacted], appeared as a witness on behalf of the Department.

## ISSUE

Did the Department properly terminate Home Help Services payments to the Appellant?

## 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 [redacted] Medicaid beneficiary and participant in Home Help Services (HHS).

2. The Appellant's case was scheduled for an annual assessment in [redacted]. The Adult Services Worker made a home call pursuant to the policy requirements of the HHS program.

3. The Appellant is diagnosed with Narcolepsy. The Appellant has no physical limitations.

4. The Appellant has a Michigan Driver's License and drives an automobile.

5. Following the assessment at the home call, the Department worker determined the Appellant had no need for physical assistance with any Activity of Daily Living or Instrumental Activity of Daily Living.

6. The Department's worker sent a negative action notice dated [redacted].

7. The Appellant appealed the Department's determination [redacted].

## 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 physician and may be provided by individuals or by private or public agencies.

### COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (FIA-324) is the primary tool for determining need for services. The comprehensive assessment will be completed on all open cases, whether a home help payment will be made or not. ASCAP, the automated workload management system provides the format for the comprehensive assessment and all information will 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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer's social security card.
- Observe a picture I.D. of the caregiver, if applicable.

- The assessment must be updated as often as necessary, but minimally at the six-month review and annual re-determination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the agency record.
- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

## Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS payment.

Conduct a functional assessment to determine the customer's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating
- Toileting
- Bathing
- Grooming
- Dressing
- Transferring
- Mobility

Instrumental Activities of Daily Living (IADL)

- Taking Medication
- Meal Preparation and Cleanup
- Shopping for food and other necessities of daily living
- Laundry
- Housework

Functional Scale ADL's and IADL's are assessed according to the following five-point scale:

1. Independent
   Performs the activity safely with no human assistance.

2. Verbal Assistance
   Performs the activity with verbal assistance such as reminding, guiding or encouraging.

3. Some Human Assistance
   Performs the activity with some direct physical assistance and/or assistive technology.

4. Much Human Assistance
   Performs the activity with a great deal of human assistance and/or assistive technology.

5. Dependent
   Does not perform the activity even with human assistance and/or assistive technology.

**Note:** HHS payments may only be authorized for needs assessed at the 3 level or greater. Customers must require assistance with at least one qualifying ADL in order to qualify for HHS payments. A qualifying ADL (functionally assessed at Level 3 or greater) would include:

- An ADL functional need authorized by the worker
- An ADL accomplished by equipment or assistive technology and documented by the worker, or
- An ADL functional need performed by someone else, requiring no Medicaid reimbursement, or
- A request authorized as necessary through an exception made by the Department of Community Health, Central Office.

Once an ADL has been determined or exception request has been granted, the customer is then eligible for any ADL or IADL authorized home help service.

*Adult Services Manual (ASM) 4-1-2004, Pages 2-4 of 27*

**ELIGIBILITY FOR HOME HELP SERVICES**

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The

customer must be eligible for Medicaid in order to receive these services.

**Medicaid/Medical Aid (MA)**

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

*Adult Services Manual (ASM) 4-1-2004, Page 8 of 27*

**Necessity For Service**

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.

- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:
  - Physician
  - Nurse Practitioner
  - Occupational Therapist
  - Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

In this case the material facts are disputed. The Appellant asserts she is physically unable to perform many of her own ADL's and IADL's due to having narcolepsy. She asserts that although she could do them when not sleeping or falling asleep, if she has something needs to get done right away, her medical condition prevents her from getting it done, thus she needs a chore provider. The Department's Adult Services Worker asserts the Appellant is able to provide for her own care.

The evidence offered by Appellant that she is unable to provide for her own care is sparse. She concedes she is able to do whatever she needs to do as long as she is not sleeping. She conceded she has a driver's license and drives. She stated she knows when she is going to fall asleep such that she can get off the road in time to manage her condition safely. Given that the Appellant is able to manage the task of driving with Narcolepsy, obviously she can manage to attend to her own personal needs without assistance. Obviously, she does not have to bath, dress, cook, or do anything while sleeping. She can do it when she is awake. There is no evidence of anything she needs done while sleeping. She may have a medical condition that limits her ability to function compared to many other individuals, however, there is no evidence she is unable to manage her own needs such that she could not live in her own home in the community. The standard for determining whether she is eligible for assistance within the program parameters is not simply whether she has a medical condition or could benefit from assistance. Most everyone could benefit from some assistance. The program is designed to assist people with limitations who are not able to function without the physical assistance of another human being for the tasks necessary to live in their own home. The tasks are basic daily needs such as bathing and grooming, along with instrumental tasks such as laundry and housekeeping. There was no evidence presented indicating the Appellant requires the physical assistance of another human being to accomplish any of the tasks for which payment assistance is available. This ALJ concurs with the determination of the Department's worker that the Appellant is not eligible for Home Help Assistance payments.

## 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 payments.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: ___7/15/2009_____

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.