

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2009-30681 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 her own behalf. ██████████, represented the Department. ██████████, ██████████, and ██████████, appeared as witnesses for the Department.

ISSUE

Did the Department perform a proper Home Help Services (HHS) comprehensive assessment and authorization denial?

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 ██████████ woman.
2. Appellant is a Medicaid beneficiary.
3. Appellant lives with her daughter and her daughter's ██████████ grandson.
4. Appellant's sister is her potential chore provider.
5. The Appellant owns a car and the car is present at her home.
6. On ██████████, a DHS Adult Services Worker made a visit to Appellant's home to conduct a HHS six month review assessment. Appellant and her grandson were present in the home. (Exhibit 1, page 8). Her chore provider/sister was not present.

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7. As a result of the information gathered from the Appellant at the assessment, the worker terminated HHS authorization for the Appellant. (Exhibit 1, pages 4-5).
8. On [REDACTED], the Department sent Appellant an Adequate Negative Action Notice that her Home Help Services would be terminated. The reason given was: "...you appear capable of providing for your own care." (Exhibit 1, pages 4-8).
9. On [REDACTED], the State Office of Administrative Hearings and Rules received Appellant's Request for Hearing. (Exhibit 1, page 3).

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 363, 9-1-08), pages 2-4 of 24, address the issue of assessment:

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 redetermination.

- 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 April only be authorized for needs assessed at the 3 level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of 3 or higher, based on interviews with the customer and provider, observation of the customer's abilities and use of the reasonable time schedule (RTS) as a guide. The RTS can be found in **ASCAP** under the **Payment** module, Time and Task screen.

The evidence of record demonstrates the Adult Services Worker (worker) properly performed a HHS six months review assessment in accordance to Department policy. (Exhibit 1, page 8). The worker credibly testified that when she arrived at the Appellant's home the Appellant was having a bowl of cereal with her grandson, her car was present, and her daughter was not home. The worker testified that she observed the Appellant walking with no difficulty and that the Appellant stated her back was better and she did not need to take pain medication any longer. Based on observations and the information the worker was provided by the Appellant at the time of the assessment; the worker terminated HHS authorization because Appellant was able to perform her activities of daily living independently.

The Appellant testified she was not having a bowl of cereal when the worker came, her grandson was not present, and that she is taking Vicodin for back pain. The Appellant contradicted herself on numerous occasions and therefore her testimony was not credible.

Several of the many examples of her contradictory testimony:

At first Appellant testified she did not have a license, then testified she had a driver's permit, next testified her driver's permit had expired and finally testified she had a driver's license. The Appellant at first testified that her ██████████ grandson was not present and not having cereal when the worker arrived. Later she stated he was present, he lives in the home with her, and her daughter was not home when the worker arrived to find her and her grandson present.

Further, the Appellant was unable to satisfactorily answer this Administrative Law Judge's question about what aspect of her back pain prevented her from getting a simple bowl of cereal to prepare. The evidence shows the Appellant's chore provider/sister was not in the home to assist her with the bowl of cereal but the bowl of cereal was present.

Appellant testified that she doesn't drive her car but the reason it is in her driveway is because her daughter and sister drive the car. The evidence contradicts her statement because neither her daughter nor her sister were in the home but the car was present and therefore neither were using it.

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The Appellant has the burden of proving, by a preponderance of evidence, that the Department did not properly terminate her home help services. The Appellant did not meet that burden.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated her home help services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 10/20/2009

***** 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.