

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:

██████████

Appellant

_____ /

Docket No. 2009-33659 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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ (Appellant) appeared and testified. Also appearing as a witness for the Appellant was his ██████████, ██████████ ██████████.

██████████ Appeals Review Officer, represented the Department of Community Health (Department). Also appearing as a witness for the Department was ██████████, Adult Services Worker, ██████████ Services (DHS).

ISSUE

Did the Department properly deny the Appellant's request for adult Home Help Services?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence presented, I find, as material fact:

1. Appellant is a Medicaid beneficiary, ██████████ has physician-verified diagnoses and medical history including Gastroesophageal Reflux Disease (GERD), Depression, Fractured Vertebrae and Hypertension. (*Exhibit 1; p. 11*)
2. On ██████████ the adult services worker conducted a home call to determine adult home help service eligibility. The worker determined that the Appellant appeared medically stable and that he was able to care for his daily needs without physical assistance. On ██████████, a Negative Action Notice was sent to the Appellant informing him of the denial of adult home help services.

3. The Appellant's home at the time of the ██████████ home call was dirty and in disarray, making it appear as if the home was never cleaned. Residing in the home is the Appellant and his adult son, who appeared to the DHS worker to be mentally impaired and therefore incapable of caring for his father's needs. The Appellant takes public transportation to doctor appointments and grocery stores. On occasion, he is taken to a store by another son. (*Exhibit 1; p. 8*)
4. The Appellant suffered spinal injury after falling off the roof of his home. Due to chronic back pain, he is unable to stand for any length of time. Additionally, he is undergoing epidural steroid injections and taking medication to manage his pain. He utilizes a walker or cane to ambulate. (*Exhibit 1; p. 8; Testimony*).
5. The Appellant does not own a washer or dryer, and thus must take his laundry to an outside Laundromat for service. The Appellant's ██████ appeared to the DHS worker to be disinterested in the Appellant's health condition(s), and that he would not meet eligibility requirements as a paid chore provider. (*Exhibit 1; p. 8*)
6. On ██████████ the Appellant filed his request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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 (DHS-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 client in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the client'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 department 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 client'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.
- Laundry.
- Light 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.

Time and Task: The worker will allocate time for each task assessed a rank of 3 or higher, based on interviews with the client and provider, observation of the client'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. When hours exceed the RTS rationale must be provided.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication.

The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation.

These are **maximums**; as always, if the client needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements. If there is a need for expanded hours, a request should be submitted to:

MDCH

Attn: Long Term Care, Systems Development Section
Capitol Commons, 6th Floor, Lansing, MI 48909

Necessity for Service

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

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- Verification of the client's medical need by a Medicaid enrolled medical professional. The client 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.

Exception: DCH will accept a DHS-54A completed by a VA physician or the VA medical form in lieu of the medical needs form.

The medical professional certifies that the client's need for service is related to an existing medical condition. The medical professional does not prescribe or authorize personal care services. If the medical needs form has not been returned, the adult services worker should follow-up with the client and/or medical professional. If the case is closed and reopened within 90 days with no changes in the client's condition, a new DHS-54A is not necessary.

Do **not** authorize HHS prior to the date of the medical professional signature on the DHS-54A.

Service Plan Development

Address the following factors in the development of the service plan:

- The specific services to be provided, by whom and at what cost.
- The extent to which the client does not perform activities essential to caring for self. The intent of the Home Help program is to assist individuals to function as independently as possible. It is important to work with the recipient and the provider in developing a plan to achieve this goal.
- The kinds and amounts of activities required for the client's maintenance and functioning in the living environment.
- The availability or ability of a [responsible relative](#) or [legal dependent](#) of the client to perform the tasks the client does not perform.

Authorize HHS **only** for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. **Unable** means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS- 54A.

- Do **not** authorize HHS payments to a responsible relative or legal dependent of the client.
- The extent to which others in the home are able and available to provide the needed services. Authorize HHS **only** for the benefit of the client and **not** for others in the home. If others are living in the home, prorate the IADL's by at least 1/2, more if appropriate.
- The availability of services currently provided free of charge. A written statement by the provider that he is no longer able to furnish the service at no cost is sufficient for payment to be authorized as long as the provider is not a responsible relative of the client.
- HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for same time period).

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9-1-2008*

A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfies that burden must be determined in accord with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

It is the province of the Administrative Law Judge to adjudge the credibility and weight to be afforded the evidence presented. *Maloy v. Stuttgart Memorial Hosp.*, 316 Ark. 447, 872 S.W.2d 401 (1994).

The DHS worker testified her impressions on entering the Appellant's home were that the Appellant's ██████ was mentally and/or physically incapable of assisting the Appellant. She further testified the dirty conditions led her to conclude no chore services were being provided by anyone. She indicated that, as a result of these conditions, she concluded the Appellant was capable of caring for his own needs. She specifically indicated that, based on the assessment, the Appellant was capable of being transported to a store or Laundromat, shopping and/or doing laundry, and then transporting all items back to his apartment without physical assistance.

The DHS 54A form indicates the Appellant suffered a recent injury to his lower back, and that he needs assistance with the tasks of housework, meal preparation, laundry and shopping. The Appellant credibly testified he continues to encounter challenges associated with his back injury, that he needs either a walker or cane to ambulate, and that he is unable to perform tasks such as laundry, shopping and meal preparation without physical assistance.

The preponderance of the evidence presented does not support the Department's denial of services.

Noteworthy is that the DHS worker's assessment leads to conclusions based on impressions that are clearly confounded or explainable by other factors. She notes the apartment is dirty, and that it therefore is not being cleaned by the Appellant's ██████. While this may be true, it also supports an inference the Appellant is unable to perform housework. The DHS worker also documents the Appellant's claim that he cannot stand for any length of time (*Exhibit 1; p. 8*), but then concludes he is nonetheless able to dress and groom himself. This conclusion does not address whether the Appellant may stand long enough to prepare a meal, other than to throw something in the microwave oven, or to go shopping or perform housework or do laundry. The DHS worker's conclusions appear based on her impressions of the Appellant, his ██████, and the condition of the dwelling at the time of the home call, and not whether the Appellant has the physical ability to care for his own needs.

Additionally, the DHS worker's denial is based on her opinion regarding whether the Appellant's ██████ is capable of assisting him. While the Appellant's ██████ may not satisfy chore provider eligibility requirements, the issue presented to the DHS worker in an initial assessment is whether the Appellant's meets medical necessity requirements for entitlement to adult home help services. When that elementary eligibility determination is made, a suitable chore provider may be found and approved by the Department. I read policy to mean that eligibility for services may be satisfied even if an approved chore provider has not yet been identified. The Appellant never insisted on having his ██████ as provider, thus rendering inappropriate the DHS worker's denial of services due to her belief the ██████ would not be a suitable chore provider.

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For the above reasons, I conclude the Department has erred in denying services outright. The Appellant established, by a preponderance of evidence presented, that he needs physical assistance with housework, laundry, shopping, and meal preparation. A supplemental home call must be conducted to determine eligibility in these areas.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that DHS' denial of Home Help Services in this case is improper.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. DHS shall schedule a supplemental home call within 30 days of this Decision and Order to determine adult home help service eligibility with regard to the tasks of housework, laundry, shopping, and meal preparation.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 11/18/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.