

**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]

Appellants

_____ /

Docket Nos. 2009-7585 HHS
2009-7587 HHS

Case Nos. [REDACTED]

Load No. [REDACTED]

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 [REDACTED] [REDACTED] (Appellant-husband) and [REDACTED] (Appellant-wife) appeared at the hearing. [REDACTED]

[REDACTED] testified on behalf of himself and his spouse. [REDACTED]
[REDACTED], represented the Department of Community Health (Department). [REDACTED]
[REDACTED] testified as a witness for the Department.

ISSUE

Did the Department properly determine Appellants' eligibility for Home Help Services (HHS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Appellants are Medicaid recipients who were determined eligible to receive HHS.
2. Appellants are married and live together.

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3. After Appellants applied for HHS, the Department received their completed Medical Needs form, DHS-54A.
4. Appellant-wife's Medical Needs form was completed by a certified physician's assistant who indicated that Appellant needs assistance with meal preparation, shopping, laundry, and housework; and Appellant-wife is disabled due to fibromyalgia.
5. Appellant-husband's Medical Needs form was completed by an individual who did not indicate a title or occupation; and this individual indicated that Appellant-husband needs assistance with meal preparation, shopping, laundry, and housework due to scoliosis, spondylosis, and spondylothesis.
6. On or about [REDACTED], [REDACTED], completed a HHS assessment of Appellants and determined that they both qualified for a [REDACTED] HHS payment for assistance with housework, laundry, shopping, and meal preparation.
7. On [REDACTED] the Adult Services Worker sent an Advance Negative Action Notice to both Appellants, informing them that they were approved for a [REDACTED] HHS payment.
8. On [REDACTED] the State Office of Administrative Hearings and Rules received Appellants' hearing request, protesting the HHS payment amount that they were determined eligible to receive.

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

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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.

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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.

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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.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

Adult Services Manual (ASM) 362

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- **Services for which a responsible relative is able and available to provide;**
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;

**ASM 363;
INDEPENDENT LIVING SERVICES PROGRAM PROCEDURES
ASB 2008-002; 9-1-2008**

RESPONSIBLE RELATIVE

A person's spouse.

A parent of an unmarried child under age 18

**ASM 361;
INDEPENDENT LIVING SERVICES PROGRAM OVERVIEW
ASB 2008-002; 9-1-2008**

In this case, the Adult Services Worker determined that Appellants were eligible for HHS. Appellants were determined eligible for a ██████████ monthly HHS payment. Appellants requested a hearing to protest the eligibility determination because they believe they are entitled to a higher HHS payment.

This Administrative Law Judge cannot uphold the approval of Appellant-wife's eligibility for HHS. The reason is because the Department did not receive a valid certification of medical need for Appellant-wife. The Medical Needs form that was completed for Appellant-wife was completed by a certified physician's assistant. Policy is clear that the Medical Needs form must be signed and dated by one of the following medical professionals: a physician, nurse practitioner, occupational therapist or physical therapist. In addition, the evidence on the record fails to establish Appellant-husband's eligibility for HHS. Since Appellant-wife failed to provide a valid certification of medical need for HHS, and the evidence on the record fails to establish that she is unable or unavailable to assist Appellant-husband with his ADLs, she would be considered a **responsible relative** of Appellant-husband. A client is not eligible for HHS if a **responsible relative** is able and available to provide the services that the client needs. Accordingly, the approval of HHS for Appellants cannot be upheld at this time.

Appellants have the right to reapply for HHS and provide the necessary documentation to establish that they meet the eligibility criteria for services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department did properly determine Appellants' eligibility for HHS.

IT IS THEREFORE ORDERED THAT:

The Department's approval of Appellants' application for HHS is **AFFIRMED**.

Marya A. Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 3/13/2009

***** 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.