

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. 2009-9044 HHS

Case No. ██████████

Load No. ██████████

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 ██████████. ██████████, the Appellant's daughter appeared on her behalf. ██████████ represented the Department. ██████████ and ██████████, ██████████, appeared as witnesses for the Department.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services?

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 Medicaid beneficiary who had been participating in the Home Help Services (HHS) program.
2. The Appellant's case transferred into the ██████████, necessitating a comprehensive assessment and redetermination.
3. The Department's worker conducted a home call and comprehensive assessment on ██████████
4. As a result of the comprehensive assessment, the worker determined the Appellant was able to provide for her own ADLs and IADLs. She sent a negative action notice

indicating the case would close effective [REDACTED].

5. The Appellant appealed the 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 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 10-1-04), pages 2-4 of 26 addresses 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 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 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.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication. The limits are as follows:

- 5 hours/month for shopping for food and other necessities of daily living
- 6 hours/month for housework
- 7 hours/month for laundry
- 25 hours/month for meal preparation

These are maximums; as always, if the customer needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements.

The DHS worker testified that a comprehensive Home Help Services assessment was performed in [REDACTED] in accordance with the Department policy listed above. The DHS worker stated that she did not observe the Appellant required assistance with any of her ADL's or IADL's. She walks independently, unassisted. She is able to and does drive. She has a valid driver's license. She and her husband are alone in the residence all day during the day as their provider works a full time job. The worker did consider the statement from the Appellant's doctor regarding her physical limitations, however, determined she had no need that rated a rank of 3 or higher for ADLs or IADLs. This was also based, in part, on the provider logs indicating services were only being provided 1 time a week in many cases. This is inconsistent with a need for physical assistance in order to maintain independent living.

The Appellant bears the burden of proving by a preponderance of evidence that the Department's reduction was not proper. The Appellant did not provide a preponderance of evidence that the Department's denial was improper. The Appellant's medical evidence was considered by this ALJ. The conclusion reached by the doctor that the Appellant is unable to attend to her husband's needs and her own, is not supported by the MRI findings. There was nothing so significant about the MRI impression that would support a determination that the worker's observations were so wrong as to require they be reversed. The worker directly observed the Appellant able to move about without assistance and drive. While the doctor can put forth his/her medical certification regarding the Appellant's medical condition, s/he is unfamiliar with the program requirements, goals and mission. It is not a prescription for payment assistance. There is insufficient evidence to reverse the

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determination made by the worker in this instance.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's Home Help Services 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: 3/24/2009

***** 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.