

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. 2009-10212 HHS
Case No. ██████████
Load 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 ██████████. ██████████, appeared as Authorized Representative for ██████████ (Appellant).

██████████, represented the Department of Community Health (Department). Also appearing as witnesses for the Department were ██████████ and ██████████.

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 ██████████ female Medicaid beneficiary. According to the Medical Needs form, her medical diagnoses include seizure disorder, and dementia. The Medical Needs form also indicates the Appellant requires assistance with all activities of daily living and instrumental activities of daily living. (*Exhibit 1, p. 9*)
2. The Appellant is married to ██████████, also a Medicaid beneficiary, and born ██████████. The Department also denied an application by ██████████ for Adult Home Help Services. The hearing on that denial was held concurrently with this hearing, and is assigned ██████████.

3. The Medical Needs form pertaining to [REDACTED] ([REDACTED]) contains medical diagnoses of Chronic Obstructive Pulmonary Disease, Arthritis and Gastroesophageal Reflux Disease, and certifies a need for assistance with meal preparation, shopping, laundry and housework. (Case No. 2009-10210 HHS; Exhibit 1, p. 7)
4. On [REDACTED], [REDACTED], sent the Appellant an Adequate Negative Action Notice informing her that her application for Adult Home Help Services was denied because her spouse, [REDACTED], was able and available to provide care.
5. On [REDACTED], the Appellant filed her 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.

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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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The Adult Services Worker testified that, during her [REDACTED], assessment, she observed [REDACTED] dressing himself, using both of his hands, and walking unassisted. The Adult Services Worker also stated that [REDACTED] has an active driver's license, that he drives unassisted and that he has a number of vehicles at his disposal for personal use. The Adult Services Worker also testified that [REDACTED] is capable of providing for the Appellant's needs but prefers not to do so, and that when he is out of the home, the Appellant's other relatives provide care.

The Adult Services Worker testified that, although a physician has duly certified, on a Medical Needs form, that [REDACTED] needs assistance with meal preparation, shopping, laundry and housework, she concluded he is nonetheless available and able to perform these tasks for the Appellant.

The Appellant's representative indicated that [REDACTED] is capable of combing his hair, brushing his teeth, bathing himself and driving a car, but cannot vacuum or perform other heavy household chores because he is old. She further acknowledges that [REDACTED] is able to prepare meals, and is capable of feeding the Appellant, but that he needs help bathing her because of her physical size.

Based on a preponderance of the evidence presented, I conclude that the Appellant needs assistance with housework and bathing. The evidence presented supports a conclusion that, although [REDACTED] physician certified a need for meal preparation, shopping, laundry and housework, in reality, and by his representative's admission, he is capable of driving a car to a grocery store, shopping, preparing meals and doing laundry.

However, the evidence presented includes a Medical Needs form signed by a physician that documents that the Appellant's spouse needs assistance with housework, meal preparation,

shopping, and laundry. Because policy requires the medical needs form as a prerequisite for adult Home Help Services eligibility, the Adult Services Worker, although the individual assessing the need for services, is not at liberty to simply ignore the opinions expressed in the medical needs form. To conclude otherwise would render the medical needs form a meaningless and contradictory policy requirement.

The preponderance of the evidence presented supports a conclusion that [REDACTED] needs assistance with housework and with bathing the Appellant because of her physical size. Because it is undisputed the Appellant needs assistance in all areas of activities of daily living and instrumental activities of daily living, and because [REDACTED] physician has certified a need for assistance on a Medical Needs form, I cannot support the Department's assertion that the Appellant's spouse is available and able to provide all of the Appellant's personal care needs.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that the Department has improperly denied the Appellant's request for Home Help Services based on policy denying eligibility when there is a spouse able and available to provide care.

IT IS THEREFORE ORDERED that:


The Department's decision is REVERSED. The Department shall conduct an assessment to determine the appropriate amount, scope and duration of adult home help services in the area of housework and bathing.

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

cc:

[REDACTED]

Date Mailed: 4/16/2009


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***** 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.

[REDACTED]

[REDACTED]

[REDACTED]