

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. 2009-14227 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 ██████████. ██████████ (Appellant) appeared and testified on her own behalf. Also appearing as a witness for the Appellant was her friend, ██████████.

██████████, represented the Department of Community Health. Also present on behalf of the Department were ██████████, and ██████████, Department of Human Services (DHS).

ISSUE

Did the Department properly determine the amount, scope and duration of the Appellant's Home Help Services award?

FINDINGS OF FACT

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

1. Appellant is a Medicaid beneficiary. According to the Medical Needs form, the Appellant is diagnosed with Schizoaffective Disorder, and, as a result, needs assistance with housework. (*Exhibit 1, p. 10*)
2. On ██████████, ██████████, Department of Human Services, sent the Appellant a Services and Payment Approval Notice informing her that Home Help Service hours had been approved in the amount of ██████████ per month.

3. On [REDACTED] the Appellant filed her Request for Hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health. The Appellant believes the amount awarded is insufficient to meet her needs.

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 If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the personal care needs. Complete the comprehensive assessment (DHS-324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client.

The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

*Michigan Department of Human Services,
Independent Living Services Program Requirements,
Adult Services Manual (ASM) 363,
pages 2 through 10 of 24
Adult Services Bulletin (ASB 2008-002); 9-1-2008*

CONTACTS The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and re-determination.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.

- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

Expanded Home Help Services (EHHS) can be authorized for individuals who have severe functional limitations which require such extensive care that the services cannot be purchased within the maximum monthly payment rate.

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.

BEST PRACTICE PRINCIPLES Independent living services will adhere to the following principles:

- Case planning will be person-centered and strength-based.
- Clients will be given a wide range of options to enable informed decision making.
- Client choice will be encouraged and respected; choices will be balanced with safety and security needs.
- All ILS clients will become self-advocates and will participate in case planning.

- Monitor client satisfaction by actively involving clients in evaluating the quality of services delivered to them.
- Monitor service delivered by caregivers to ensure client needs are properly met.
- Monitor caseloads to ensure consistency of service delivery.
- Service plans will be built on the principle of continuous quality improvement.
- Services should be least intrusive, least disruptive and least restrictive.
- Services must recognize the role of the family, directing resources toward the family in their role as caregiver. **However**, if the interest of the family and the client compete, the client's interest is primary.
- A broad range of social work practices will be employed, focused on person-centered services planning.

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.

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;
- Home delivered meals;
- Adult day care.

*Michigan Department of Human Services,
Independent Living Services Program Requirements,
Adult Services Manual (ASM) 363, pages 2 through 10 of 24
Adult Services Bulletin (ASB 2008-002); 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 satisfied her burden here 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).

Proof by a preponderance of the evidence requires that the fact finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence. See, e.g., *Martucci v Detroit Police Comm'r*, 322 Mich 270, 274; 33 NW2d 789 (1948).

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

[REDACTED]
Docket No. 2009-14227 HHS
Decision and Order

401 (1994).

The DHS Adult Services Worker credibly testified that she ranked the Appellant at a “4” for the task of housework, because it was apparent to her the Appellant needed assistance with this task, but that she would not be capable of doing anything without help.

The Appellant asserted she has carpel tunnel syndrome, a condition not included under the diagnostic section of the medical needs form, and that she does not understand why more hours were not awarded.

The Appellant’s chore provider testified simply that the Appellant suffers from mental incapacity, that she worries all the time, and that it is difficult to provide her with proper care. Neither the Appellant nor her chore provider provided any further testimony beyond these claims.

DECISION AND ORDER

Based on a preponderance of evidence presented, I decide that the Department has properly determined the amount, scope and duration of the Appellant’s Home Help Services.

IT IS THEREFORE ORDERED that:

The Department’s decision is **AFFIRMED**.

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

cc:

[REDACTED]

Date Mailed: 4/23/2009

***** 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.



