

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2009-14518 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 ██████████ (Appellant) appeared on her own 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 ██████ year old Medicaid beneficiary who had been participating in the Home Help Services (HHS) program.
2. The Appellant's worker made direct observations of the Appellant on ██████████, resulting in a determination the Appellant was no longer in need of physical assistance with housework, shopping, errands, meal preparation, medication assistance, laundry or mobility.
3. The Department's worker directly observed the Appellant walking to and from a market near her home. She further saw the Appellant carrying a bag and walking without the assistance of a cane, walker or any other device.

4. The Department's worker directly observed the Appellant walking up and down stairs without assistance from another person or device. She saw the Appellant engaged in the physical activities walking, standing, stair climbing and descending and carrying for over 30 minutes.
5. As a result of the direct observations of the Appellant on [REDACTED], the worker determined the Appellant's rankings should be changed from 3 or higher to 2 or less for the activities of housework, laundry, medication, meal preparation, shopping and errands and mobility. She sent a negative action notice on [REDACTED], indicating the case would close effective [REDACTED].
6. 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 as a result of the direct observations made on ██████████ ██████████ she determined the Appellant was no longer in need of physical assistance for the tasks of housework, laundry, medication assistance, shopping, meal preparation and errands. The testimony she provided regarding what she observed is found credible and persuasive to this ALJ. It was contested by the Appellant, however, not materially or credibly. In response to testimony the Appellant was seen out and about on foot, without the assistance of another person, cane or walker, the Appellant responded she did not think it was snowing or actually as cold as the worker said it was. This was ineffective at credibly or materially contradicting the damaging testimony from the worker. The direct observations made are material to a determination of whether the Appellant is physically able to care for herself and remain residing in her home. The conclusion that the Appellant is able to prepare her own meals is supported by a direct observation that she is able to walk 4 or 5 blocks, carry a bag of food items, climb and descend stairs, all without aid of a walker or another person.

The evidence of whether there is medical support for an open or closed case is not as material as the determination made by the worker. Policy supports the determination of the worker when it states explicitly the worker performs the comprehensive assessment and determines if and how much assistance is needed. The doctors are not familiar with the program requirements and parameters and cannot be relied on to determine if a person meets them simply by indicating what their medical status is. While this ALJ has no doubt the Appellant experiences some amount of pain or discomfort resultant from her medical condition, this not the determinative factor in assigning rankings. The issue is whether the tasks can be performed with or without assistance. The Appellant demonstrated she is able to perform much without any assistance.

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. There is insufficient evidence to reverse the 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:



Date Mailed: 4/20/2009


Docket No. 2009-14518 HHS
Decision and Order

***** 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.