

**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. 2009-19290 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ (Appellant) appeared and testified on her own behalf. ██████████; and

██████████ testified as witnesses on Appellant's behalf. ██████████, represented the Department. ██████████

██████████, testified as a witness for the Department.

ISSUES

- (1) Did the Department act properly in reducing Appellant's Home Help Services effective ██████████
- (2) Did the Department properly terminate Appellant's Home Help Services effective ██████████?

FINDINGS OF FACT

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

1. Appellant is a ██████████ Medicaid recipient who was receiving home help services.
2. Appellant was living with her spouse, daughter/provider, and adult son at all times relevant to this matter.

██████████
Docket No. 2009-19290 HHS
Decision and Order

3. Appellant was diagnosed with osteoarthritis, joint pain and status post cerebral vascular accident-right sided weakness. (Exhibit 1, p. 26)
4. Appellant had been receiving home help services for assistance with housework, laundry, shopping for food/meds, and meal preparation. (Exhibit 1, p. 21)
5. On ██████████, the Adult Services Worker went to Appellant's home to reassess Appellant's eligibility for home help services.
6. During the reassessment, the worker noted that: Appellant was home with her spouse, daughter/provider, and son; the department had received a previous Medical Needs form, certifying that Appellant's spouse needed assistance with laundry and shopping; Appellant's spouse was cooking during the home call, he was not using an assistive device, and he got up twice from sitting in the living room to cook something on the stove; Appellant's spouse has back problems, but it is apparent that he can do the meal preparation for Appellant as the responsible relative; per Appellant's statements and based on the assessment, Appellant only needs paid help from her daughter for laundry, shopping, and minimal housework; Appellant's spouse can assist with meal preparation, and it appears he could keep their room clean; and there are two other adult children residing in Appellant's home who could do most of the other housework. (Exhibit 1, p. 25)
7. After the home help services reassessment in ██████████, the Adult Services Worker did the following: removed meal preparation on the basis that Appellant's spouse is able to assist her with this activity; reduced the time for assistance with housework and shopping; prorated the IADLs by 2; and reduced Appellant's monthly home help services payment to \$89.23. (Exhibit 1, p. 22)
8. On ██████████, the Adult Services Worker sent Appellant an Advance Negative Action Notice, informing her that her home help services payment would be reduced to ██████████. (Exhibit 1, pp. 4-7)
9. In ██████████, the Department received an updated Medical Needs form for Appellant's spouse, certifying that Appellant's spouse needs assistance with housework, but he can work at his usual occupation and any other job with limitations; and it was noted that he is unable to lift or push more than 5lbs-both upper extremities. (Exhibit 1, p. 19)
10. Based on the updated medical needs form and the information obtained from the reassessment in ██████████, the worker determined that Appellant no longer needed home help services on the basis that her

spouse was able to assist her with her IADLs . (Exhibit 1, p. 23)

11. On [REDACTED] the Adult Services Worker sent Appellant an Advance Negative Action Notice, informing her that her home help services payment would be terminated. (Exhibit 1, pp. 4-7)
12. On [REDACTED], the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the reduction and subsequent termination of her home help services.

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 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.

**ASM 363; INDEPENDENT LIVING SERVICES PROGRAM PROCEDURES
ASB 2004-006 10-1-2004**

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 customer 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 customer's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer does not perform. Authorize HHS **only** for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.
- Do **not** authorize HHS payments to a responsible relative or legal dependent of the customer.
- 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 customer 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 customer.
- HHS may be authorized when the customer is receiving other home care services if the services are not

duplicative (same service for same time period).

ASM 363; INDEPENDENT LIVING SERVICES PROGRAM PROCEDURES ASB 2004-006 10-1-2004

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; pages 9 or 26; 10 of 26 and 15 of 26; INDEPENDENT LIVING SERVICES PROGRAM PROCEDURES ASB 2004-006 10-1-2004

RESPONSIBLE RELATIVE

A person's spouse.

A parent of an unmarried child under age 18

ASM 361; page 6; INDEPENDENT LIVING SERVICES PROGRAM OVERVIEW ASB 2004-006 10-1-2004

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.

Adult Services Manual (ASM) 10-1-2004

Medicaid Personal Care Option

Customers in need of home help personal care services may become eligible for MA under the Medicaid personal care option.

Discuss this option with the customer and the ES.

Conditions of eligibility:

- The customer meets all MA eligibility factors except income.
- An ILS services case is active on CIMS (program 9).
- The customer is eligible for personal care services.
- The cost of personal care services is **more** than the MA excess income amount.
- The customer agrees to pay the MA excess income amount to the home help provider.

Inform the ES of the amount of personal care services (HHS care cost) **and** the amount of personal care required but not approved for HHS payment, i.e., monthly payment does not meet total care needs.

If **all** the above conditions have been met, the customer has met MA spend-down requirements. The ES will send written notification of the MA effective date and the MA excess income amount.

Upon receipt of the ES notification, enter the customer's spend-down amount in **the Resources** tab of the **Basic Customer** module in **ASCAP**.

Note: Use the Services Approval Notice (FIA-1210) to notify the customer of HHS approval when MA eligibility is met through this option. The notice must inform the customer that the HHS payment will be affected by the spend-down amount, and that the customer is responsible for paying the provider the MA excess income amount (spend down) each month.

Do **not** close a case eligible for MA based on this policy option if the customer does not pay the provider. It has already been ensured that MA funds will not be used to pay the customer's spend-down liability. The payment for these expenses is the responsibility of the customer.

Notify the ES in writing of any changes in the customer's personal care needs. The ES will send written notification of any changes in the monthly MA excess income amount.

MA eligibility under this option **cannot** continue **if:**

- The customer no longer needs personal care;
- or**
- The cost of personal care becomes **equal to or less than** the MA excess income amount.

Note: See Program Eligibility Manual (PEM) 545, Exhibit III, regarding the Medicaid Personal Care Option.

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.

***ASM 363; page; INDEPENDENT LIVING SERVICES PROGRAM
PROCEDURES ASB 2004-006 10-1-2004***

In this case, Appellant requested a hearing, protesting not only the reduction of her home help services, but the subsequent closure of her case. Appellant's spouse testified that he is unable to assist his wife with her activities of daily living because he is incapacitated due to carpal tunnel syndrome in both wrists, a torn rotator cuff in his arm, and pain medications. Appellant's spouse testified that he has chosen to live with carpal tunnel syndrome and not have surgery to treat it. Appellant's spouse testified further that his blood pressure is not stable, he is a diabetic, and he is unable to stand for long periods of time.

In ██████████ the Adult Services Worker completed a home help assessment and determined that Appellant's home help services must be reduced. During the reassessment, the worker noted that: Appellant was home with her spouse, daughter/provider, and son; the department had received a previous Medical Needs form, certifying that Appellant's spouse needed assistance with laundry and shopping; Appellant's spouse was cooking during the home call, not using an assistive device, and he got up twice from sitting in the living room to cook something on the stove; Appellant's spouse has back problems, but it is apparent that he can do the meal preparation for Appellant as the responsible relative; per Appellant's statements and based on the assessment, Appellant only needs paid help from her daughter for laundry, shopping, and minimal housework; Appellant's spouse can assist with meal preparation, and it appears he could keep their room clean; and there are two other adult children residing in Appellant's home who could do most of the other housework. After the home help services reassessment in ██████████, the Adult Services Worker did the following: removed meal preparation on the basis that Appellant's spouse is able to assist her with this activity; reduced the time for assistance with housework and shopping; prorated the IADLs by 2; and reduced Appellant's monthly home help services payment to ██████████. There was no change in the home help services payment

for assistance with laundry.

The Department established that the Adult Services Worker conducted her home help services reassessment of Appellant in accordance with Department policy and allocated the time and ranking for all of the IADLs that Appellant needs assistance with based on her interview of Appellant and her observations of Appellant and her spouse during the last assessment in [REDACTED]. The Department established that the Adult Services Worker followed policy and used the reasonable time schedule as a guide in determining the time that would be allocated for each task given a ranking of 3 or higher. There is no evidence to establish that Appellant had any special needs that required a deviation from the reasonable time schedule set forth in Department policy. Further, it would have been appropriate for the worker to prorate the IADLs by the number of adults in Appellant's household. Instead, the worker prorated the IADLs by only ½. Appellant was living with her spouse, her adult daughter/provider, and her son who is reportedly [REDACTED]. The Department can authorize home help services **only** for the benefit of the customer, **not** for others in the home. If others are living in the home, the department must prorate the IADLs, which include laundry, housework, meal preparation, and shopping for food/meds by at least ½ or **more if appropriate**. Further, the home help services policy states clearly that **the Adult Services Worker is responsible for determining the necessity and level of need for home help services**. Although the client's physician must certify that the client's need for services is related to an existing medical condition, the physician does not prescribe or authorize personal care services. Appellant failed to provide the necessary evidence to refute the reduction of her home help services.

After reducing Appellant's home help services, the Department received a completed Medical Needs form for Appellant's spouse which certifies his need for assistance with housework only. The worker determined, after reviewing the updated Medical Needs form and observing Appellant's spouse in his home, that Appellant's spouse is able to assist Appellant with all of her IADLs, which include meal preparation, laundry, housework, and shopping. Appellant's spouse argued that he is unable to assist his wife with her IADLs because of his medical condition. However, the preponderance of evidence on the record establishes otherwise. A medical doctor completed a Medical Needs form, certifying that Appellant's spouse is able work at his usual occupation and any other job with limitations. The only limitation noted was an inability to lift or push more than 5lbs. The doctor did not indicate that Appellant's spouse had any problems with walking or standing. During a home help services assessment, the Adult Services Worker is required to make an observation of the client's abilities. (See ASM 363) The worker testified credibly that during her reassessment of Appellant, she observed Appellant's spouse arising from a sitting position without assistance, ambulating without an assistive device, and cooking a meal on the stove. The worker testified at the hearing that Appellant's spouse was only wearing wrist guards, and he did not appear to have problems functioning. Further, the fact that Appellant's spouse has chosen to continue taking pain medication for treatment of his carpal tunnel syndrome, instead of undergoing surgery, is evidence that he is not having severe symptoms which prevent

him from functioning or assisting Appellant with her activities of daily living.

Department policy states clearly that the Department cannot authorize home help services to a client who lives with his/her responsible relative/spouse, and that responsible relative is able and available to provide the home help services that the client needs. In this case, Appellant failed to establish that her spouse is unable or unavailable to assist her with her IADLs. Therefore, the Department's termination of Appellant's home help services must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced and, subsequently, terminated Appellant's Home Help Services.

IT IS THEREFORE ORDERED that:

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

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

cc:

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Date Mailed: 6/25/2009

***** 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.