

**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. 2009-26608 HHS
Case 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 daughter and chore provider, ██████████.

██████████, Appeals Review Officer, represented the Department of Community Health (Department). Also appearing as witnesses for the Department were ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker, ██████████ Department of Human Services (DHS).

ISSUE

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

FINDINGS OF FACT

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

1. Appellant is an adult Medicaid beneficiary. Her physician-verified and other medical diagnoses include osteomyelitis of the ankle, leg amputation, multiple pain, bilateral shoulder rotator cuff pain, chronic low back pain, history of back surgery, uncontrolled diabetes, multiple infections over the last 3 years, CHF and asthma. (*Exhibit 1; p. 13*)

2. On [REDACTED], an Adult Services Worker conducted a home call to determine continued eligibility for home help services. Based on observations, the adult services worker determined that the Appellant's medical conditions had improved to a point where she was able to care for her daily needs. A portion of the adult services worker's decision was based on her observations that the Appellant's home was in disarray. She therefore concluded the chore provider was not providing services for the Appellant.
3. On [REDACTED], the adult services worker issued to the Appellant a negative action notice terminating her adult home help services.
4. 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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DEPARTMENT OF HUMAN SERVICES
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 this burden must be determined in accordance with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

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).

The adult services worker testified that, during the ██████████ assessment, she noted the apartment was extremely messy, which led her to conclude that the care provider was not performing the task of housework. She also indicated the chore provider, who was present, continuously made excuses for the condition of the apartment, but claimed she was in the process of reorganizing different rooms of the home. The adult services worker further testified that, in speaking with the Appellant, learned the Appellant is capable of driving to and from the store, but that she needs assistance getting in and out of the car, and, once inside a store, needs assistance getting groceries from higher shelves.

The Appellant and her chore provider credibly testified that, although the Appellant has improved, she still needs some assistance with bathing, laundry and shopping, because she is basically wheelchair-bound inside her apartment. The Appellant also indicated she needs assistance getting in and out of the bathtub because she does not wear her prosthetic leg while bathing and is therefore unsteady on one leg and at risk for falling.

Based on a preponderance of the evidence presented, I conclude the complete termination of services is inappropriate. Although it is apparent the Appellant's medical condition has improved since her leg was amputated, it is also apparent she remains in need of assistance with the tasks of bathing, laundry and shopping. And, the record also reflects the adult services worker's acknowledgment that the Appellant is wheelchair-bound inside her apartment, thereby supporting an inference she may not be able to completely care for all tasks associated with daily living.

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that the Department improperly terminated the Appellant's Home Help Services based on the [REDACTED] assessment.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. DHS shall conduct a further assessment to determine appropriate need for tasks associated with bathing, laundry and shopping.

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

cc: [REDACTED]

Date Mailed: 10/1/2009

[REDACTED]
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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.