

**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. 2009-28748 HHS

Case 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 ██████████. ██████████ represented the Appellant. The Appellant and ██████████ were present. ██████████

██████████, represented the Department. ██████████ was present as a Department witness. ██████████ was present as a Department witness.

ISSUE

Did the Department properly deny Home Help Services payments to the Appellant?

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 Medicaid beneficiary who has received Home Help Services in the past.
2. The Appellant walks with the aid of a walker. She suffers Parkinsons, diabetes, arthritis, asthma and neuropathy.
3. The Appellant is seeking Home Help Assistance payment, thus completed an application for the same.

4. The Appellant requires assistance with Instrumental Activities of Daily Living and some Activities of Daily Living.
5. The Appellant is married and resides with her husband.
6. The Department worker determined the Appellant's husband is capable of providing all care needed by the Appellant at an assessment conducted ██████████.
7. On ██████████, the Department sent a Negative Action Notice to the Appellant denying Home Help Services. The reason cited was the availability of her husband, a legally responsible relative.
8. The Appellant appealed the determination on ██████████.

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.

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) 9-1-2008

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.

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 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 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 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
- 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 the 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:

* * *

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 the 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 the same time period).

Adult Services Manual (ASM) 9-1-2008

Policy establishes the Department cannot pay for a personal care or chore provider if the beneficiary has a legally responsible relative available and able to provide the care the beneficiary may need. In this case the Department asserts the Appellant's husband is available and legally responsible to provide the care required by the Appellant.

The Appellant's representative asserts her husband does not, will not and is not capable of providing the care needed by the Appellant. The representative asserts he is too large and not cognitively able to perform the tasks needed to care for his wife. It was agreed the Appellant requires assistance in and out of the shower. She walks with use of a walker and performs her own personal care. She cannot do housework such as floor care and garbage removal. She does not require help transferring.

Testimony asserted on behalf of the Appellant's husband is that he is unable to take care of his wife and he won't do it because he is forgetful. He has neuropathy, diabetes, arthritis and memory loss. The Appellant's husband would be required to assist her in and out of the shower, as well as perform the household chores on behalf of both of them. The representative asserted at hearing the Appellant resides with her son because she is unable to walk up and down the stairs. She further asserted her husband resides with their daughter, thus they do not reside together.

The Department witness stated all Department records indicate they reside together at the ████████ address. There is no record they are living apart.

This ALJ considered the evidence of record. There is disagreement regarding the capabilities of the Appellant's husband, who is legally obligated to provide the care his

wife's needs unless he is unable to do so. The Department evidence of observations pertaining to the physical and cognitive abilities of the Appellant's husband are quite sparse; specifically, what was seen or observed that would lead the worker to determine he is physically capable of steadying his wife while she gets in and out of the shower. Furthermore, the Department witness cited nothing specific respecting the Appellant's physical ability to perform household chores. Is he strong enough to operate a vacuum cleaner? Can he safely sweep and mop a floor despite neuropathy? This ALJ had no specific evidence reconciling the reports of the Appellants combination of advanced age and neuropathy. However, the testimony provided on behalf of the Appellant lacks credibility. There is a dispute regarding where the married couple resides. Department records, which are only the result of the report from the Appellant and her husband themselves, indicate they live together in ██████████. If this is not the case, it was imperative that this get reported to the Department at some point. The benefit program records kept all list the couple as living together, so to assert they don't for the benefit of only this program appears self serving to this ALJ. Additionally, there was no specific evidence of physical limitations the Appellant's spouse is suffering such that he is unable to render the assistance required by his spouse. The burden of proof rests with the Appellant. It was not met in this case.

This ALJ finds the Appellant is not eligible to receive Home Help payment benefits because she is married and her spouse is available and able to provide her care. The worker correctly applied the policy prohibiting payment to a legally responsible relative.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department has properly denied the home help assistance application of the Appellant.

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

Docket No. 2009-28748 HHS
Decision and Order

cc:



Date Mailed: 9/29/2009

***** 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.