

**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. 2009-3380 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's representative, appeared and testified. ██████████ (Appellant) appeared and testified. ██████████ appeared and testified as a witness for Appellant. ██████████ ██████████, represented the Department of Community Health (Department). ██████████; and ██████████ ██████████, appeared and testified as witnesses for the Department. Appellant stated that he does not protest the termination of his HHS case.

ISSUE

Did the Department properly determine Appellant's Home Help Services eligibility for the period of ██████████ through ██████████?

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 ██████-year-old Medicaid recipient who was determined eligible for Home Help Services (HHS) beginning ██████████
2. Appellant was diagnosed with bilateral lower leg amputation, heart disease with history of valve replacement, diabetes, arthritis, and hypertension. (Department Exhibit 1, pp. 6 & 20)
3. Appellant's was living with his spouse at all times relevant to this matter. (Department Exhibit 1, p. 10).

4. Appellant's medical doctor completed a Medical Needs form, certifying that Appellant needs assistance with toileting, bathing, grooming, dressing, transferring, mobility, meal preparation, shopping, laundry, and housework. (Exhibit 1, p. 6)
5. Appellant's spouse was diagnosed with aortic mitral valve disease-valve replacements. (Department Exhibit 1, p. 7)
6. The medical doctor of Appellant's spouse completed a Medical Needs form, certifying that she needs assistance only with shopping and housework. (Department Exhibit 1, p. 7)
7. ██████████ went to Appellant's home and assessed his eligibility for HHS.
8. ██████████ determined after the assessment that Appellant would be eligible for assistance with housework and shopping only, and Appellant had a responsible relative who was able and available to assist Appellant with all of his other personal care activities. (Department Exhibit 1, pp. 19 & 21)
9. During the HHS assessment, the Adult Services Worker determined that housework should be ranked at a level 5, and shopping for food/meds should be ranked at level 4, on the Independent Living Services Five-Point Functional Scale, based on his observation and conversation with Appellant during the assessment. (Department Exhibit 1, p. 21)
10. On ██████████, the Adult Services Worker sent Appellant written notice that he was approved for an HHS payment in the monthly amount of ██████████, at a rate of ██████████ per hour. (Department Exhibit 1, pp. 19 & 22)
11. At the end of ██████████ Appellant's provider/representative, ██████████, went to the local Department of Human Services (DHS) office and informed ██████████ that he was no longer willing to provide HHS to Appellant for ██████████ per month.
12. On ██████████ sent the Appellant an Advance Negative Action Notice, informing him that his HHS payments would be terminated because his provider was no longer willing to provide HHS.
13. On ██████████ the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the initial determination of his HHS eligibility beginning ██████████

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 health professional and may be provided by individuals or by private or public agencies.

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. If the case is closed and reopened 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; within 90 days with no changes in the customer's condition, a new FIA-54A is not necessary.

Do **not** authorize HHS prior to the date of the medical professional signature on the FIA-54A.

ASM 363
INDEPENDENT LIVING SERVICES PROGRAM PROCEDURES
ASB 2008-001; 1-1-2008

RESPONSIBLE RELATIVE

A person's spouse.

A parent of an unmarried child under age 18

ASM 361;
INDEPENDENT LIVING SERVICES PROGRAM OVERVIEW
ASB 2008-001;1-1-2008

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
- 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 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
- 6 hours/month for light housework
- 7 hours/month for laundry

- 25 hours/month for meal preparation

INDEPENDENT LIVING SERVICES PROGRAM PROCEDURES
ADULT SERVICES MANUAL; ASM 363
ASB 2008-001
1-1-2008

The Department can authorize HHS **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 by at least 1/2, or more if appropriate.

INDEPENDENT LIVING SERVICE PROGRAM
PROCEDURES
ADULT SERVICES MANUAL; ASM 363
ASB 2008-001
1-1-2008

Local Office Hourly Rate

Each local DHS office has an established individual county rate. Workers cannot authorize below the established hourly rate. **Hourly rates which exceed the established rate are exceptions and require DCH approval. At this time, all county rates are frozen at the current level.**

Exception to the Local Office Rate

All exceptions to the established county rate must be submitted to the Department of Community Health for approval. Request an exception to the going rate if the individual circumstances justify an enhanced rate.

Exceptions to the rate will be considered for the following reasons:

The provider must possess specific skills or training to meet the client's needs.

The client has severe mental and/or physical functional limitations requiring complex care.

The exception request must include:

A description of the client's prescribed complex care needs.

A description of the specialized training the provider has received from a clinical practitioner in order to meet the client's needs.

Submit the request, with all supporting documentation, to:

MDCH
Attn: Long Term Care, Systems Development Section
Capitol Commons, 6th Floor
Lansing, MI 48909

In this case, Appellant protests only the Department's initial eligibility determination effective ██████████. Appellant testified that his spouse was out of town for one month from July to August and unable to assist him with his personal care activities. Appellant and his representative maintain that the worker agreed to pay the provider a set amount to provide a number of services, and the provider deserved more than ██████████ per month. Appellant stated that the provider assisted him with toileting, bathing, grooming, dressing, mobility, taking him to church every Sunday, meal preparation, shopping, laundry and housework. Additionally, Appellant protested the hourly rate that his former provider was being paid. However, Adult Services Workers have no control over the individual county hourly rates for individual HHS providers. The Department policy that was in effect at the time of the eligibility determination stated clearly that hourly rates which exceed the established rate are exceptions and require DCH approval; and at that time, all county rates were frozen at the current established level. (Exhibit 1, p. 19) The Department established that Appellant's provider was paid at the correct hourly rate of ██████████.

Appellant's Adult Services Worker testified that Appellant was only eligible for a HHS payment for housework and shopping for food/meds. The worker properly determined that Appellant would only be eligible for assistance with shopping and housework since his spouse was able and available to assist him with his other personal care activities. Appellant had a responsible relative, his spouse, who was living with him at all times relevant to this matter. Although Appellant's spouse was diagnosed with a severe physical impairment, her doctor certified that she was not able to shop and do housework without assistance. The doctor did not certify that Appellant's spouse needed assistance with any of her other personal care activities. (Exhibit 1, p. 7) A client cannot receive a HHS payment for activities that a responsible relative is able and available to provide. Although Appellant testified that his spouse was gone for the entire month of ██████████ and was not available to assist him, he failed to provide the necessary evidence to establish that the Adult Services Worker knew this at the time of the assessment or eligibility determination. Therefore, the worker's determination that Appellant was only eligible for assistance with shopping and housework must be upheld.

The Department established that the Adult Services Worker conducted his HHS assessment of Appellant in accordance with Department policy. The Adult Services Worker allocated the time and ranking for the two IADLs that Appellant qualified for assistance with based his assessment of Appellant and what was reported to him during the home call visit. 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 shopping and housework. 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, the Department can authorize HHS **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 housework and shopping for food/meds by at least 1/2, or **more if appropriate**. The HHS policy states clearly that the Adult Services Worker is responsible for determining

the necessity and level of need for HHS. 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. Since Appellant failed to provide the necessary evidence to refute the Department's HHS eligibility determination, it 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 determined Appellant's HHS eligibility for the period of [REDACTED] through [REDACTED]

IT IS THEREFORE ORDERED that:

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

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

cc:

[REDACTED]

Date Mailed: 2/24/2009

***** 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.