

**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. 2009-36335 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 at hearing. The Appellant
was present and provided testimony on her own behalf. ██████████
██████████ for the Appellant, was present on her behalf.

██████████, represented the Department of
Community Health. ██████████, appeared as a witness
on behalf of the Department.

ISSUE

Did the Department properly terminate 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 had been a participant in the Home Help Services (HHS) program.
2. The Appellant is cognitively impaired. She does not have physical limitations. She resides in the family home with her mother.

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3. The Appellant completed her public education in special education classes. She is currently working part time in supported employment at ██████████ as a dishwasher. She is participating in an employment search for a position working in a child daycare setting.
4. The Appellant's mother has been her chore provider.
5. The Appellant has no known physical limitations evidenced in the record.
6. The Appellant's case was due for a review in ██████████. The Department sent a DHS-54A medical needs form to aid in completing the assessment.
7. The DHS-54A was returned to the Department. The Appellant's doctor indicated the Appellant did not have a medical need for assistance with any Activity of Daily Living or Instrumental Activity of Daily Living.
8. Following receipt of the DHS-54A, the Department sent Notice of Termination, in ██████████.
9. The Appellant thereafter re-applied for Home Help Services. A new DHS-54A was completed by a different doctor and returned to the Department.
10. The new DHS-54A indicates the Appellant has a medical need for assistance with some Activities of Daily Living, as well as some Instrumental Activities of Daily Living. The worker did not authorize payment for any activity, based upon his assessment that the Appellant did not require any higher level of assistance beyond supervision and monitoring for most tasks.
11. The worker further determined the Appellant may need some assistance with shopping, specifically, selecting appropriate items and handling money, however, this assistance was being provided by a natural support, the Appellant's mother, with whom she resides, therefore, he did not authorize payment assistance for this task.
12. The Department sent a Notice of the denial ██████████.
13. The Appellant requested a hearing ██████████.

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 7-1-2009.

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.

The Adult Services Manual (ASM 363 7-1-09), 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.

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).

Adult Services Manual (ASM) 7-1-2009.

Department policy addresses the need for supervision, monitoring or guiding below:

Services Not Covered By Home Help Services

Do **not** authorize HHS 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;

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- Services provided by another resource at the same time;
- Transportation - Medical transportation policy and procedures are in Services Manual Item 211.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care

Adult Services Manual (ASM) 9-1-2008

In this case it is undisputed the Appellant does not suffer physical limitations. She has full use of her hands, arms and legs. She is cognitively impaired, although high functioning. She can write, having signed her name to the hearing request. She rides the city bus without supervision. She will attend the movies and conduct the transaction of purchasing the movie ticket without assistance. Additionally, she performs dishwashing duties part time at [REDACTED]. Her responsibilities include handling and washing of knives and other silverware, breakable dishes and use of machinery. The testimony provided by the Appellant and her mother establishes the Appellant requires supervision and monitoring to ensure she makes appropriate decisions. She is getting assistance with hair washing, however, no evidence was presented to establish she requires the assistance in doing it, only that she is actually getting the assistance. Additionally, her mother testified she shaves under her daughter's arms for her because she does not believe she could handle a razor safely. Her mother's claim she could not shave under her own arm safely is belied by the uncontested fact that she cleans and handles knives at [REDACTED] without assistance, as well as operates the machinery. The Appellant is also receiving assistance with meal preparation. She is able to and does heat up food in the microwave oven. While this ALJ has no trouble believing she would not be able to safely cook an elaborate meal, that is certainly not a basic requirement of independent living, nor is one placed at risk of having to live in an institutional setting because one must prepare simple foods to eat. The fact of the matter is many people are unable to prepare anything but simple meals, sandwiches and microwaveable foods. Additionally she resides with her family. The program she seeks to continue participating in is designed to assist people to remain independent in the community. It does not allow payment for services provided free of charge. The Appellant's mother does prepare meals and the Appellant partakes in them as a family member. The uncontested testimony establishes the Appellant's mother would still provide assistance with meal preparation if not compensated for it. Policy does not support payment for services being provided free of charge.

This ALJ notes the Appellant's mother probably did not have knowledge of the policy prior to the negative action, thus would not understand why the program benefits were ended when her daughter's medical condition is the same. The fact of the matter is,

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payment is never supposed to be authorized for those who require mere supervision and monitoring. The credible evidence of record does not persuade this ALJ the Appellant requires anything more than supervision and monitoring to live safely and happily in the community. She is quite a capable young woman according to the evidence of record. The termination of program benefits implemented by the Department was supported by policy and appropriate in this circumstance.

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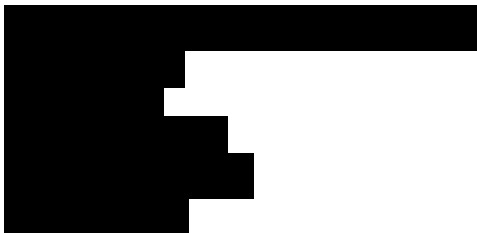
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly terminated the Appellant's HHS payments.

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:

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Date Mailed: 12/15/2009

***** 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.