

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2010-13898 HHS
Case No. [REDACTED]

[REDACTED]
Appellant
_____ /

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 telephone hearing was held on [REDACTED]. [REDACTED] (Appellant) appeared and testified on her own behalf. Her chore provider/daughter, [REDACTED] appeared as a witness for the Appellant.

[REDACTED], represented the Department of Community Health. [REDACTED] (DHS) appeared as a witness for the Department.

ISSUE

Did the Department perform a Home Help Services comprehensive assessment in accordance to Department policy?

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 [REDACTED] year-old woman.
2. Appellant is a Medicaid beneficiary.
3. Appellant's chore provider is her adult daughter, [REDACTED] (Exhibit 1, Page 14).
4. The Appellant has diabetes and a history of a [REDACTED] right leg amputation. (Exhibit 1, Pages 3 and 14).

5. In [REDACTED], Administrative Law Judge [REDACTED] issued a Decision and Order ordering the Department to perform a comprehensive assessment for the Appellant.
6. On [REDACTED] Appellant's Adult Services Worker (ASW) performed the ordered Home Help Services assessment. During the assessment the ASW asked questions and received answers from the Appellant. (Exhibit 1, Page 14).
7. During the assessment the ASW observed that the Appellant could walk on her own. The ASW noted that based on observations and Appellant's answers, the Appellant needed only limited assistance with her activities of daily living or instrumental activities of daily living. (Exhibit 1, Pages 14-17).
8. On [REDACTED] the Department sent an Adequate Action Notice notifying Appellant that her Home Help Services payments would be authorized for bathing, laundry, housework and shopping in the amount of [REDACTED]. (Exhibit 1, Pages 11-12, 18).
9. On [REDACTED] the Department received Appellant's Request for Hearing. (Exhibit 1, Page 3).

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.

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

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 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 April 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.

Approval of time for bathing housework, laundry and shopping –

The ASW notes taken during the ordered assessment indicated she observed the Appellant walk and answer questions competently.

The ASW notes taken during the ordered assessment indicated the Appellant informed her she could make her own meals and could drive at times. The ASW noted that based on observations and Appellant's answers, she Appellant authorized HHS for bathing, housework, laundry and shopping. (Exhibit 1, Pages 14,16).

The Appellant testified that in [REDACTED], she had been authorized to receive over [REDACTED] per month in HHS payments, but after the [REDACTED] assessment she was only authorized for [REDACTED] per month. The Department objected to the characterization of the [REDACTED] authorization of HHS time as a reduction. The Department's witness testified that the current action was not a reduction, rather the result of [REDACTED] order to perform a comprehensive assessment. A review of the documents in evidence shows that in [REDACTED] [REDACTED] ordered the Department to perform a comprehensive assessment and the [REDACTED] HHS action was an authorization pursuant to [REDACTED] order.

The Appellant was asked to explain why she believed the [REDACTED] assessment and authorization was erroneous. The Appellant responded she had received over [REDACTED] per month in HHS payments, as opposed to the [REDACTED] after the [REDACTED]. The Department clarified that HHS wasn't authorized based on a set amount of money, rather on the need for medical services determined by an ASW worker during the comprehensive assessment.

The Appellant and the Appellant's daughter stated that the daughter chore/provider does a lot to help Appellant, including help with shopping and getting out of the bathtub. It is noted that the Department authorized HHS payment for shopping and help getting out of the bathtub.

The Appellant testified that she had many ailments and she could get letters from her doctors. This Administrative Law Judge is limited to evidence that was provided to the Department at the time of its assessment. In addition, Adult Services Manual (ASM 363, 9-1-08), page 9 of 24 outlines the Department's policy regarding who is responsible for determining HHS authorization:

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. (Underline added.)

The Department's policy included above clearly distinguishes that although a doctor verifies a medical need, it is the ASW that determines need for personal care services. As the general doctor letters proposed by Appellant were not available to the Department at the time of its [REDACTED] assessment they cannot be applied to the ASW's findings or the Department's HHS authorization.

The Appellant bears the burden of proving by a preponderance of evidence that the Department's [REDACTED] HHS authorization was not determined according to policy. The Appellant did not provide a preponderance of evidence that the Department's [REDACTED] HHS authorization was not determined according to policy. The Department must implement the Home Help Services program in accordance to Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly authorized her Home Help Services.

[REDACTED]
Docket No. 2010-13898 HHS
Hearing Decision & Order

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 4/15/2010

***** 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.