

**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. 2010-2225 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ appeared on behalf of the Appellant. ██████████, appeals review officer, represented the Department. Her witnesses were ██████████, and ██████████ supervisor.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services, (HHS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. At the time of hearing the Appellant is a ██████████-year-old Medicaid recipient.
2. The Appellant alleges medical afflictions of: HTN and an undisclosed psychiatric condition. (See Testimony and Appellant's Exhibit #1)
3. On or about ██████████, the Appellant's ASW (██████████) conducted a face-to-face home visit and observed that the Appellant's condition had improved to the point that HHS services were no longer necessary. She then sent out a negative action notice. (See Testimony of Hamilton)¹

¹ There was much discussion on the record about the Appellant's inaccurate street address.

4. The Appellant was observed folding laundry and living with her daughter. The ASW (██████████) remarked that she had improved to such a level that IADL services were no longer necessary. (See Testimony of ██████████)
5. The ASW observed that the daughter who lives with the Appellant is not the choreprovider, but rather the son and representative today, ██████████ who frequently calls-in reminders. (See Testimony of Hamilton)
6. The instant appeal was received by the State Office Administrative Hearings and Rules on ██████████. (Appellant's Exhibit #1)

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 redetermination.

- 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.

Adult Services Manual (ASM) §363, September 1, 2008, page 2

Provider Criteria

Determine the provider's ability to meet the following minimum criteria in a face-to-face interview with the client and the provider:

Age

- Appropriate to complete the needed service.

Ability

- To follow instructions and HHS program procedures.
- To perform the services required.
- To handle emergencies.

Physical Health

- Adequate to perform the needed services.

Knowledge

- How and when to seek assistance from appropriate others in the event of an emergency.

Personal Qualities

- Dependable.
- Can meet job demands including overtime, if necessary.

Training

- Willing to participate in available training programs if necessary. HHS payment may be terminated if the provider fails to meet any of the provider criteria.

Provider Interview

Explain the following points to the client and the provider during the initial interview:

- The provider is employed by the client not the State of Michigan.
- A provider who receives public assistance must report all income received as a home help provider to the FIS/ES.
- The client is the employer and has the right to hire and fire the provider.
- The client is responsible for notifying the worker of any change in providers or hours of care.
- The services the provider is responsible for and has agreed to deliver including the frequency, amount and type of service.
- The provider must keep a log of the services provided ...

ASM Supra p. 16

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.

ASM §363, September 1, 2008, pages 2, 3 of 24

The Department witness testified that on home help call she observed the Appellant folding laundry and that she looked like she had improved to such a degree that IADL services were no longer necessary. She added that the choreprovider's telephone calls to remind his mother to do certain things – was not a compensable service under the home help program.

The Appellant's representative said that he works full time, but arranges the HHS services in the morning, noting that this is when she needs him the most. He said he goes shopping every other day. He added that the laundry is done at his home [5 miles away] because neither the Appellant nor his sister is capable of going downstairs.

On review, I found the observations of the Department's witness more credible than the proofs of the Appellant. The comprehensive assessment is the key issue and remains the responsibility of the Department via its ASW – who was present at the Appellant's home observing her. See ASM §365, Appendix.

The Appellant failed to preponderate that the Department erred in its assessment.

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Hearing Decision & Order

Based on the observations of the ASW and her testimony at hearing it was apparent that the Appellant could move independently and self-manage her care. The ASW's decision to cancel Home Help Services was appropriate, when made, based on this record.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's Home Help Services.

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 12/23/2009

***** 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.