

**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. 2010-22324 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 ██████████. ██████████, cousin, appeared on the Appellant's behalf. ██████████, Appeals and Review Officer, represented the Department. ██████████, Adult Services Worker, and ██████████, Adult Services Supervisor, were present as Department witnesses.

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 was receiving Adult Home Help Services.
2. The Appellant suffers from COPD and is oxygen dependant. (Exhibit 1, page 9)
3. The Appellant's son was his chore provider. (Exhibit 1, page 5)
4. On ██████████, an Adult Services Worker (ASW) conducted a home visit as part of the six month case review. Present in the home were the Appellant, his spouse, the chore provider's wife and her children. The

chore provider's wife stated that the chore provider was at work, that she did not want to be involved in the review and that she did not have any information about the services being provided. (Testimony and Exhibit 1, page 5)

5. On ██████████, a Department of Human Services Medicaid worker emailed the ASW that the chore provider was in jail awaiting deportation and that there was conflicting information regarding the chore provider's marital status and address. (Testimony and Exhibit 1, pages 5 and 10)
6. The ASW determined that the Appellant was not eligible for continuing Home Help Services based on her observations of the Appellant prior to the home visit, statements from the chore provider's wife, false information given by the chore provider and because it appeared the Appellant had improved since the chore provider moved out and stopped providing services. (Testimony and Exhibit 1, page 4)
7. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant indicating that his Home Help Services payments would terminate effective ██████████. (Exhibit 1, page 4)
8. The Appellant requested a formal, administrative 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.

Program requirements are set forth in Adult Services Manual item 362, below:

COMPREHENSIVE ASSESSMENT

If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the personal care needs. Complete the comprehensive assessment (DHS- 324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

CONTACTS

The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and redetermination.

Adult Services Manual (ASM 362) 12-1-2007, Page 3 of 5

Adult Services Manual item 363 addresses program procedures:

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 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.

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.

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

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.

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 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 same time period).

REVIEWS

ILS cases must be reviewed every six months. A face-to-face contact is required with the client, in the home. If applicable, the interview must also include the caregiver.

Six Month Review

Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.
- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- Follow-up collateral contacts with significant others to assess their role in the case plan.

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- Review of client satisfaction with the delivery of planned services.

Adult Services Manual (ASM 363) 9-1-2008, Pages 2-6 of 24

On ██████████, the Adult Services Worker (ASW) completed a home visit as part of a six month review in accordance with Department policy. The worker testified that the Appellant was present in the home as well as his wife, the chore provider's wife and her children. The ASW's case note indicates that she observed the Appellant sitting on the bed with his oxygen during the home visit. The ASW's note also indicates that the chore provider's wife stated that her husband was at work and that she did not want to be involved review herself nor did she have any information about services being provided. (Exhibit 1, page 5) The ASW also noted that prior to the home visit, she observed the Appellant traveling in his motorized wheelchair getting to the main road from his apartment building without his oxygen. (Testimony and Exhibit 1, page 5) The ASW testified that she primarily spoke with the chore provider's wife, who reluctantly stated that the Appellant and his wife had improved and that the Appellant can use his chair to go to the store down the street. (Testimony and Exhibit 1, page 5)

The ASW testified that the ██████████ Final Administrative Removal Order explains why the provider moved out of the home. The ASW testified she spoke with immigration on ██████████, who stated that the provider was in jail on ██████████ and that she would have to call the deportation worker for more information. The ASW testified she was unable to reach the deportation worker. The ASW asserted that the chore provider lied about living in the Appellant's home prior to the ██████████ home visit. However, the evidence indicates that the ASW knew the chore provider was living elsewhere prior to the ██████████ home visit as the partial case note from the ██████████ states the Appellant lives with his spouse. (Exhibit 1, page 5).

However, even if there was some proof of dishonesty by the chore provider, this would not be a basis to terminate services for the Appellant. Further, the chore provider's incarceration and expected deportation is also not sufficient to terminate services for the Appellant. A suspension of payments until a new chore provider could be enrolled would have been more appropriate. A termination services must be based upon a comprehensive assessment determination that the Appellant no longer a needs assistance at a level three or greater with any of the activities of daily living or independent activities of daily living.

The ASW's determination to terminate services can not be supported by the ██████████ assessment. The ASW's observation of the Appellant in his motorized scooter prior to the home visit is insufficient to determine that the Appellant no longer needs assistance with any activities of daily living or independent activities of daily living. Policy clearly states that a face-to face interview is to be conducted with the client in their home to assess the personal care needs. The Department did not present any

evidence or testimony that the ASW had any discussion with the Appellant himself regarding any improvement in his health condition, let alone his abilities and needs. Instead, the ASW testified she primarily spoke with the chore provider's wife, who stated he did not want to be involved. While policy does allow the ASW to make collateral contacts with significant others to assess their role in the case plan, the evidence indicates that the chore provider's wife did not have any involvement with the services being provided. (Exhibit 1, page 5)

The Appellant's representative testified that the information the ASW obtained from INS was incorrect as the Appellant went to work the morning of ██████████ where he was picked up and arrested by INS that same day. The Appellant's representative stated that the Appellant does need ongoing Home Help Services as is on oxygen constantly and his condition has not improved. The Appellant's representative explained that ten days after the ASW's home visit, the Appellant was hospitalized on life support, returned home but had to be hospitalized again two days later. The Appellant's representative testified that the doctors indicate the Appellant's lungs are done and he can never walk again. The Appellant's representative further testified that the Appellant's wife is not able to provide the services the Appellant needs and that his daughter is currently providing the care.

Based on the submitted evidence, the Department failed to conduct a complete six month review, including a reviewing the comprehensive assessment and service plan review with the Appellant himself. There is insufficient evidence that the Appellant improved since the chore provider moved out and stopped providing care, the reason for termination as stated in the Adequate Negative Action Notice. (Exhibit 1, page 4). There evidence indicates that the chore provider was not living in the Appellant's home at least as of the ██████████ home visit. The ASW's assessment was insufficient to establish that the Appellant's health had improved or that he was able to take care of his own needs at the time of the ██████████ home visit, and therefore he no longer qualified for Home Help Services.

Since there has been a significant decline in the Appellant's health, the Department indicated they would take a new referral for Home Help Services for the Appellant on the date of this hearing. If they have not already done so, the Department shall conduct a new comprehensive assessment, including discussion with the Appellant himself of his abilities and needs. Based on the testimony, an interpreter or translator may be needed if the Appellant has lost the ability to speak and due to the language barrier. The Department shall also evaluate enrollment of a new chore provider.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department has not properly terminated home help assistance payments for the Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is hereby ordered to conduct a complete comprehensive assessment, including a discussion with the Appellant himself, of his abilities and assistance needs. The Department shall also evaluate enrollment of a new chore provider.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 5/18/2010

***** 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.