

**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. 2010-36080 HHS
Case No. [REDACTED]

[REDACTED],

Appellant

_____ /

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 [REDACTED]. [REDACTED] appeared on her own behalf. [REDACTED] Appeals and Review Officer, represented the Department. [REDACTED], Adult Services Worker, was present as a Department witness.

ISSUE

Did the Department properly terminate Home Help Services (HHS) 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 [REDACTED] year old Medicaid beneficiary who was receiving Adult Home Help Services.
2. The Appellant has been diagnosed with multiple sclerosis, rheumatoid arthritis, high blood pressure, high cholesterol, right hip pain, and quadraparesis. (Exhibit 1, page 7)
3. In [REDACTED], the Appellant made efforts to notify the Department of Human Services (DHS) of her recent marriage, including leaving a voicemail for the Adult Services Worker. (Appellant Testimony)

4. The DHS records for other benefit programs were updated to reflect the Appellant's marital status, however the Adult Services Worker did not receive the Appellant's voicemail. (Adult Services Worker Testimony)
5. The Adult Services worker became aware of the Appellant's marriage in ██████████ through other DHS workers and Department records. (Adult Services Worker Testimony)
6. Department policy states that Home Help Services may not be authorized for services that a responsible relative, spouse or parent of an unmarried child under age 18) is able and available to provide.
7. The Adult Services Worker determined that the Appellant's spouse could provide the services HHS hours had been authorized for outside of his work hours. (Adult Service Worker Testimony)
8. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant that her Home Help Services payments would terminate. (Exhibit 1, pages 10-14)
9. 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.

Adult Services Manual (ASM 363) 9-1-2008, pages 2-15 of 24 describes how and when Home Help Services can be authorized:

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).

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;
- Home delivered meals;
- Adult day care.

Adult Services Manual (ASM 363) 9-1-2008,
Pages 2-15 of 24

In present case, the Adult Services Worker last conducted a comprehensive assessment in ██████████. (Adult Services Worker Testimony) It is not contested that the Appellant was married after this assessment was completed. The Appellant testified that she made efforts to notify the Department of Human Services (DHS) of her marriage, including leaving a voicemail for the Adult Services Worker in ██████████. The Adult Services Worker credibly testified that she did not receive the Appellant's voicemail. However, some of the efforts to notify DHS of the marriage were received as other DHS workers were aware of the marriage and DHS records for other benefit programs were updated to reflect the Appellant's marital status. (Adult Services Worker Testimony)

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Upon learning of the Appellant's marriage in [REDACTED], the Adult Services worker considered the ability and availability of the Appellant's spouse to provide the services HHS hours had been authorized for. The Appellant was receiving 21 ½ hours per month for assistance with housework, laundry, shopping, and meal preparation. (Exhibit 1, page 4) The Adult Services Worker testified that she determined that the Appellant's spouse would be able to assist with these activities outside of his work hours. Accordingly, the Adult Services Worker found that the Appellant was no longer eligible for the HHS program.

The Appellant disagrees with the Adult Services Worker's determination and testified that her needs and abilities vary day by day due to the onset of her disease, multiple sclerosis. The Appellant stated that her husband works 25 miles away and his hours are never the same day to day, which affects his ability to assist with activities such as shopping. The Appellant has a car and can drive but explained that she can not shop on her own because she can not lift. The Appellant stated that her husband sometimes works during the hours stores are open. The Appellant further explained that if she is not doing well, her husband would not be able to go shopping without her because he does not have a driver's license. The Appellant stated that she has been paying her daughter to do the shopping and laundry.

The Department properly considered the availability and ability of the Appellant's husband to provide care for the Appellant. The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. Adult Services Glossary (ASG Glossary) 12-1-2007, Page 5 of 6. The Appellant's husband meets the definition of a responsible relative. Under Department policy, Home Help Services for the Appellant could only be authorized for those services or times which the responsible relative is unavailable or unable to provide. The policy notes that 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 care giving. These disabilities must be documented/verified by a medical professional on the DHS-54A (Medical Needs form). Adult Services Manual (ASM 363) 9-1-2008, Page 5 of 24.

There is no evidence that the Appellant's husband is disabled; only that he is unavailable at times due to his work schedule. The Adult Service Worker's determination that the Appellant's husband could provide services to the Appellant outside of his work hours was reasonable. It may be difficult to coordinate at times due to the Appellant's needs and abilities varying day by day and her husband's works irregular hours. However, the activities the Appellant was receiving HHS hours for, housework, shopping, laundry and meal preparation, do not have to be performed while the Appellant's spouse is out of the home for work.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department has properly terminated home help assistance payments for the Appellant.

IT IS THEREFORE ORDERED that:

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

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

cc:



Date Mailed: 7/29/2010

***** 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.