

**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. 2010-36081 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge under MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant was represented by his mother and chore provider, ██████████. ██████████, represented the Department. ██████████, appeared as a witness for the Department. ██████████, was also present for the hearing.

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 ██████████ Medicaid beneficiary who was receiving ██████████ in HHS payments for assistance with the following tasks: grooming, medications, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 12)
2. The Appellant lives with his mother, who is also his chore provider. (Testimony of ██████████; Exhibit 1, pages 11-12)
3. The Appellant has been diagnosed with mental retardation and memory loss. (Exhibit 1, pages 4 and 14)

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4. On ██████████, the Appellant's case was transferred to the Adult Services Worker (worker).
5. On ██████████, the worker conducted an annual in-home assessment with the Appellant and his mother for continuing eligibility for HHS. (Exhibit 1, pages 5 and 8)
6. At the assessment, the worker was informed that the Appellant has a valid Michigan driver's license. (Testimony of ██████████)
7. On ██████████, the Appellant's physician certified a medical need for assistance with the following tasks: grooming, taking medications, meal preparation, shopping, laundry, and housework. (Exhibit 1, page 4)
8. On ██████████, the worker contacted the Appellant's physician to discuss the Appellant's needs. The physician advised the he was aware of the fact that the Appellant drives. He stated that he was most concerned with the Appellant receiving monitoring and supervision of his daily tasks. (Exhibit 1, page 10; Testimony of ██████████)
9. As a result of the information gathered from the Appellant and his mother at the home visit, as well as information obtained from the Appellant's treating physician, the worker determined that the Appellant's eligibility for continuing HHS was not supported. (Exhibit 1, pages 8-10; Testimony of ██████████)
10. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant, advising that his HHS payments would terminate, effective ██████████. (Exhibit 1, pages 5-7)
11. 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.

The purpose of HHS is 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.

The Adult Services Manual addresses the issue of assessment as follows:

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.

* * *

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.
- 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).

*Adult Services Manual (ASM 363) 9-1-2008,
Pages 2-14 of 24*

On ██████████, the worker completed a home visit with the Appellant and his mother as part of an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that the Appellant's mother could not articulate the specific tasks that she assisted the Appellant with on a daily basis. When asked about laundry, she stated that the Appellant needs to be supervised when doing laundry so that he does not mess up the clothes. As for grooming, the Appellant's mother stated that he needs prompting to perform those tasks. When they discussed shopping, the Appellant's mother stated that the Appellant drives her to the store, and she selects and purchases his groceries because the Appellant does not know how. The worker further testified that the Appellant's mother advised her that the only medications she administers to the Appellant are over-the-counter medications. (Exhibit 1, page 8; Testimony of ██████████)

After the assessment, the worker contacted the Appellant's treating physician to ascertain his need for assistance. The Appellant's physician advised that the Appellant was functional. However, his concern was that the Appellant need to be prompted and supervised with performing daily tasks. (Exhibit 1, page 10; Testimony of ██████████)

The Appellant's mother disagrees with the termination and testified that the Appellant needs assistance. As for grooming, she testified that she braids the Appellant's hair when it is too long. He is otherwise capable of grooming himself. As for laundry, the Appellant's mother testified that the Appellant cannot do laundry because he cannot read the instructions on her washer and dryer. However, she did acknowledge that the Appellant is capable of driving a car by himself. But she stated that he learned to drive by watching others do it and that he cannot read the road signs.

The Appellant's mother further testified that she does all of the shopping because the Appellant would probably not buy any healthy foods, and the Appellant cannot prepare meals because he doesn't know how to put things together properly. As for housework, the Appellant's mother testified that the Appellant probably could do it, but he would not do it right. For example, she explained that if she let the Appellant vacuum, he would probably leave things behind and think nothing of it. Finally, the Appellant's mother testified that she has to administer over-the-counter medications to the Appellant when needed because he cannot read. She stated that some days he can identify the medications himself, but other days he cannot.

The evidence supports the worker's determination that the Appellant needs prompting, monitoring, and supervision to perform the tasks of daily living. Unfortunately, the HHS program does not cover monitoring, prompting, and supervision. Accordingly, the Appellant did not meet his burden of proving, by a preponderance of evidence, that the Department improperly terminated his HHS. The evidence supports the worker's decision to terminate services.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 8/17/2010

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***** 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.