

**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. 2010-36890 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 on [REDACTED]. The Appellant appeared without representation. Her witness was her friend, [REDACTED]. [REDACTED], appeals review officer, represented the Department. Her witness was [REDACTED], Adult Services Worker (ASW).

ISSUE

Did the Department properly terminate Home Help Services (HHS) of 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 female Medicaid beneficiary. Appellant's Exhibit #1
2. The Appellant is afflicted with; fatigue, ovarian cancer stage 3, HTN, SOB, vascular disease, kidney infection and stent replacement. Department's Exhibit A, pp. 8, 12.
3. On [REDACTED], the Appellant was advised via advanced negative action notice that her services were being terminated effective [REDACTED]. Department's Exhibit A, pp. 2, 4.

4. The ASW reported on face-to-face contact with the Appellant that she observed her ambulate and reported that she was in an improved condition. See Testimony and Department's Exhibit A, p. 16
5. The ASW reassessed the Appellant and determined that she had the ability to provide for her own self-care. See Testimony of ██████████.
6. The ASW said that the Appellant had only three medications – none of which concerned pain management. Department's Exhibit A, p. 8.
7. On the date of assessment the ASW determined that the Appellant had recovered from her stent replacement. See Testimony of ██████████.
8. The instant request for hearing was received by SOAHR 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 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 re-determination.
- 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
- 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. (Emphasis supplied)

Adult Service Manual (ASM), §363,
pp. 2, 3 of 24, 9-1-2008.

The Department's witness (██████████) testified that HHS services were terminated because she assessed the Appellant as ambulatory, independent and not requiring home help services – based on her observations and conversation with the Appellant during a face to face meeting in the Appellant's home.

In terms of necessary services the Appellant's physician told the ASW that she only needed assistance with heavy lifting and transportation – two (2) services not covered by the HHS program.

The Appellant's witness said that the doctor's office later contradicted that recommendation in a post petition communication not shared with the ALJ.

The Appellant and her witness stated that she has good days and bad days, but that her medical plight today is as serious as it was in ██████████ - when she first underwent chemotherapy for ovarian cancer.

The Appellant said she cannot cook or run a vacuum. She added that the ASW misunderstood her comments about her ability to do laundry. She said her chore provider does all the laundry – while she just folds things on the couch.

She added that the medication for her UTI doesn't always work and that she suffers from chronic bleeding.


The Department's record documented the medical opinion of her physician who reported her chief medical issue to be "stent replaced" with no listing of the other afflictions articulated by the Appellant. The medical needs form DHS 54A was consistent with the observations of the ASW on in home assessment, as well as her notes concerning that meeting.

The Appellant produced no credible evidence to counter the ASW assessment or to support her medically based argument that she can do very little for herself. If there has been a change in condition as suggested by the Appellant and her witness – then the Appellant is free to reapply for services if necessary. However, she did not preponderate her burden of proof that the Department erred in the termination of her HHS services.

A comprehensive assessment is the responsibility of the ASW, and I find that it was properly measured and applied to this Appellant. The ASW's credible determination was that the Appellant was independent on ██████████, and able to provide self care, she properly terminated HHS benefits.

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.


Docket No. 2010-36890 HHS
Hearing Decision & Order

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: 7/13/2010

***** 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.