

**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. 2010-14781 HHS

██████████

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 ██████████. ██████████, Supports Coordinator Services to ██████████, appeared on the Appellant's behalf. ██████████, Appeals and Review Officer, represented the Department. ██████████, Social Worker, appeared as a witness for the Department.

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 lives with his mother, who is also his chore provider. (Testimony)
3. The Appellant has been diagnosed with mental retardation, autism, and asthma. (Exhibit 1, page 10)

4. On ██████████, an Adult Services Worker conducted an in home assessment with the Appellant and his mother for continuing eligibility for Home Help Services. (Exhibit 1, page 5)
5. As a result of the information gathered from the Appellant and his mother at the home visit, the ASW determined that eligibility for continuing Home Help Services with this provider was not supported. (Exhibit 1, pages 5-6)
6. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant that his Home Help Services payments would terminate, effective ██████████. (Exhibit 1, page 4)
7. 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 2-5 of 24 addresses the issue of assessment:

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.
- 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).

HOME HELP SERVICE PROVIDERS

Provider Selection

The client has the right to choose the home help provider(s). As the employer of the provider, the client has the right to hire and fire providers to meet individual personal care service needs.

The client may receive DHS payment for home help services from **qualified** providers only.

The determination of provider qualification is the responsibility of the adult services worker.

Upon request, the adult services worker should assist the client in obtaining a qualified provider.

The local office may maintain a resource file of qualified providers willing to assist HHS clients. The file may include such information as:

- Type of client the provider is willing to work with;
- Training the provider has participated in;
- Past work experience;
- Hours the provider is willing/available to work;
- Type of services the provider is willing to perform.

Do not authorize HHS payments to a **responsible relative or **legal dependent** of the client.**

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. |

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|--------------------|---|---|
| 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.

Adult Services Manual (ASM 363) 9-1-2008,
Pages 2-16 of 24

The Appellant is a [REDACTED] Medicaid beneficiary who was receiving Home Help Services, with his mother enrolled as the chore provider. On [REDACTED], the Adult Services Worker (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. (Exhibit 1, page 5) The worker testified that the Appellant's mother stated she can not use her hands due to severe arthritis and demonstrated to the worker how she can not open her hands. The worker's notes indicate that during the assessment the Appellant reported he can dress himself, perform his own hygiene, assist with the laundry, and housework chores. (Exhibit 1, page 5) The worker testified that she was also informed that the Appellant's sister assists with some activities, such as meal preparation. The worker explained that she must determine if the provider is qualified and based on the information she was provided at the time of the Assessment, and in this case the provider did meet the criteria found in the above cited policy. Therefore, the worker stated the Appellant no longer qualified for Home Help Services with this provider. The worker further stated that the Appellant may still qualify for Home Help Services in several areas, and she had hoped a new provider would contact the Department to be enrolled.

The Appellant's representative disagrees with the determination and testified that the Appellant's mother may have overstated the Appellant's abilities during the home visit. The Appellant's representative also stated that the Appellant's mother is physically capable using her hands to assisting the Appellant in many ways, including opening items and driving. The Appellant's representative also noted that the Appellant's mother can assist with supervision and training the Appellant to be as independent as possible.

A letter from the Appellant's brother was submitted, which also states that the Appellant's abilities were overestimated during the home visit. The letter further indicates that the brother is assisting with some activities covered under the Home Help program, such as shopping, and that Appellant only needs verbal assistance, such as reminding and guiding for other activities. (Exhibit 2)

The Home Help Services Program does not cover assistance with all of the activities discussed by the Appellant's representative and included in the brother's letter, such as driving to appointments and outside chores. The Department also noted that policy does not allow Home Help Services payments activities where only verbal assistance is required. The Appellant's representative acknowledged that this case really comes down to the Appellant's mother providing monitoring, prompting, and supervision. However, the Appellant's representative also noted that the Appellant's sister is willing to be enrolled as the new chore provider.

The Appellant did not meet his burden of proving, by a preponderance of evidence, that the Department improperly terminated his home help services based on the available information. The evidence supports the worker's determination to terminate services as the Appellant's mother does not meet the provider criteria, the assistance the Appellant needs for several tasks was only verbal, and that the assistance for other tasks was being provided by a sibling instead of the Appellant's mother. This does not imply that the Appellant does not need assistance or that he no longer qualifies for any Home Help Services. If the Appellant's sister has not already done so, she should contact the Department to be enrolled as the new chore provider. Further, even though the Home Help Services program does not cover verbal assistance, the Department can refer the Appellant to other programs that include this level of assistance as well as assistance with the activities not covered by the Home Help Services Program. Lastly, as noted by the worker, the Appellant's mother may qualify for some services herself. If she has not already done so, the Appellant's mother may wish to file her own application with the Department.

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 based on the information available at the time of the re-determination.

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

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CC:



Date Mailed: 3/31/2010

***** 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.