

**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. 2010-14782 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] [REDACTED], appeared as the Appellant's representative. [REDACTED] was present. [REDACTED], represented the Department. [REDACTED], and [REDACTED], 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 [REDACTED] year old Medicaid beneficiary who was receiving Adult Home Help Services.
2. The Appellant lives in an apartment with her husband. (Testimony)
3. The Appellant has been diagnosed with diabetes mellitus, GERD, hypercholesterolemia, neck arthritis, morbid obesity, hypertension, left breast cancer status post mastectomy surgery and a bladder condition. (Exhibit 1, page 7)

4. On ██████████, an Adult Services Worker (worker) conducted a home visit with the Appellant, her husband, and chore provider to assess continuing eligibility for Home Help Services. (Exhibit 1, page 6)
5. As a result of the information gathered from at the time of the assessment, the ASW determined that the Appellant was no longer eligible for Home Help Services. (Exhibit 1, page 6)
6. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant that her Home Help Services payments would terminate, effective ██████████. (Exhibit 1, page 5)
7. On ██████████ a formal, administrative hearing was requested on the Appellant's behalf. On ██████████ the hearing request was resubmitted with the Appellant's signature. (Exhibit 1, pages 3-4)

### **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.

**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).

Adult Services Manual (ASM 363) 9-1-2008, Pages 2-5 of 24

The Appellant had been receiving Home Help Services hours for the tasks of bathing, grooming, dressing, mobility, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 9) On [REDACTED] the Adult Services Worker (worker) conducted a home visit for the Home Help Services (HHS) comprehensive assessment for redetermination in accordance with Department policy. The worker testified that the Appellant, her husband, and the chore provider were present for the home visit. (See also Exhibit 1, page 6) The worker stated that the Appellant's husband reported that he is able to perform activities of daily living and instrumental activities of daily living for himself and his wife. (Exhibit 1, page 6) The worker testified that she observed the Appellant walking within the apartment unassisted. The worker also testified that the chore provider was not providing services daily, and that the Appellant can participate in some meal preparation with her husband's assistance. The worker noted that the Appellant's husband stated he is able to do everything when the provider is not there. Accordingly, the worker determined that the Appellant no longer qualified for Home Help Services payments as her husband, a responsible relative under Department policy, is available and able to assist her.

The Appellant's representative disagrees with the determination and testified that the Appellant is not able to do anything on her own and that she needs a walker to move within the home. The Appellant's representative testified that she assists the Appellant with bathing, dressing, laundry, meals, and shopping. The Appellant's representative acknowledged that the Appellant and her husband could take out food already prepared to microwave or make sandwiches, however, there is not anything that they like to prepare themselves. The Appellant's representative testified that the Appellant had limitations due to a leg problem, however, she could not recall if this was discussed at the home visit with the worker. The leg problem is not noted on the Medical Needs form from the Appellant's physician. (Exhibit 1, page 7)

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.

**Docket No. 2010-14782 HHS**  
**Decision and Order**

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. Adult Services Manual (ASM 363) 9-1-2008, Page 5 of 24.

Based on the information available to the Department at the time of the re-determination eligibility for continuing Home Help Services not supported. The DHS 54-A from the Appellant's husband did document diagnoses of neck disc disease C5-C6, C6-C7, hypercholesterolemia, hypertension and peptic ulcer disease. The doctor did circle some activities, however, he did not check yes or no to certify if the Appellant's husband had medical needs for assistance with these tasks. (Exhibit 2) Further, the Appellant's husband reported that he is able to perform all the activities of daily living and instrumental activities of daily living for himself and his wife. Accordingly, the Appellant is not be eligible for Home Help Services because her husband is a responsible relative that is able and available to provide the needed assistance.

**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.

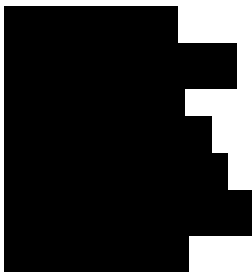
**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

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

cc:



Date Mailed: 04/27/2010

**Docket No. 2010-14782 HHS**  
**Decision and Order**

**\*\*\* 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.