

**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. 2010-16061 HHS
Case No. [REDACTED]

[REDACTED]
Appellant
_____ /

DECISION AND ORDER

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

After due notice, a telephone hearing was held on [REDACTED]. [REDACTED] appeared on her own behalf. [REDACTED] represented the Department. [REDACTED], appeared as a witness for the Department.

ISSUE

Did the Department properly terminate Appellant's home help services?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a [REDACTED] year-old woman. (Exhibit 2).
2. Appellant is a Medicaid beneficiary.
3. Appellant's chore provider is her adult son, [REDACTED]. (Exhibit 1, Page 10).
4. Appellant lives with her chore provider adult son. (Exhibit 1, Page 10).
5. The Appellant has lupus, renal disease, and a history of a [REDACTED] stroke and hip replacement. The Appellant goes dialysis three times per week. (Exhibit 1, Page 12, Exhibit 2).
6. On [REDACTED] Appellant's Adult Services Worker (ASW) made a visit to Appellant's home to conduct a required Home Help Services annual reassessment for Appellant. During the assessment the ASW asked questions and received answers from the Appellant. (Exhibit 1, Page 5).

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7. During the reassessment the ASW observed the Appellant. The ASW noted that based on observations and Appellant's answers, the Appellant had improved from her HHS assessment a year prior and did not need assistance with her activities of daily living or instrumental activities of daily living. (Exhibit 1, Pages 4-7, 10-11).
8. On [REDACTED], the Department sent a Negative Action Notice notifying Appellant that her Home Help Services payments would be terminated effective [REDACTED]. (Exhibit 1, Pages 4-6).
9. On [REDACTED], the Department received Appellant's Request for 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 Social Welfare Act, 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 agencies.

The ASW testified that a comprehensive assessment was completed on [REDACTED], at which the Appellant was asked questions and provided answers.

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

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 redetermination.
- 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 for food and other necessities of daily living
- Laundry
- 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 April 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 customer and provider, observation of the customer'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.

Termination of HHS –

The ASW testified that she has experience working as a physical therapist for stroke and joint replacement patients, and therefore, is familiar with medical necessity for personal care assistance services with these conditions. The ASW testified that during the reassessment she observed the Appellant walk without a mobility aid, walk up and down the stairs to receive a medication bottle from her bedroom, and function without right side weakness.

The ASW stated the Appellant informed her of tasks she could not perform because of right-side weakness due to a ██████ stroke and due to fatigue after her dialysis sessions. The ASW explained that her observations did not match the limitations the Appellant was telling her. The ASW noted that based on observations and Appellant's answers, the Appellant had improved from her original HHS assessment following her stroke a year prior and did not need assistance with her activities of daily living or instrumental activities of daily living. (Exhibit 1, Pages 4-7, 10-11). The ASW testified that because the Appellant did not demonstrate any functional need for personal care services she was required, in accordance to policy, to terminate the Appellant's HHS.

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The Appellant testified that although she went upstairs to retrieve the medication bottle, it was very difficult to ascend and descend the stairs. The Appellant explained that although she could open and close her hand, her right hand was too weak to carry a pot or a can of beans. The Appellant testified that her home is small and she doesn't need to use her cane in the home. She said she needs her chore provider to help her get out of the bath tub. The Appellant added that on her dialysis days she is too fatigued afterward to stand and make a meal, but she can get an apple or piece of bread from the refrigerator.

Appellant's ██████████ letter –

The Department objected to the introduction of a ██████████, letter from one (1) of Appellant's doctors. The Department's objection was based on the fact that the Department's action was taken a month before the doctor wrote the letter. This Administrative Law Judge is limited to evidence that was provided to the Department at the time of its assessment.

In addition, Adult Services Manual (ASM 363, 9-1-08), page 9 of 24 outlines the Department's policy regarding who is responsible for determining HHS authorization:

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- **Verification of the client's medical need by a Medicaid enrolled medical professional.** The client is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. (Underline added.)

The Department's policy included above clearly distinguishes that although a doctor must verify a medical need, it is the ASW that determines need for personal care services. As the ██████████ letter was not available to the Department at the time of its ██████████, assessment it is not applied to the ASW's findings and the Department's determination.

It is noted that the Appellant was in the hospital during the telephone hearing. The Appellant stated she was told the ball and socket of her hip prosthesis had come loose because the surrounding muscles were weak. It was discussed with Appellant that if her medical condition changed she could present new medical documentation to the Department for new consideration.

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Summary -

The Appellant bears the burden of proving by a preponderance of evidence that the Department's termination was not according to policy. The Appellant did not provide a preponderance of evidence that the Department's termination was not according to policy. The Department must implement the Home Help Services program in accordance to Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated her Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

Cc:



Date Mailed: 4/15/2010

***** 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.