

**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. 2010-22327 HHS

Case No. ██████████

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. ██████████ appeared on her own behalf. ██████████, cousin, appeared as a translator and witness. ██████████ daughter, appeared as a witness for the Appellant. ██████████ Appeals and Review Officer, represented the Department. ██████████, Adult Services Worker, and ██████████, Adult Services Supervisor, 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 ██████████ Medicaid beneficiary who was receiving Adult Home Help Services.
2. The Appellant suffers from a back injury and many other medical problems. (Testimony)
3. The Appellant's son was her chore provider. (Exhibit 1, page 5)

4. On ██████████, an Adult Services Worker (ASW) conducted a home visit as part of the six month case review. Present in the home were the Appellant, the chore provider's wife and her children. The chore provider's wife stated that the chore provider was at work and that she did not want to be involved in the review. (Testimony and Exhibit 1, page 5)
5. On ██████████ a Department of Human Services Medicaid worker emailed the ASW that the chore provider was in jail awaiting deportation and that there was conflicting information regarding the chore provider's marital status and address. (Testimony and Exhibit 1, page 6)
6. The ASW determined that the Appellant was not eligible for continuing Home Help Services based on her observations of the Appellant at the home visit, statements made by the chore provider's wife, false information given by the chore provider and because it appeared the Appellant was taking care of her own needs since the chore provider moved out. (Testimony and Exhibit 1, page 4)
7. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments would terminate effective ██████████. (Exhibit 1, page 4)
8. 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.

Program requirements are set forth in Adult Services Manual item 362, below:

COMPREHENSIVE ASSESSMENT

If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the personal care needs. Complete the comprehensive assessment (DHS- 324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

CONTACTS

The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and redetermination.

Adult Services Manual (ASM 362) 12-1-2007, Page 3 of 5

Adult Services Manual item 363 addresses program procedures:

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).

REVIEWS

ILS cases must be reviewed every six months. A face-to-face contact is required with the client, in the home. If applicable, the interview must also include the caregiver.

Six Month Review

Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.
- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- Follow-up collateral contacts with significant others to assess their role in the case plan.

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- Review of client satisfaction with the delivery of planned services.

Adult Services Manual (ASM 363) 9-1-2008, Pages 2-6 of 24

On ██████████, the Adult Services Worker (ASW) completed a home visit as part of a six month review in accordance with Department policy. The worker testified that the Appellant was present in the home as well as the chore provider's wife and her children. The ASW testified that she observed the Appellant walking unassisted during the home visit. The ASW explained that during the home visit, the chore provider's wife stated that her husband was at work and that she did not want to be involved. However, the ASW testified that all the talking during this home visit was done with the chore provider's wife, who reluctantly stated that the Appellant and her husband had improved and that she did not know who was providing services.

The ASW and her supervisor testified that there is a history with the Appellant's family, including the chore provider, being dishonest with the Department. For example, the ASW's ██████████ case note indicates that the provider had stated he was divorced and was living with his parents because they could not do anything for themselves. The ASW asserts that this was dishonest because the Medicaid eligibility worker provided information that the chore provider was married and was not living with his parents, but instead at a different address with his wife and children. (Exhibit 1, pages 5-6) The ASW further testified that the chore provider's wife lied during the ██████████, home visit when she stated that the chore provider was at work based on the ██████████ deportation order and her ██████████ call to the jail confirming that the chore provider was incarcerated and awaiting deportation. (Testimony and Exhibit 1, pages 5 and 7)

The Department's allegations that the Appellant and her family have been dishonest are not supported by the evidence in this case. A case noted, dated ██████████, indicated the provider was moving out and the ██████████ note indicated the Appellant lived with her spouse. (Exhibit 1, page 5) Based on these case notes, the ASW knew that the chore provider was not living in the Appellant's home prior to the ██████████ home visit. There has been no evidence submitted that the chore provider reported he was divorced or that he moved back into his parent's home to care for them. Regarding the chore provider's where about during the ██████████ home visit, the ██████████ Final Administrative Removal Order is not documentation of when the Appellant was arrested. The ASW's call to the jail on ██████████ only confirmed he was still in jail and awaiting deportation, not when the period of incarceration began. The Appellant's cousin testified that the chore provider's wife was not lying when she told the ASW her husband was at work. The Appellant's cousin explained that the chore provider's went to work the morning of ██████████, but INS picked him up and arrested him at work that same day.

However, even if there was some proof of dishonesty by the Appellant's family, this would not be a basis to terminate services for the Appellant. A termination services must be based upon a comprehensive assessment determination that the Appellant no longer a needs assistance at a level three or greater with any of the activities of daily living or independent activities of daily living.

The ASW's determination to terminate services can not be supported by the ██████████ assessment. The ASW's observation of the Appellant walking without assistance and not wearing a neck brace is insufficient to determine that the Appellant no longer needs assistance with any activities of daily living or independent activities of daily living. Policy clearly states that a face-to face interview is to be conducted with the client in their home to assess the personal care needs. The ASW testified that the Appellant can understand some English and has been able to make some yes/no statements in the past. However, the ASW testified all talking during the ██████████ home visit was with the chore provider's wife, who stated she did not want to be involved. Accordingly, the worker failed to discuss the personal care needs with the Appellant herself. While policy does allow the ASW to make collateral contacts with significant others to assess their role in the case plan, there is no evidence that the chore provider's wife was involved in the case plan. Rather, the chore provider's wife stated she did not want to be involved and did not know who was providing services.

The Appellant's cousin further testified that after the chore provider was arrested, the checks for Home Help Services payments were returned to the Department and the family requested that the daughter be enrolled as the new chore provider. However, the Department never acted on this request to enroll the daughter as the new provider and instead issued the termination notice.

Based on the submitted evidence, the Department failed to conduct a complete six month review, including a reviewing the comprehensive assessment and service plan review with the Appellant herself. There is insufficient evidence that the Appellant has been taking care of her own needs since the chore provider moved out and stopped providing care, the reason for termination as stated in the Adequate Negative Action Notice. (Exhibit 1, page 4). There evidence indicates that the chore provider moved out around ██████████ and continued to provide services up to the time of the ██████████ home visit and his incarceration. The ASW's assessment was insufficient to establish that the Appellant has been or is able to take care of her own needs, and therefore no longer qualifies for Home Help Services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department has not properly terminated home help assistance payments for the Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is hereby ordered to conduct a complete comprehensive assessment, including a discussion with the Appellant herself, of her abilities and assistance needs. The Department shall also evaluate enrollment of a new chore provider.

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

cc:



Date Mailed: 5/18/2010

***** 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.