

**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. 2010-3193 HHS

Case No. ██████████

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 hearing was held on ██████████. ██████████ appeared on behalf of the Appellant. The Appellant was present and testified. ██████████, represented the Department. Her witnesses were ██████████, and ██████████.

ISSUE

Did the Department properly deny Home Help Services (HHS) 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. At the time of hearing the Appellant is a ██████████, disabled, Medicaid and SSI beneficiary.
2. According to the Appellant's representative his mother is afflicted with Bipolar Disorder, Epilepsy and Rheumatoid Arthritis. See Testimony.
3. On ██████████, the ASW [██████████] sent the Appellant notice that services were being denied following in-home assessment on ██████████. ¹ Department's Exhibit A, pp. 2, 5,6

¹ Presumably a typographical error - ASW ██████████ said she also sent a follow up letter on ██████████
██████████

4. The ASW said the denial was based on her observations on in-home assessment, the Appellant's statements and lack of a medical certification. Department's Exhibit A, p. 6 and See Testimony.
5. On the face-to-face home visit the ASW documented that the Appellant could ambulate without assistance and that the stated reason for pursuing HHS was the Appellant's need to pay rent to her son. See Testimony and Department's Exhibit A, p. 6.
6. She said that the Appellant also reported that she needed reminders [about medication]. Department's Exhibit A, p. 6 and See Testimony.
7. The ASW reported that the medical needs form 54A was a forgery – there was varying testimony from the Appellant on this topic.² Department's Exhibit A, p. 7 and See Testimony.
8. Following receipt of DHS 1212 A [sent [REDACTED] and [REDACTED] [REDACTED]] and notice of appeal rights, the Appellant filed the instant request for hearing received by the State Office of Administrative Hearings and Rules on [REDACTED]. 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 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.

² The document refers to the Appellant in the first person. Department's Exhibit A, p. 7.

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 23, 9-1-2008.

The Department witness testified that on in-home assessment the Appellant said she wanted HHS to enable her to pay rent to her son – the Appellant’s representative today.

The Appellant testified that she suffers from Bipolar Disorder and arthritis and needs a significant amount of reminding from others.

The Appellant’s son testified that he recently retrieved his mother from ██████████ where she had been living for several years. He said the process of ensuring her safety by taking time off from work to travel to ██████████ and her deteriorating condition caused him to bring his mother back to Michigan to reside in his home.

He said he never asked for rent as he is employed and has arranged family support for the Appellant around the clock. He shares monitoring duties with his fiancée. He said there are (4) four people living in his home.

He further testified that owing to his mother’s epilepsy and medication issues that she is frequently shaky and needs help with some activities of daily living – notably hair washing. He said she was a fall/faint risk owing to her physical condition.

On review it was apparent that the Appellant suffers from a mental health affliction - a fact she clearly expressed during the hearing.

I found the son’s testimony both competent and credible as he spoke plainly and against his self-interest. He knows there’s a problem with the Appellant and he has taken family-based actions to ensure her care. He agreed with ASW ██████████ that (4) people live in his home. He works midnights so adult supervision and home care is presently split between his fiancée and him.

As for the medical needs form I rule that it is neither genuine nor prepared by a medical professional. That document carried no weight in support of the Appellant.

However, for the Department this might have been a clue to engage active listening and determine if other services were appropriate for referral, such as community mental health. Assistance from the Department on these issues is required in the Philosophy and Good Practices sections of the Adult Service Manual.³

³ See ASM 361, Nonpayment services.
Nonpayment Services

Nonpayment independent living services are available, without regard to income or assets, upon request to any person who needs some form of in-home service. Nonpayment services include all services listed below except personal care services:

- Information and referral.
- Protection (for adults in need of a conservator or a guardian, but who are not in any immediate need of protective intervention).
- DHS counseling.

As for the hands on services sought by the Appellant - at the time of assessment it appeared that the Appellant did not qualify. However, the credible testimony of the son suggests a change (or erosion) of condition in terms of mobility and grooming that likely did not exist at the time of the in-home assessment. He was advised to seek reassessment from the Department for his mother.

On review of the evidence presented today the ALJ finds that the comprehensive assessment was accurate when made. Whether the Appellant was referred for other services is unknown.

The Appellant did not preponderate that the Department erred in denying her application for hands on Home Help Services as of [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for Home Help Services.

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:

[REDACTED]

-
- Education and training.
 - Health related.
 - Housing.

Docket No. 2010-3193 HHS
Decision and Order

Date Mailed: 1/20/2010

***** 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.