

**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. 2010-43915 HHS
[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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. The Appellant, [REDACTED] appeared on his own behalf. The Appellant's mother, [REDACTED], was present as the Appellant's witness. [REDACTED] Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker (worker), was present as the Department's witness.

ISSUE

Did the Department properly deny Home Help Services (HHS) payments to the Appellant?

FINDINGS OF FACT

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

1. The Appellant is a [REDACTED] Medicaid beneficiary who applied for Adult HHS.
2. The Appellant lives with his mother. (Exhibit 1, page 9)
3. The Appellant has been diagnosed with a seizure disorder, anger management issues, ADHD, bi-lateral upper and lower limb pain, and a closed-head injury. (Exhibit 1, page 10)
4. On [REDACTED], the worker conducted an initial assessment with the Appellant and his mother/chore provider to determine his eligibility for HHS. (Exhibit 1, page 9)

5. From the information obtained at the assessment, the worker determined that the Appellant was not eligible for HHS because he has no physical limitations, and he only needs assistance with supervision and prompting. (Exhibit 1, page 9)
6. On [REDACTED], the Department issued an Advance Negative Action Notice to the Appellant, advising that his HHS application was denied. (Exhibit 1, page 4-7)
7. On [REDACTED], a formal, administrative hearing was requested on the Appellant's behalf.

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.

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.

In addition, the Adult Services Manual (ASM 363) 9-1-2008, pages 2-5 of 24 provides as follows regarding the worker's role in determining if there is a need for HHS:

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).

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

On ██████████, the worker conducted an initial comprehensive assessment to determine the Appellant's need for HHS. The worker testified that the Appellant, his mother/chore provider, and his brother were present for the home visit. The worker stated that she spoke with the Appellant's mother regarding the Appellant's needs, and from that discussion, she determined that the Appellant is able to perform his own tasks of daily living with supervision, monitoring, and prompting. She ranked the Appellant at level 2 or below for all HHS tasks.

The Appellant testified that he cannot cook because they have a gas stove, and he is afraid that he might have a seizure and burn himself or burn the house down, but he can use the microwave and fix a sandwich. The Appellant further testified that he is able to mop and dust, and he can fold laundry, but he cannot run the washing machine because he does not know how. The Appellant also stated that he can dress himself, groom himself, and use the toilet himself, but he does need someone to be around when he bathes himself because of his seizures. As for medications, the Appellant admitted that he can administer them himself as long as he remembers. Finally, the Appellant acknowledged that he is able to drive and that he can fix things around the house.

The Appellant's mother testified that the Appellant does need hands-on help, but not on a regular basis. She explained that after the Appellant has a seizure, he has really bad headaches, and he is bedridden for up to a day or two. In addition, his medication sometimes makes him vomit. She stated that she needs assistance on those days because she cannot get the Appellant from the basement to the bathroom, and because she is unable to clean up after him when he vomits because of her own health problems.

From the evidence presented in this case, the worker's determination—that the Appellant is capable of performing all IADLs and ADLs himself with supervision, monitoring, and prompting—was proper. Unfortunately, policy does not provide for payment for supervising, monitoring, or prompting the beneficiary. Rather, policy requires that there be a hands-on activity. Accordingly, based on the information available to the Department at the time of the initial assessment, the Appellant was not eligible for HHS. However, as mentioned at the hearing, the Appellant may wish to inquire about services that may be available to him through Community Mental Health (CMH).

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department properly denied the Appellant's HHS application.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

Docket No. 2010-43915 HHS
Decision and Order

CC:



Date Mailed: 10/21/2010

***** 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.