

**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. 2010-47761 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED], caregiver, appeared on the Appellant's behalf. [REDACTED] appeared and testified. [REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker, appeared as a witness for the Department.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services (HHS) payments?

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.
2. The Appellant is a [REDACTED] with multiple medical conditions including COPD, diabetes, congestive heart failure, renal insufficiency, coronary artery disease and CF cardiac stage IV. (Exhibit 1 page 13 and Exhibit 2)
3. The Appellant was receiving Home Help Services (HHS) for assistance with bathing, transferring, mobility, medication, housework, laundry, shopping, and meal preparation, as authorized by a prior Adult Services Worker. (Exhibit 1, page 12)

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4. A DHS 54-A Medical Needs form was completed by the Appellant's physician on [REDACTED] certifying a medical need for assistance with taking medications, meal preparation, shopping, laundry, and housework. (Exhibit 2)
5. On [REDACTED], the current Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, pages 7-8)
6. As a result of the information gathered from the assessment, the worker determined that the Appellant did not qualify for ongoing Home Help Services and adjusted the Appellant's functional rankings to level 1 for the activities of daily living and instrumental activities of daily living. (Exhibit 1, page 10)
7. On [REDACTED], the Department sent an Advance Negative Action Notice to the Appellant indicating that his Home Help Services payments would terminate effective [REDACTED]. (Exhibit 1, pages 4-6)
8. On [REDACTED], the State Office of Administrative Hearings and Rules received the 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 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.
- Review of client satisfaction with the delivery of planned services.

Annual Redetermination

Procedures and case documentation for the annual review are the same as the six month review, with the following additions:

Requirements

- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- A new medical needs (DHS-54A) certification, if home help services are being paid.

Note: The medical needs form for SSI recipients will **only** be required at the initial opening and is no longer required in the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and then annually thereafter.

- A face-to-face meeting with the care provider, if applicable. This meeting may take place in the office, if appropriate.

Adult Services Manual (ASM 363) 9-1-2008, Pages 2-7 of 24

The Adult Services Worker (ASW) testified that the Appellant's case was a new case for her at the time of the ██████████ assessment. She explained that the updated DHS 54-A medical needs form had not been received at that time, so she could only rely on the previous worker's file indicating the Appellant suffered from coronary artery disease, COPD and dementia. On ██████████, the ASW completed a home visit as part of the HHS comprehensive assessment for redetermination. The ASW testified that the Appellant only reported needing assistance due to problems with his legs, not due to any of his other diagnoses. The ASW testified that she observed the Appellant moving fairly well in his home, without any assistance during the home visit. The ASW determined that the Appellant did not qualify for ongoing HHS payments based on her observations and the lack of medical documentation to support the Appellant's complaints of leg problems.

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The Appellant's chore provider disagrees with the HHS termination and testified that the Appellant has leg pain and trouble breathing. She stated that the Appellant needs help getting in and out of the tub but can otherwise bath himself, and that he can not stand or walk for long periods to complete housework, shopping, laundry or cooking. The Appellant's chore provider explained that the Appellant does not need mobility assistance inside his small home, only outside of the building. She further testified that she assists with drawing up the Appellant's evening insulin shot because he is not a good reader.

It is not clear that the Department followed the above cited policy in completing the periodic re-assessments. There was no evidence presented indicating that the Appellant's chore provider was involved in the [REDACTED] assessment. This is particularly troubling given the ASW's testimony that she relied on the prior worker's case notes indicating that the Appellant suffers from dementia. It also appears that assessments were only completed annually and not at least every six months. (Exhibit 1, pages 8-9)

The termination of HHS hours for the IADL's is not supported by the evidence. The home visit notes document the Appellant's report that he can not stand or walk for long periods and needs assistance with housework, shopping, laundry and meal preparation. (Exhibit 1, pages 7-8) While no diagnosis specific to the Appellant's leg was included in the prior worker's notes or in the listed diagnoses on the [REDACTED] DHS 54-A Medical Needs form, the Appellant's age and combination of diabetes, renal insufficiency, COPD and heart impairments support the doctor's certification of a medical need for assistance with the IADLs. (Exhibit 2) Pain, shortness of breath, fatigue and low stamina would be expected at the Appellant's age with his combination of impairments. For example, the Appellant reported to the ASW that he can only fold laundry, but not carry it to/from the laundry facilities or put it away. (Exhibit 1, pages 7-8) This is consistent with the caregiver's testimony and the DHS 54-A medical needs form. A termination of HHS hours for laundry is not supported by the evidence. In regards to medication assistance, the home visit notes do not indicate that administration of insulin was even discussed. (Exhibit 1, pages 7-8) The HHS hours for taking medication, housework, shopping, laundry and meal preparation shall be reinstated.

The termination of HHS hours for bathing, transferring and mobility is supported by the evidence. The Appellant's physician did not certify a medical need for assistance with these activities. (Exhibit 2) The ASW's observations of the Appellant during the home visit did not indicate any need for assistance with mobility and transferring. The Appellant's caregiver also testified that the Appellant does not require assistance with mobility inside his home. The termination of HHS hours for bathing, transferring and mobility is upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly terminate the Appellant's HHS payments in the areas of medication, housework, shopping, laundry and meal preparation.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The termination of HHS hours for medication, housework, shopping, laundry, and meal preparation is REVERSED. The HHS hours for these activities shall be returned to the previously authorized times effective [REDACTED].

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

cc:

[REDACTED]

Date Mailed: 11/5/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 March 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.