

**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. 2010-55770 HHS

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge under 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 ██████████. The Appellant, ██████████, was present and represented herself. Her stepdaughter, ██████████, appeared as her witness. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Specialist, appeared as the Department's witness.

ISSUE

Did the Department properly terminate 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 ██████████ Medicaid beneficiary, who was receiving assistance with the following tasks: housework, laundry, shopping, and meal preparation. (Testimony of ██████████; Exhibit 1, page 8)
2. The Appellant's household composition is not clear. She asserts that she lives alone. However, three of her children use her address as their mailing address for purposes of receiving state services. (Testimony of ██████████ Testimony of ██████████)
3. The Appellant has been diagnosed with coronary artery disease, hypertension, and diabetes. (Exhibit 1, page 10)

4. On ██████████, the worker conducted an annual in-home assessment with the Appellant to determine continuing eligibility for HHS. (Exhibit 1, page 7)
5. As a result of the information gathered from the Appellant at the home visit, as well as her own observations regarding the Appellant's condition, the worker determined that the Appellant's eligibility for continuing HHS was not supported. (Exhibit 1, pages 4-7; Testimony of ██████████)
6. On ██████████, the worker issued an Advance Negative Action Notice to the Appellant, advising that her HHS payments would terminate, effective ██████████. (Exhibit 1, pages 4-6)
7. The Appellant requested a formal, administrative hearing on ██████████. (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.

The purpose of HHS is 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.

The Adult Services Manual addresses the issue of assessment as follows:

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.

* * *

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).

* * *

Services Not Covered By Home Help Services

Do **not** authorize HHS for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - Medical transportation policy and procedures are in Services Manual Item 211.
- Money management, e.g., power of attorney, representative payee;

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- Medical services;
- Home delivered meals;
- Adult day care


Adult Services Manual (ASM 363 9-1-2008), pages 2-4, 14-15 of 24

On ██████████, the worker completed a home visit with the Appellant as part of an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that the Appellant greeted her at the door and walked with the worker to the kitchen table without any assistive device. The Appellant did later show the worker a walker that the Appellant asserted she used, which the Appellant obtained and carried herself out of another room. The worker further testified that the Appellant was able to sit down without any problem or assistance. Further, the Appellant informed the worker that she can do light housework and that she can get herself cereal and use the microwave, but she cannot cook large meals because she cannot stand for an extended period of time. At first the Appellant stated that she could not stand for more than 5 or 10 minutes, but she then later stated she could stand for 30 minutes at a time.

The worker further testified that the Appellant advised her that she does daily exercises for her knee and that she is able to walk down the road for 4 to 5 houses and then return home. Finally, the worker testified that there were several people in the Appellant's home at the time of the visit, and she discovered that three of the Appellant's children are using the Appellant's address for purposes of receiving state services. The worker explained that in light of the information obtained at the assessment, as well as her own observations, she determined that the Appellant has made significant progress and no longer needs HHS. While the Appellant may have some residual pain from her knee-replacement surgery, it is not enough to warrant HHS.

The Appellant disagrees with the termination and testified that she needs assistance. Although she was given ample opportunity to do so, the Appellant did not explain to this Administrative Law Judge why she needs assistance with any of the individual tasks. Rather, she stated generally that she is in constant pain from her knee replacement and her low back problems. She explained that it is painful to stand, it is painful to sit, and some days she cannot even get out of bed because the pain is so bad. Unfortunately, there is no medical evidence to support the Appellant's assertions. She is six-month post knee replacement surgery and, therefore, should be well on her way to recovery. Further, there is no medical diagnosis to support her complaints of severe low back pain. Finally, even if the Appellant does have a need for assistance, it appears that she has sufficient family support to assist her with those needs.

Accordingly, the Appellant did not meet her burden of proving, by a preponderance of evidence, that the Department improperly terminated her HHS. The evidence supports the worker's decision to terminate services in this case.


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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department has properly terminated HHS payments for the Appellant.

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

CC:



Date Mailed: 12/20/2010

***** 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.