

**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. 2010-562 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 ██████████. The Appellant appeared without representation. She had no witnesses. ██████████, appeals review officer, represented the Department. Her witness was ██████████.

ISSUE

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

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 ██████████ disabled Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with chronic, severe low back pain, radiculopathy, herniated disc, right leg weakness (Department's Exhibit A, pp. 12, 13 and 18)
3. On ██████████, the Appellant was advised via advanced negative action notice that her services were being terminated effective ██████████. (Department's Exhibit A, p. 7)
4. The ASW reported on face-to-face contact with the Appellant that she observed her ambulate without assistance, or device. She answered the door and took care of young school age children and their needs on a daily basis. Her chore provider (mother) has full-time midnight shift employment, so she

was unable to articulate to the ASW exactly what the chore provider did – beyond cooking an evening meal. (See Testimony and Department’s Exhibit A, p. 16)

5. The ASW reassessed all of the Appellant’s rankings for both ADLs and IADLs below the compensable minimum of (3) three. (Department’s Exhibit A, p. 10)
6. The case file and conclusions of the issuing ASW were reviewed and concurred in by supervisor Mary Lee, under oath at hearing.
7. On ██████████, the Appellant filed a request for hearing. (Appellant’s Exhibit #1)
8. The instant request for hearing was received by SOAHR on ██████████. (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 (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.

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. 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.

Adult Services Manual (ASM) §363, September 1, 2008, page 2

Provider Criteria

Determine the provider's ability to meet the following minimum criteria in a face-to-face interview with the client and the provider:

Age

- Appropriate to complete the needed service.

Ability

- To follow instructions and HHS program procedures.
- To perform the services required.
- To handle emergencies.

Physical Health

- Adequate to perform the needed services.

Knowledge

- How and when to seek assistance from appropriate others in the event of an emergency.

Personal Qualities

- Dependable.
- Can meet job demands including overtime, if necessary.

Training

- Willing to participate in available training programs if necessary. HHS payment may be terminated if the provider fails to meet any of the provider criteria.

Provider Interview

Explain the following points to the client and the provider during the initial interview:

- The provider is employed by the client not the State of Michigan.
- A provider who receives public assistance must report all income received as a home help provider to the FIS/ES.
- The client is the employer and has the right to hire and fire the provider.
- The client is responsible for notifying the worker of any change in providers or hours of care.
- The services the provider is responsible for and has agreed to deliver including the frequency, amount and type of service.
- The provider must keep a log of the services provided ...

ASM *Supra* p. 16

* * *

The Department's witness testified that services were terminated because the ASW assessed the Appellant as ambulatory and not requiring home help services – based on her observations and interactions with the Appellant. Witness ██████████ did not dispute that the Appellant “moved slow” and had limited use of her hands and arms – but agreed with the analysis and observations of ASW ██████████ that the Appellant was no longer eligible for HHS.

The Appellant testified that she never got a chance to ask questions during the in-home assessment and that she is now slated for a knee surgery on or about ██████████. See Appellant's Exhibit #1. She said her new surgeon is ██████████.

She added that the young children in her home are assisted by their older sister.

The Appellant argued that she has good days and bad days.

The Department's record documented the several attempts to contact the Appellant's physician and chore provider. The Appellant, although not unpersuasive, produced no evidence to counter the ASW assessment – although her announcement of new surgery might present a change in circumstances allowing the opportunity to reapply for HHS without first closing her file.

The Appellant did not preponderate that the Department erred in the termination of her HHS services. A comprehensive assessment is the responsibility of the ASW and I find that it was properly measured and applied to this Appellant.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's 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:

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Date Mailed: _____

***** 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.