

**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. 2010-5806 HHS

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████ appeared on his own behalf. ██████████, Appeals and Review Officer, represented the Department. ██████████, Adult Services Worker, and ██████████, ILS Supervisor, were present as Department witnesses.

ISSUE

Did the Department properly terminate Home Help Services payments 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. The Appellant is a ██████████ Medicaid beneficiary who was receiving Adult Home Help Services.
2. The Appellant lives in an apartment and his daughter is his chore provider. (Exhibit 1, page 8)
3. The Appellant has been diagnosed with abdominal aortic aneurism, asthma, and coronary artery disease. (Exhibit 1, page 7)

4. On ██████████, an Adult Services Worker conducted an in home assessment with the Appellant for continuing eligibility for Home Help Services. (Exhibit 1, page 8)
5. As a result of the information gathered from the Appellant at the assessment, her observations and an interview with the provider, the ASW determined that eligibility for continuing Home Help Services was not supported. (Exhibit 1, pages 4-6 and 8-9)
6. On ██████████ the Department issued an Advance Negative Action Notice to the Appellant that his Home Help Services payments would terminate, effective to ██████████. (Exhibit 1, pages 4-6)
7. The Appellant requested a formal, administrative 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 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.

Adult Services Manual (ASM 363) 9-1-2008, pages 2-5 of 24 addresses the issue of assessment:

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

The Appellant was authorized to receive Home Help Services for the activities of mobility, housework, laundry, shopping, and meal preparation because he had difficulty with lifting and bending following a ██████████ surgery for an abdominal aortic aneurism. (Exhibit 1, pages 10-12)

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On [REDACTED], the Adult Services Worker (worker) completed a home visit as part of an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that during this visit, the Appellant stated he drives himself to doctors appointments and is able to shop and cook for himself. The worker explained that the Appellant appeared to be in excellent health and did not appear to have any problems with mobility during this home visit or when he previously came to the Department office. At the [REDACTED] home visit, the worker observed that the apartment did not appear to have been cleaned recently as there was clutter, a thick layer of dust, and dishes piled in the sink. The worker also stated that the Appellant could not give clear answers to questions regarding what chores his daughter performs and how often she provides these services. The worker stated that she had previously spoken with the Appellant's daughter, his HHS provider, who stated that the Appellant cooks for himself because he does not like her cooking. The Appellant's daughter also could not clearly state how many days per week and what tasks she performs for her father. (Testimony and Exhibit 1, pages 8-9)

The worker testified that based on her conversation with the Appellant's daughter, her observations and the information she was provided by the Appellant at the time of the assessment, she determined that the Appellant no longer qualified for Home Help Services payments.

The Appellant disagrees with the determination and testified that his daughter comes to his home three to five days a week to provide the authorized home help services. The Appellant stated he now has a hernia at the site from the abdominal surgery which limits his ability to lift and carry. The Appellant explained that he has additional diagnoses of diabetes, hepatitis C, liver disease and lower back problems and sees multiple doctors. Due to his impairments, the Appellant testified he has different energy levels each day and is not able to stand for long periods of time to cook meals or do dishes. The Appellant stated that he can use the microwave to heat meals and that if he took breaks, he probably could do the dishes.

The Appellant further testified that he does not use any assistive devices and does not need physical assistance to get around in his apartment. The Appellant stated he just sits until he is able to get up and go. The Appellant stated he does not try to carry grocery bags because his doctor advised him not to lift and carry much weight due to the hernia that has developed about a year ago at the incision site from the [REDACTED] aortic aneurism surgery.

The [REDACTED] Medical Needs form submitted by the Appellant's doctor only indicated diagnoses of abdominal aortic aneurism, asthma, and coronary artery disease. There is no mention of the hernia at the incision site or that additional diagnoses the Appellant testified to. While the Appellant explained that he sees multiple doctors, he testified that the doctor who completed and signed this form is the one that

diagnosed the hernia at the incision site. The Appellant also testified that he did not let the Department know he had additional doctors who treat his other conditions.

The Appellant did not meet his burden of proving, by a preponderance of evidence, that the Department did not properly terminate his home help services. The information provided by the Appellant's doctor does not document the additional diagnoses the Appellant testified cause his severe functional limitations. Based on the information available to the Department at the time of the re-determination eligibility for continuing Home Help Services not supported.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department has properly terminated home help assistance payments for the Appellant based on the information available at the time of the re-determination.

IT IS THEREFORE ORDERED that:

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

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

cc:



Date Mailed: 1/11/2010

***** 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.