

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-18803 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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, was present at the hearing. He was represented by ██████████. ██████████ represented the Department. ██████████ (worker), and ██████████, appeared as the Department's witnesses.

ISSUE

Did the Department properly deny the Appellant's Home Help Services (HHS) application?

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.
2. The Appellant is a ██████████, who suffered a stroke in ██████████ and requires assistance with Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). He also suffers from hypertension, high cholesterol, and NIDDM. (Exhibit 1, page 18)
3. The Appellant applied for HHS in ██████████ requesting assistance with bathing, grooming, dressing, medications, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 15)

4. On ██████████, the worker visited the Appellant's home and conducted a comprehensive assessment to determine the Appellant's need for HHS. (Exhibit 1, pages 9 and 15)
5. At the assessment, the worker was advised that the Appellant lives with his wife and their two adult children. (Exhibit 1, page 5; Testimony of ██████████)
6. The worker inquired about the Appellant's wife's ability to care for the Appellant, and she was advised by the Appellant's son that the Appellant's wife suffers from mental issues and that taking care of the Appellant was too much for her. (Exhibit 1, page 15; Testimony of ██████████)
7. At the assessment, the worker observed the Appellant's wife walk without any assistance. It did not appear that the Appellant's wife suffered from any physical disabilities. (Exhibit 1, page 15; Testimony of ██████████)
8. The worker left a DHS-54A medical needs form for the Appellant's wife's physician to complete to determine if she is capable of caring for the Appellant. (Exhibit 1, page 15; Testimony of ██████████)
9. On ██████████, the worker received the completed medical needs form from the Appellant's wife's physician, noting that she suffers from Post Traumatic Stress Disorder and Panic Disorder, and indicating that she does not require any assistance with personal care activities. (Exhibit 1, page 13)
10. On ██████████, the Department issued an Adequate Negative Action Notice, denying HHS because the Appellant's wife is in the home and able to care for him. (Exhibit 1, pages 9-11)
11. On ██████████, the Department received the Appellant's Request for Hearing. (Exhibit 2)

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.

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).


Adult Services Manual (ASM 363) 9-1-2008, pages 2-5 of 24
(Emphasis Added)

The worker testified that at the initial assessment in ██████████, she became aware that the Appellant was married and that his wife was living in the home. She further testified that the Appellant's son told her that the Appellant's wife cannot take care of the Appellant because she suffers from mental issues. In addition, she testified that she observed the Appellant's wife ambulate without assistance and it did not appear to the worker that the Appellant's wife suffered from any physical disability. The worker stated that she left a medical needs form for the Appellant's wife to complete to determine if she was unable to care for the Appellant. The completed medical needs form did not indicate that the Appellant's wife is unable to care for the Appellant.

On ██████████, the worker sent out an Adequate Negative Action Notice, denying the Appellant's HHS application. The worker testified that because the Appellant's wife lives in the home, she is not working, and she has no documented reason for being unable to care for the Appellant, the worker determined that she is capable of caring for the Appellant.

The Appellant disagrees with the determination that his wife is able to provide the needed care services. The Appellant stated that his wife has her own medical conditions, which prevent her from caring for him. He stated that she suffered a left leg fracture in ██████████ and that she suffers from depression. The Appellant testified that his wife has been deemed disabled by the Social Security Administration (SSA) as of ██████████. He argues that this disability determination is sufficient evidence that his wife is unable to care for him. In fact, the Appellant's daughter assists his wife with her bathing and dressing needs. The Appellant testified that the only thing his wife does for him in the home is make him tea.

The Department properly considered the availability and ability of the Appellant's wife to provide care for the Appellant. The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. Adult Services Glossary (ASG Glossary) 12-1-2007, page 5 of 6. The Appellant's wife meets the definition of a responsible relative. Under Department policy, HHS for the Appellant could only be authorized for those services or times which the responsible relative is unavailable or unable to provide. The policy notes that 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 care giving. These disabilities must be documented/verified by a medical professional on the DHS-54A. Adult Services Manual (ASM 363) 9-1-2008, page 5 of 24. The medical needs form submitted to the Department by the Appellant's wife's physician did not verify that she is unable to care for the Appellant. Likewise, the SSA's disability determination does not support the Appellant's wife's inability to care for him because it considered other factors, which are not relevant in this case, such as the Appellant's wife's inability to speak English and her lack of any previous employment. In addition, the determination specifically states that the Appellant's wife is physically able to work at all exertion levels. However, it is her ability to concentrate that prevents her from working a 40-hour work week. Finally, there is no dispute that the Appellant's wife is available to care for the Appellant.


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Decision and Order

The Appellant did not meet his burden of proving, by a preponderance of evidence, that the Department did not properly deny his HHS application. Based on the information available to the Department at the time of the denial, eligibility for HHS was not supported.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that 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 Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 5/13/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.