

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2011-45494 HHS
Case No. [REDACTED]

[REDACTED],
Appellant
_____ /

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 on [REDACTED]. The Appellant was present for hearing and was represented by [REDACTED], Appeals Review Officer, represented the Department. Her witnesses were [REDACTED], ASW and [REDACTED], ASW Supervisor.

PRELIMINARY MATTER

The admission of Department's Exhibit B (medical needs form 54A) was taken under advisement during the hearing – pending receipt. The Exhibit is hereby admitted. It was afforded moderate weight in support of the Department's denial of Home Help Services (HHS).

ISSUE

Did the Department properly deny Home Help Services 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 [REDACTED]-year old, disabled, Medicaid beneficiary. (Appellant's Exhibit #1)
- 2) The Appellant is afflicted with: bi-polar disorder, depression, schizophrenia, hyperlipidemia and sciatica. (Department's Exhibit A, p. 11, and See Testimony)
- 3) The Appellant testified that she was improperly denied program placement because she did not properly explain her limitations and physical needs. (See Testimony)
- 4) The Appellant's representative testified that the Appellant has physical illness in the form of sciatica which results in pain and numbness to the Appellant's lower back, legs and hand. She can neither sit nor stand for extended periods. This diagnosis

was made post home visit. (See Testimony)

- 5) Department witness, ASW ██████████, testified that when she arrived for the face to face, in-home assessment, the Appellant was fully mobile, but stated that she sometimes required moral support and verbal prompts. (Department's Exhibit A, pp. 6, 9 and 10)
- 6) A medical needs form dated ██████████, showed certification of need for assistance in the home – particularly with her “meds schedule.” (Department's Exhibit B)
- 7) The Department advised the Appellant of the denial of services on ██████████, by way of Adequate Action Notice DHS 1212A – effective ██████████. (Department's Exhibit A, pp. 2, 5)
- 8) The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health 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 medical professional.

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 customer in his/her place of residence.

- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer'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 re-determination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the agency 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 customer'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. When hours exceed the RTS rationale must be provided. (Emphasis supplied)

Adult Service Manual (ASM), §363, pp. 2, 3 of 23, 9-1-2008.

The Department witness testified that she observed and assessed the Appellant and found her to not be in need of HHS based on her personal observations, assessment and questioning. She testified that the Appellant was fully mobile, but admitted to confusion which was remedied by calling her sister and receiving moral support.

The Appellant's representative stressed that the Appellant had physical needs for hands on assistance beyond medication management. The Appellant said she was recently diagnosed with sciatica. This development was unknown to the ASW as it was determined to have been learned after the in home assessment – and was not shared with the Department. The

Department witness explained, on the record, that the Appellant would need to seek a new referral for evaluation of this heretofore unknown malady.

On review, the proofs supported the Department's face-to-face assessment. The ALJ has no doubt that the Appellant endures some level of pain – however the nature and quality of the underlying disease process was unknown to both parties at the time of the comprehensive assessment. Accordingly, the Department's decision to deny HHS was proper when made as the Appellant failed to demonstrate the need for any hands-on assistance. Furthermore, the HHS program does not provide services of supervising or reminding.

If the Appellant has recently suffered a significant change in condition, following the July ██████████ in-home assessment, she should contact the Department for further instructions.

The Appellant failed to preponderate her burden of proof that the Department erred in denying her request for HHS.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for HHS.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: ██████████
██████████
██████████
██████████

Date Mailed: 10/13/2011

***** 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.