

**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. 2011-11589 HHS
Case No. 940181

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 ██████████. ██████████, Appellant, appeared on his own behalf. ██████████, appeared as the witness for the Appellant.

██████████, represented the Department. ██████████, and ██████████ appeared as witnesses for the Department.

ISSUE

Did the Department properly terminate Appellant's Home Help Services?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is ██████████. (Exhibit 2).
2. Appellant is a Medicaid beneficiary.
3. Appellant's prospective chore provider is his witness at hearing. (Exhibit 1, Page 10).
4. Appellant lives with his ██████████. (██████████ testimony).
5. The Appellant has severe degenerative arthritis, low back syndrome, COPD, psychiatric disorder, blood pressure vertigo. The Appellant's family practice physician writes his prescriptions and signs his medical needs form. (Exhibit 2).

6. In or before ██████████, Appellant's Adult Services Worker (ASW) made a visit to Appellant's home to conduct a required Home Help Services annual reassessment for Appellant. During the reassessment the ASW learned from the Appellant that the Appellant had fired his previous chore provider for not performing his duties. (Exhibit 1, Page 7).
7. During the reassessment the Appellant informed the ASW that he intended for the woman present in his home to be his new chore provider. (Exhibit 1, Page 12).
8. On ██████████, the Appellant and his prospective chore provider traveled by bus to the Department of Human Services office building to meet with the ASW and enroll the chore provider. The Appellant and his prospective chore provider got off the bus approximately three to four miles from the Department of Human Services office building, and walked three to four miles to reach the Department of Human Services office building for the appointment. (Exhibit 1, page 11; testimony of Appellant and his witness).
9. On ██████████, the Department sent a Negative Action Notice notifying Appellant that his Home Help Services payments would be terminated effective ██████████. (Exhibit 1, Pages 2-4).
10. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 1, Pages 2-4).

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 Social Welfare Act, 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 agencies.

The ASW testified that she went to the Appellant's home in ██████████ to perform a comprehensive reassessment. The ASW testified that at the ██████████ home visit the Appellant informed her that he had fired his chore provider. At the time the Appellant had not enrolled any chore provider and the ASW stopped any payments to the DHS to the fired chore provider.

Adult Services Manual (ASM 363, 9-1-08), the pertinent parts of pages 2-4 of 24 listed below, addresses the functional levels of need evaluated during an assessment:

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...

- The assessment must be updated as often as necessary, but minimally at the six-month review and annual redetermination.

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 for food and other necessities of daily living
- Laundry
- 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 customer and provider, observation of the customer'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.

Termination of HHS –

The Appellant testified that he did not understand why his Home Help Services would be terminated just because he walked four miles to the Department of Human Services office. The Appellant admitted that he became agitated when he told the worker he walked the four miles and the worker questioned him about it, because he believed it was difficult for him to walk the four miles.

The ASW testified that it was not merely the fact that the Appellant walks the four miles to the Department of Human Services office that resulted in his termination. The ASW explained that it is the ASW worker who assesses the medical need and level of need to have Home Help Services paid for by Medicaid. The ASW explained that if a person has the ability to walk four miles, even if the walking is difficult and requires frequent breaks, it is evidence that a person can perform tasks within his home. The ASW further explained that the tasks for which the Appellant was authorized require only a short amount of walking distance within his home and can be performed at different times of the day, therefore he can take breaks to catch his breath in between each task. The ASW testified that she observed the Appellant again the day of hearing and watched him stand up, sit down and walk a great distance.

The prospective chore provider testified that she lives with the Appellant. The prospective chore provider explained that most of the Appellant's Home Help Services needs appeared to arise from his mental health issues. The needs described by the prospective chore provider were for guiding or for mental health issues more appropriately addressed by services of community mental health.

The prospective chore provider testified that she has been providing services for the Appellant since ██████████ but has never been paid by DHS. The evidence provided by the Department established that the prospective chore provider had never been enrolled as a Home Help Services provider between ██████████ and ██████████.

The Adult Services Manual (ASM 363, 9-1-08), page 9 of 24 outlines the Department's policy regarding who is responsible for determining HHS authorization:

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- **Verification of the client's medical need by a Medicaid enrolled medical professional.** The client is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. (Underline added.)

The Department's policy included above clearly distinguishes that although a doctor must verify a medical need, it is the ASW that determines need for personal care services. In this case the ASW observed the Appellant walk far distances, stand up, walk, and slam a door. The ASW credibly testified that the observations brought the conclusion that the Appellant has the physical functional ability to perform his activities of daily living and instrumental activities of daily living.


The ASW's supervisor observed the Appellant on the day he walked four miles, and again at hearing, and concurred with the ASW's determination that the Appellant had the functional ability to perform his activities of daily living.

Summary -

The Appellant bears the burden of proving by a preponderance of evidence that the Department's termination was improper. The Appellant did not provide a preponderance of evidence that the Department's termination was improper. The Department must implement the Home Help Services program in accordance to Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated his Home Help Services.


Docket No. 2011-11589 HHS
Decision and Order

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 3/9/2011

***** 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.