

**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. 2011-14871 HHS
Case No. 53814487

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. ██████████ represented the Department. Her witnesses were ██████████, and ██████████.

ISSUE

Did the Department properly deny Home Help Services (HHS) to the Appellant?

FINDINGS OF FACT

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

- 1) The Appellant is ██████████ Medicaid beneficiary. (Appellant's Exhibit #1)
- 2) The Appellant is afflicted with: HTN, DM, osteoporosis, asthma, osteoarthritis, and high cholesterol. (Department's Exhibit A, p. 12)
- 3) The Appellant testified that she was improperly denied program placement because the ASW could not assess her level of pain simply by looking at her during a face to face home visit. (See Testimony of Appellant and Appellant's Exhibit #1)
- 4) The Department witness, ASW ██████████ testified that when he arrived for the face to face, in-home assessment with new employee, ██████████, the Appellant moved about her residence freely demonstrating no lack of mobility or gait disturbance.
- 5) He further explained on questioning from the ALJ that he was able to determine her ability to lift items (such as laundry, etc.,) by observing other movements and by

answers to questions he posed during the in-home assessment. See Testimony of [REDACTED].

- 6) The Department advised the Appellant on the denial of services on [REDACTED], by way of Adequate Action Notice DHS 1212A – effective [REDACTED].
- 7) A prospective choreprovider [identified as [REDACTED]] was present for the face-to-face assessment, but left remarking that she, "...did not want the job." (Department's Exhibit A, p. 10)
- 8) The instant appeal was received by the State Office of Administrative Hearings and Rules (SOAHR) on [REDACTED]. (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 he observed and assessed the Appellant and found her to not be in need of HHS based on his personal observations, assessment and questioning. He testified that she had to restriction in mobility and retained the ability to lift and utilize her hands.

The Appellant stressed that there was no way the ASW could assess her "pain or illness" just by looking at her. She added that he was "in and out." She said she had a cast applied at Harper Hospital and that she "...was limping now." She urged the Department to "check her records."

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 – perhaps a significant amount of pain.

However, the Appellant is still mobile and suffers no inability to move or utilize her limbs – irrespective of pain. Indeed, chores might take her longer to perform as she necessarily breaks them into smaller, more manageable components, but based on the evidence

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submitted in this record the ASW assessment was accurate and HHS was properly denied as the Appellant failed to demonstrate the need for any hands-on assistance.

If the Appellant has recently suffered a significant change in condition – since the [REDACTED], assessment – she should contact the Department for further instructions.

It is the province of the ASW to determine eligibility for services; the ASM requires the ASW to conduct an in-home assessment of the prospective HHS recipients. There was no evidence to cast doubt on either the testimony of ASW [REDACTED] or his in-home assessment.

The Appellant failed to preponderate her burden of proof that the Department erred in denying HHS for lack of an accurate in-home assessment.

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:

[REDACTED]

Date Mailed: 4/13/2011

***** 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.