

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2011-1854 HHS
Case No. 40261271

██████████

Appellant

_____ /

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 ██████████. ██████████ appeared on her own behalf. ██████████, represented the Department. ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services (HHS) payments?

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 ██████████ Medicaid beneficiary.
2. The Appellant was ranked as a level 3 and received Home Help Services (HHS) for assistance with bathing, mobility, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 9 and ASW Testimony)
3. On ██████████, the Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, pages 7-8)
4. As a result of the information gathered from the assessment, the worker determined that the Appellant did not qualify for ongoing Home Help Services because she could complete her activities of daily living independently. (Exhibit 1, page 8)
5. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments

would terminate effective ██████████. (Exhibit 1, pages 4-6)

6. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, page 3)
7. On ██████████, the Appellant's doctor returned a medical needs form listing diagnoses of severe degenerative joint disease in both knees, diabetes mellitus with neuropathy, and difficulty walking. (ASW Testimony)

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 private or public agencies.

Program requirements are set forth in Adult Services Manual item 362, below:

COMPREHENSIVE ASSESSMENT

If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the personal care needs. Complete the comprehensive assessment (DHS- 324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

CONTACTS

The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and redetermination.

Adult Services Manual (ASM 362) 12-1-2007, Page 3 of 5

Adult Services Manual item 363 addresses program procedures:

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).

REVIEWS

ILS cases must be reviewed every six months. A face-to-face contact is required with the client, in the home. If applicable, the interview must also include the caregiver.

Six Month Review

Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.
- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- Follow-up collateral contacts with significant others to assess their role in the case plan.
- Review of client satisfaction with the delivery of planned services.

Annual Redetermination

Procedures and case documentation for the annual review are the same as the six month review, with the following additions:

Requirements

- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- A new medical needs (DHS-54A) certification, if home help services are being paid.

Note: The medical needs form for SSI recipients will **only** be required at the initial opening and is no longer required in the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and then annually thereafter.

- A face-to-face meeting with the care provider, if applicable. This meeting may take place in the office, if appropriate.

Adult Services Manual (ASM 363) 9-1-2008, Pages 2-7 of 24

The Adult Services Worker (ASW) completed a home visit as part of a comprehensive assessment on ██████████. The ASW testified that the Appellant reported she was doing well and had begun a home exercise program following her discharge from physical therapy. This included walking up and down the stairs, weight bearing exercises and non-weight bearing exercises. The Appellant also reported having bad days where she does not do anything, about 8-9 days per month. The ASW observed the Appellant using the table or her walker for assistance transferring between sitting and standing. The Appellant reported needing assistance with laundry as she gets out of breath going up and down the stairs, some meal preparation as she can not stand for long periods, and stepping in and out of the tub for bathing. The ASW and the Appellant discussed that there were no grab bars in the bathroom, only a shower door. The Appellant indicated her standing tolerance was 25-30 minutes and her sitting tolerance was at least 30 minutes. The ASW determined that the Appellant did not qualify for ongoing HHS payments because the ASW believed the Appellant could complete her activities of daily living independently based on the Appellant's increased activity level. (ASW Testimony and Exhibit 1, pages 7-8)

The Appellant disagrees with the HHS termination and testified that she has limited range of motion with her arms. She notes that the ASW did not wait for the Appellant's doctor to return the documentation of her medical needs prior to terminating the case, nor did she observe the Appellant performing each daily activity. The Appellant explained that she only goes up and down about 4 steps as part of her home exercise program, not the entire flight of stairs to the basement, where the laundry facilities are. She further testified that she uses both hands on the hand rail while going up and down the steps. The Appellant also explained that she can not use the shower door for balance getting in and out of the tub as it would move. She described the shower door as having two parts, one side is a mirror and the other is made of plastic that slides.

The termination of HHS hours for all activities is not supported by the evidence. The home visit notes document the Appellant needs assistance stepping in and out of the tub. The shower door, as described by the Appellant, is not an appropriate substitute for grab bars or other assistance with balance while getting in and out of the tub. There also appears to have been a misunderstanding regarding the extent of walking up and down stairs that the Appellant is capable of. Based on her testimony, the Appellant does not go up and down the entire flight, and must hold the hand rail with both hands for the few steps she uses during the home exercise program. Accordingly, she would not be capable of carrying her laundry up and down the basement stairway. The HHS hours for bathing and laundry shall be reinstated as appropriate for a ranking at level 3.

The termination of HHS hours for mobility, housework, shopping and meal preparation is supported by the evidence. The home visit notes show that the Appellant reported and was observed ambulating without assistance once she was standing. (Exhibit 1, pages 7-8) The Appellant reported a standing tolerance of 25-30 minutes and a sitting tolerance of at least 30 minutes. While it may take longer and she may have to take breaks before completing the activity, the Appellant indicated she can perform tasks such as vacuuming, washing dishes, frying bacon and reheating food in the microwave. The Appellant did not report physical impairments that affect her ability to shop; only that it gets on her nerves. She stated that the cashiers are too slow and the lines are too long so she gets angry and walks out of the store. (Exhibit 1, pages 7-8) The termination of HHS hours for mobility, housework, shopping and meal preparation is upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly terminate the Appellant's HHS payments in the areas of bathing and laundry.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The termination of HHS hours for bathing and laundry is REVERSED. The HHS hours for these activities

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shall be returned to the previously authorized times effective [REDACTED].

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

cc:

[REDACTED]

Date Mailed: 1/3/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 March 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.