

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-40504 HHS
Case No. 4334072

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's chore provider, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Appellant's Adult Services Worker (ASW) at the ██████████ County DHS-HHS Office, appeared as a witness for the Department.

ISSUE

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

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 a ██████ year-old Medicaid beneficiary. (Exhibit 1, page 25).
2. Appellant has been diagnosed by a physician with panic attacks, anxiety, and depression. Appellant has also diagnosed herself with irritable bowel syndrome, cellulitis with wound trauma care, pulmonary hypertension, an irregular heart, angina, high cholesterol, a history of strokes, and a history of alcoholism. (Exhibit 1, page 14).
3. Appellant had been receiving 22 hours and 37 minutes of HHS per month, with a monthly care cost of \$████████. (Exhibit 1, page 27).
4. On ██████████, ASW ██████████ conducted a home visit with Appellant as part of a review of Appellant's HHS. (Exhibit 1, pages 8-9; Testimony of ASW ██████████).
5. Based on her assessment and information provided by Appellant during

the home visit, ASW ██████████ determined that Appellant required no assistance and she decided to terminate HHS. (Exhibit 1, pages 8-9; Testimony of ASW ██████████).

6. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be terminated because Appellant no longer met the criteria for HHS. The effective date of the termination was to be ██████████. (Exhibit 1, pages 5-7).
7. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant asserts that she needs help with a number of tasks due to her medical conditions and that she will provide further information regarding those conditions. (Exhibit 1, page 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 private or public agencies.

Adult Services Manuals 361 (6-1-07) (hereinafter "ASM 361") and Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

Home help services (HHS, or personal care services) are non-specialized personal care service activities provided under ILS to persons who meet eligibility requirements.

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

(ASM 361, page 2 of 5)

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 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:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven 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.

(ASM 363, pages 2-4 of 24)

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. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician.
 - Nurse practitioner.
 - Occupational therapist.
 - Physical therapist.

(ASM 363, page 9 of 24)

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.

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- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

(ASM 363, pages 14-15 of 24)

On ██████████, ASW ██████████ completed a home visit and comprehensive assessment as part of a review of Appellant's case. Following that assessment, the ASW terminated the HHS hours previously authorized for housework, laundry, shopping, and meal preparation/cleanup. Appellant disagrees with the termination of HHS and argues that her needs have not changed. For the reasons discussed below, this Administrative Law Judge finds that the Department properly terminated the Appellant's HHS payments based on the available information.

Appellant testified that her needs have not changed and that she requires the same assistance as before. (Testimony of Appellant). According to Appellant, she cannot go shopping alone because of her panic attacks and problems with her leg. (Testimony of Appellant). Regarding meal preparation, Appellant testified that she requires assistance because she has trouble standing due to the effects of her neck problems. (Testimony of Appellant). With respect to housework, Appellant testified that, while she can dust, she cannot complete the rest of her housework because she has pain in her left shoulder. (Testimony of Appellant). Appellant further testified that she still requires assistance with laundry because, while she can fold clothes, she cannot lift or carry a basket of clothes due to problems on her left side. (Testimony of Appellant).

ASW ██████████, however, found that Appellant has no issues that would indicate that she requires assistance. (Exhibit 1, page 8; Testimony of ASW ██████████). As noted by ASW ██████████ (Exhibit 1, page 8), the only diagnoses on Appellant's medical needs forms were panic attacks and anxiety with depression (Exhibit 1, pages 25-26). Appellant did self-report a number of other conditions (Exhibit 1, page 14), but she provided no support for her claims. ASW ██████████ also specifically asked Appellant about Appellant's alleged shoulder pain, but Appellant could give no explanation. (Exhibit 1, page 8; Testimony of ASW ██████████). ASW ██████████ further observed Appellant transfer from sitting to standing without assistance, side-step between furniture without difficulty, and easily lean over to look into a purse. (Exhibit 1, page 8; Testimony of ASW ██████████). According to ASW ██████████'s notes and testimony, Appellant also has a steady gait and did not get short of breath during the home visit. (Exhibit 1, page 9; Testimony of ASW ██████████).

It is undisputed that the only medical problems Appellant reported during the home visit were panic attacks, seizures, angina and endometriosis. (Exhibit 1, page 8; Testimony of Appellant; Testimony of ██████████; Testimony of ASW ██████████). However, during the hearing, Appellant relied on other, newer medical conditions to support her argument

that the Department should not have terminated benefits based on the ██████████ assessment. For example, while Appellant testified that problems with her neck and their effects on her left side prevent her from preparing meals, performing housework or doing the laundry, she also testified that she only recently found out about the deterioration in her neck and that she will be getting a MRI of her neck soon. Appellant further testified that her neck problems have been going on for six months, but there is no indication that she informed ASW ██████████ about it or told ██████████ that she required assistance due to neck pain. When specifically asked about her alleged left shoulder pain, Appellant could give no explanation during the home visit. (Exhibit 1, page 8) Similarly, while Appellant stated that she has trouble standing and just got out of the hospital on ██████████ due to a stroke, she never informed ASW ██████████ of any problems and the only report of a stroke ASW ██████████ has was from 2005. (Exhibit 1, page 8; Testimony of Appellant; Testimony of ASW ██████████). Any medical issues that arose subsequent to the Department's decision or that were not conveyed to ASW ██████████ must be rejected as this Administrative Law Judge is limited to reviewing the evidence available to the Department at the time it made its decision.

Given the evidence available to the Department at the time it made its decision, its decision should be sustained. After excluding Appellant's new or unsupported claims, the only issue remaining was her panic attacks. However, to the extent Appellant seeks to have her provider monitor her in case she suffers panic attacks, her request must be rejected because HHS expressly does not include supervising, monitoring, reminding, guiding or encouraging. ASM 363, pages 14-15 of 24.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly terminated Appellant's HHS based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

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Date Mailed: 9/1/11

***** 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 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.