

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-40527 HHS

Case No. 25879381

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 appeared on his own behalf. ██████████, Appellant's former chore provider, also testified on his behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker (ASW), from the ██████████ DHS-District ██████████ Office appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's application for 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.
2. Appellant has been diagnosed by a physician with low back pain, gastroesophageal reflux disease (GERD), chronic anxiety, chronic bronchitis, and hypertension (HTN). Appellant has also diagnosed himself as having hepatitis c and pain in both knees. (Exhibit 1, page 8).
3. According to Appellant, he was receiving HHS until approximately ██████ of ██████. Appellant also testified that his HHS was terminated because he did not have a provider and that he did not appeal that termination. (Testimony of Appellant).
4. In ██████████, Appellant applied for HHS. (Exhibit 1, pages 5-7).
5. On ██████████, ASW ██████████ conducted a home visit and comprehensive assessment as part of the application process. (Exhibit 1,

page 10).

6. Based on her assessment and information obtained from Appellant during the home visit, ASW ██████████ determined that Appellant did not meet the criteria for HHS. (Exhibit 1, page 10; Testimony of ASW ██████████).
7. On ██████████, the Department issued an Adequate Negative Action Notice to Appellant indicating that Appellant's application for HHS was denied. (Exhibit 1, pages 5-7).
8. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant stated that the only reason his HHS was terminated before was because he did not have a provider and that he has a provider now. (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.

As a preliminary matter, this Administrative Law Judge would note that Appellant testified that he was previously receiving HHS for years until those services were terminated in ██████████ because he did not have a provider. (Testimony of Appellant). Appellant never appealed that termination, but he indicated during the hearing that he would like to challenge the termination. (Testimony of Appellant). However, any appeal of the ██████████ termination is untimely and must be dismissed.

The Social Security Act and the federal regulations which implement the Social Security Act require an opportunity for fair hearing to any recipient who believes the Department may have taken an action erroneously. See 42 C.F.R. § 431.200 *et seq.* However, the opportunity for fair hearing is limited by a requirement that the request be made within 90 days of the Department's negative action:

Request for hearing.

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that

notice of action is mailed, to request a hearing. [42 C.F.R. § 431.221(d).]

Here, the only evidence requiring any termination in [REDACTED] was Appellant's testimony and this Administrative Law Judge engaged in questioning to determine whether the Department provided adequate notice of fair hearing rights at the time of the termination of HHS. Appellant confirmed that he was notified of his fair hearing rights at the time of that termination and that he chose not to appeal. Accordingly, to the extent he raised a challenge to the termination of HHS in his current request for hearing, that challenge must be dismissed as it was not received until [REDACTED] and therefore exceeded the 90 days time to request a fair hearing.

With respect to the issue that is properly before this Administrative Law Judge, *i.e.* the denial of Appellant's HHS application on [REDACTED], Adult Services Manual 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)

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

(ASM 363, pages 14-15 of 24)

The exact services Appellant requested and was denied is unclear in his Request for Hearing. However, testimony during the hearing demonstrates that Appellant is seeking HHS for assistance with transportation, meal preparation/cleanup, housework, and dressing. (Testimony of Appellant). Each of those tasks will be addressed in turn and, for the reasons stated below, this Administrative Law Judge finds that the Department's denial of HHS should be affirmed.

Transportation

Appellant first argues that the Department erred by denying his request for HHS with respect to transportation to the doctor's office. (Testimony of Appellant). However, transportation is expressly included in the services not covered by HHS. ASM 363, pages 14-15 of 24. Accordingly, the Department's decision is affirmed.

Meal Preparation/Cleanup

Appellant also argues that he requires HHS for assistance with meal preparation because he cannot stand over the stove. (Testimony of Appellant). According to Appellant, he can only stand for 15 minutes at a time. (Testimony of Appellant). ASW ██████████, however, determined that Appellant could stand for 15 to 20 minutes at a time and that such a limitation has no impact because the time frame is long enough for Appellant to prepare a meal. (Exhibit 1, page 10; Testimony of ██████████). ASW ██████████ also noted that Appellant can take breaks while preparing a meal. (Exhibit 1,

page 10; Testimony of ██████████).

Appellant does not disagree with ASW ██████████ findings and, given that agreement, the Department's denial of HHS for assistance with meal preparation and cleanup is affirmed. While Appellant is slightly limited in his ability to stand for long periods of time, the length of time he can stand for and his ability to take breaks while completing the task make him independent with respect to meal preparation and cleanup.

Housework

Appellant asserts that, while he can vacuum, he requires HHS for assistance with housework because of problems with his right arm. (Testimony of Appellant). ASW ██████████ testified and wrote in her notes that, while Appellant uses a cane with his right arm and claims to have arthritis in his right hand, Appellant is not on any medications for pain or receiving treatment for problems with his right arm. (Exhibit 1, page 10; Testimony of ██████████). ASW ██████████ also noted that Appellant did not complain about arm problems during the home visit. (Exhibit 1, page 10).

Appellant did not testify during the hearing that he previously requested assistance with housework during the home visit and this Administrative Law Judge finds ASW ██████████ notes and testimony that Appellant did not complain of arm trouble to be credible. This Administrative Law Judge also finds ASW ██████████ testimony and notes that Appellant is not on any pain medications or receiving any treatment with respect to his right arm to be credible as well. Appellant provides no support for his claims and he has failed to meet his burden of proving beyond a preponderance of the evidence that the Department erred. Accordingly, the Department's decision to deny HHS for assistance with housework is sustained.

Dressing

Appellant also asserts that he requires HHS for assistance with dressing. (Testimony of Appellant). According to Appellant, while he can partially dress himself, he needs some assistance due to the arthritis in his right arm. (Testimony of Appellant). ASW ██████████, however, testified that she specifically addressed the task of dressing with Appellant and that Appellant reported that he could dress himself. (Testimony of ASW ██████████).

Appellant testified that he did inform ASW ██████████ that he needed assistance with dressing (Testimony of Appellant), but this Administrative Law Judge finds ASW ██████████ to be more credible with respect to what Appellant requested during the home visit. Additionally, Appellant's medical needs form does not indicate a need for assistance with dressing (Exhibit 1, page 11) and Appellant was observed to have no difficulties with bending (Testimony of ASW Ferguson). Given that evidence, in addition to credibility of ASW ██████████ notes and testimony, this Administrative Law Judge finds that Appellant has failed to meet his burden of proving beyond a preponderance of the evidence that the Department erred in finding that he does not require assistance with laundry. The Department's decision is therefore affirmed.



Docket No. 2011-40527 HHS
Decision and Order

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.


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

cc:



Date Mailed: 8/31/2011

***** 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.