

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

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IN THE MATTER OF:

Docket No. 2012-12768 HHS
Case No. [REDACTED]

[REDACTED],
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 [REDACTED]. The Appellant appeared without representation. Her witness was her nephew, [REDACTED], Appeals Review Officer, represented the Department. Her witness was [REDACTED], ASW.

ISSUE

Did the Department properly terminate the 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. At the time of hearing the Appellant is a disabled, [REDACTED]-year-old, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with DM, HTN, apnea, hypothyroidism, COPD, hypercholesterolemia, obesity, bilateral CTS, emphysema, OA, panic attacks, PTSD, cervical disc disease and other disc abnormalities throughout her spine. (Department's Exhibit A, pp. 2, 13 and Appellant's Exhibit #1)
3. On [REDACTED], the ASW conducted an unannounced, yearly redetermination for the Appellant that led to a termination of services effective [REDACTED]. (Department's Exhibit A, pp. 5, 6)
4. On [REDACTED], the ASW sent the Appellant an advance negative action notice informing her that HHS would be terminated based on the in-home assessment, above. (Department's Exhibit A, pp. 2, 5, 6)
5. The Appellant was provided with a print out version of her appeal rights on receipt of the notice of termination. (Department's Exhibit A, p. 7)

6. The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health 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 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.

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 24, 9-1-2008.

The Department witness testified that on assessment she observed the Appellant move about her residence and determined that she did not need HHS. She testified that the Appellant was independent in all ADLs and IADLs. She was reported to live with her brother.

The Appellant disputed every observation catalogued and reported by the ASW. The Appellant said that they did not discuss "half of the items reviewed at hearing." The Appellant said that sometimes she is in bed all week and that she doesn't wear a bra because she cannot fasten one. She added that with regard to dressing - on the ASW arrival she was in "oversized clothing - which is the only way [she] can dress" - by herself. She said she does not have the capability to reach her arms behind her, nor can she reach her "rear, nails, feet, neck and ears." She said she cannot enter or exit a bathtub. She added that she had a hand held shower device - and a bath chair - which were ineffective devices for bathing.

The Appellant said her ability to self transfer is dependent on her condition that day.

She disputed the ASW's observation on the size of her portable oxygen tanks. The Appellant said she needs help shopping in order to reach items. She said she is unable to open cans or bottles but that on a "good day" she can cut vegetables "if someone brings them to me." Her multiple assistive devices are of no help in the kitchen for lack of a lift system.

She said she was ordered by her physician to avoid dust and sweeping owing to her COPD.

The Appellant said that the observation of her brother was erroneous as he is a disabled veteran and was wearing a body cast under his shirt when observed by the ASW. "He's all broke up." She said. The Appellant admitted that she can fold laundry. She said the observation of having her hair groomed was inaccurate as on the day of unannounced in

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home assessment she had not done her hair - she only swept the sides back to answer the door.

She said her next medical issue is prospective knee replacement. She said she is fearful of being placed in a nursing facility if she can receive no help in the home.

Her witness, [REDACTED], verified all that she related under oath. He said "...that's about it. I come over and help her, but I have my issues too."

The Department witness testified that the Appellant never said that she could not get in or out of the bath or that the shower device would not reach.

I found the Appellant's testimony credible and controlling on the issue of need for time for bathing - based on the Appellant's descriptive testimony. However, the Appellant is reminded that it is her duty to inform the ASW of new developments such as her prospective knee surgery and to then seek reassessment as necessary.

On review, it wasn't clear why the ASW assessed areas of ADL or IADL for which the Appellant did not receive RTS allotment of time versus the ranking of ADLs and IADLs reported in the evidence. See Department's Exhibit A, at page 15.¹

The following item[s] summarizes the ADL/IADL terminations and the ALJ's disagreement:

- Bathing was improperly eliminated as the clear weight of the evidence showed that the Appellant needs hands on assistance to bathe her "rear." Furthermore, the Appellant disputed stating she had a "hip kit" and testified that she had a portable shower device which did not work. [This caused the Appellant to question out loud if the ASW had read her file prior to the home visit]. I would reinstate that service to its prior level - but it is not clear what that level was as the prior time and task schedule was not provided.
- Dressing was improperly eliminated. The Appellant demonstrated the ability to throw on oversized garments which required no overhead or behind the head fastening, zipping or buttoning. From her description at hearing it is doubtful that these garments would have been appropriately modest for public presentment. I would reinstate that service to its prior level - but it is not clear what that level was as the prior time and task schedule was not provided.
- Grooming was improperly eliminated. The ASW notes showed that the Appellant had nail maintenance performed by a podiatrist owing to her physical logistics. The Appellant's ability to comb hair had nothing to do with her pincher ability and fine motor control – but rather her pain on shoulder disability and degenerative disc disease. I would reinstate that service to its prior level - but it is not clear what that level was as the prior time and task schedule was not provided.
- Transferring was improperly eliminated based on the ASW observation of ability to move from a seated position to a standing position – but it did not address the Appellant's inability to transfer from bed to a standing or seated position or the relative success or failure to access her bedside commode. I would reinstate that service to its

¹ This undated document suggests a reduction in HHS – not a termination.

prior level - but it is not clear what that level was as the prior time and task schedule was not provided.

- Mobility was improperly removed as the ASW equated it with motor vehicle transportation – a non covered service under HHS. The Appellant utilizes multiple assistive devices for ambulation – but when “visiting friends” she talks through the open window of a car door. She does not exit the vehicle. I would reinstate that service to its prior level - but it is not clear what that level was as the prior time and task schedule was not provided.
- Housework was improperly eliminated based on the ASW observation of mobility within the home and pincher abilities. The ASW incorrectly concluded that the brother who lives with the Appellant was able bodied. The Appellant reported that he is a disabled veteran awaiting surgery who was wearing a body brace under his shirt at the time of assessment. [It is unclear what household chores he could do because he was not interviewed by the ASW]. In this instance it appears that the prior ranking was a “4” – I would reinstate that level of service as the minimal chores the Appellant can reasonably/safely perform from her wheelchair obviously signals the need for help from another individual – but not her brother based on this evidence.
- Shopping was improperly eliminated based on the ASW notes. The Appellant’s ability to reach and grasp is compromised by CTS, weakness and disc generated pain. The Appellant further observed that the ASW inaccurately described the size, weight and dimensions of her oxygen tanks and their relative portability. In this case the Appellant was formerly ranked at level “4” for shopping. I would reinstate that level of service as it is apparent that once in a store – she would need some assistance to complete her tasks whether for fatigue, inability to reach or package placement.
- Meal Preparation was improperly eliminated. The Appellant acknowledged the ability to cut vegetables while seated – if they were handed to her. The Appellant did not acknowledge the ability to operate a microwave oven nor was she asked if she had such a device – it is apparent that some assistance is necessary for clean-up duties which extend beyond countertop height.

The following item summarizes the IADL termination for laundry and the ALJ’s agreement with that assessment:

- Laundry was properly eliminated as the Appellant admitted in her testimony the ability to distinguish color and do a load of washing. She acknowledged the ability to fold everything – but added that the washed items would need to be hung to dry. Obviously, the Appellant is free to use a drier as opposed to standing to hang wet clothing. This chore was properly eliminated based on today’s evidence.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was deficient on several levels. First, based on the evidence it is not clear if this was a termination or a reduction of HHS. The Department’s Exhibit A contradicts the testimony. See Department’s Exhibit A at pages 5, 14 and 15. If the services represented on page 15 were the preexisting services then the ASW’s focus on ADLS at the unannounced face to face assessment was for naught – albeit hotly disputed by the

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Appellant. If the services represented at page 15 connote current services – then this was a reduction in services without apparent application of the shared household policy.

With the exception of laundry the Appellant successfully disputed each assessment of ADL and IADL reviewed by the ASW. While some explanations were better than others – there was no doubt in the ALJ's mind that the Appellant's inability to reach, lift, tote, carry, fasten, transfer, etc., was not so much a consequence of her hands and pincher ability – but rather her shoulders and the various afflictions affecting her spine – which were not addressed by the ASW.

The ASW observations at face to face unannounced assessment were astute – but failed to account for the Appellant's reasonable explanations – a good example of which was the observation of the apparently able bodied brother in the back yard at the time of her arrival. According to the Appellant he is a disabled veteran –“all broke up” awaiting medical treatment of his own. She added that under his shirt he wore a back brace to accommodate his disability.

There was no evidence that the ASW accounted for a shared household in her decision which lends weight to the conclusion that this was a termination of HHS – but if it was a reduction case then the issue of his presence and ability would need to be addressed at some point in the future.

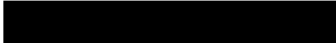
The remainder of the explanations showed an otherwise alert, oriented adult – requiring the use of assistive devices – able to take on most chores as they presented, but requiring hands on assistance as reflected in Department's Exhibit A, at page 14. The Appellant denied ever stating that she had a “hip kit,” she said she had a portable shower head – and it did not work to adequately bathe her body. I thought the Appellant made a convincing argument for reinstating her original services. She had a supporting witness who affirmed her testimony and observations. He furthermore explained that he did the majority of the driving.

The ASW had no supporting witness to bolster her challenged observations.

The Appellant must understand that the HHS program is not a static award of Home Help Services – it is anticipated that hands on services will wax or wane depending on physical status of the recipient. Some people improve with time – some do not.

The Appellant is neither totally disabled nor totally dependent. She requires some hands on assistance with the tasks referenced above. Based on the testimony and the evidence reviewed today the rankings at page 14 of the Department's Exhibit seem reasonably accurate.

Based on the record established today the Appellant has preponderated her burden of proof to demonstrate her need for HHS services. Her testimony was supported by her witness. The Department's evidence did not support the testimony of the ASW – whose observations were credibly challenged by the Appellant.


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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly terminated the Appellant's HHS.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

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

cc:



Date Mailed: 3/6/2012

***** 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.