

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-15061 HHS

████████████████████

████████████████████

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 behalf of the Appellant, who was present and testified. ██████████ Appeals Review Officer, represented the Department. Her witness was ██████████, 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) The Appellant is a disabled, ██████-year old Medicaid beneficiary. (Appellant's Exhibit #1)
- 2) The Appellant is afflicted with asthma, Hepatitis C, HTN, GERD, CTS, apnea, pain, SOB, DM, Bi-polar, CKD III, COPD, CVA/TIA, glaucoma, OSA, Major Depressive Disorder, Recurrent and Borderline Personality Disorder. As of ██████████, the Appellant is authorized for a host of CMH services [beyond medication set up] unknown to ██████████. (Appellant's Exhibit #1 – throughout and Department's Exhibit A, p. 14).
- 3) The Department's witness testified that on in-home assessment she did not observe any limits to the Appellant's ability to perform ADLs. She added that a recently received DHS-54A medical needs form did not certify a need for

assistance with any ADL. (Department's Exhibit A, p. 12)

- 4) The Department witness said she reviewed the new policy requiring at least one ADL at a ranking of three (3) or better to qualify for HHS. She identified no need for ADLs in the Appellant. (See Testimony and Department's Exhibit A, pp. 2, 8, 11, 12)
- 5) [REDACTED], the Department sent the Appellant an Adequate Negative Action Notice advising her that her HHS benefit would be terminated on [REDACTED]. Her further appeal rights were contained therein. (Department's Exhibit A, pp. 2, 7)
- 6) A letter of support from the [REDACTED] CMH states that the Appellant needs assistance with the ADL of transferring, in addition to all IADLs owing to her significant mental health diagnosis. (Appellant's Exhibit #1, p. 5)
- 7) The request for hearing on 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 (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.

Changes in the home help eligibility criteria:

Home Help Eligibility Criteria

To qualify for home help services, an individual must require assistance with at least one activity of daily living (ADL) assessed at a level 3 or greater. The change in policy must be applied to any new cases opened on or after October 1, 2011, and to all ongoing cases as of October 1, 2011.

Comprehensive Assessment Required Before Closure

Clients currently receiving home help services must be assessed at the next face-to-face contact in the client's home to determine continued eligibility. If the adult services specialist has a face-to-face contact in the client's home prior to the next scheduled review/redetermination, an assessment of need must take place at that time.

Example: A face-to-face review was completed in August 2011; the next scheduled review will be in February 2012. The specialist meets with the client in his/her home for a provider interview in December 2011. Previous assessments indicate the client only needing assistance with instrumental activities of daily living (IADL). A new comprehensive assessment must be completed on this client.

If the assessment determines a need for an ADL at level 3 or greater but these services are **not** paid for by the department, or the client refuses to receive assistance, the client would **continue** to be eligible to receive IADL services.

If the client is receiving only IADLs and does **not** require assistance with at least one ADL, the client no longer meets eligibility for home help services and the case must close after negative action notice is provided.

Each month, beginning with October, 2011, clients with reviews due who only receive IADL services must take priority.

Negative Action Notice

The adult services specialist must provide a DHS-1212, Advance Negative Action notice, if the assessment determines the client is no longer eligible to receive home

help services. The effective date of the negative action is ten business days after the date the notice is mailed to the client.

Right to Appeal

Clients have the right to request a hearing if they disagree with the assessment. If the client requests a hearing within ten business days, do not proceed with the negative action until after the result of the hearing.

Explain to the client that if the department is upheld, recoupment must take place back to the negative action date if payments continue. Provide the client with an option of continuing payment or suspending payment until after the hearing decision is rendered.

If the client requests a hearing after the 10-day notice and case closure has occurred, do not reopen the case pending the hearing decision. If the department's action is reversed, the case will need to be reopened and payment re-established back to the effective date of the negative action. If the department's action is upheld, no further action is required.

Adult Service Bulletin (ASB) 2011-001;
Interim Policy Bulletin Independent Living Services (ILS)
Eligibility Criteria, pp. 1-3, October 1, 2011

The Department witness testified that on in-home assessment she observed that the Appellant had no need for ADL assistance. She explained policy developments and advised the Appellant's chore provider that the Appellant would be terminated from the home help program for lack of need with hands on assistance. The most recent DHS-54A supported need for assistance with IADLs - not ADL. See Appellant's Exhibit #1, pp. 4, 5 and Department's Exhibit, p. 12.

At hearing, the Appellant's representative said that the Appellant needs help at home with reminding and supervision. She said she was the only chore provider and that the Appellant did not receive services from CMH.

It is the province of the ASW to determine eligibility for services; the ASM requires an in-home assessment of HHS recipients. Based on new policy an HHS recipient must

[REDACTED]
Docket No. 2012-15061 HHS
Decision and Order

utilize at least one (1) ADL requiring hands-on service at the three (3) ranking or higher in order to remain eligible for HHS.

Since the Appellant has now exhausted her available services under the HHS program it is incumbent on the ASW to advocate for the Appellant in receiving CMH sponsored Community Living Supports (CLS) to address the monitoring and supervision needs articulated by the Appellant's chore provider at hearing. [ASM 125, Coordination with Other Services, pp. 1, 2 of 10, [REDACTED]]

The Appellant failed to preponderate her burden of proof that the Department erred in terminating her HHS, because at the time of assessment she demonstrated no need for assistance with an ADL with a ranking of 3 or greater.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated the Appellant's 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: _____ 3-6-12 _____

***** 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.