

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

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IN THE MATTER OF:

████████████████████

Docket No. 2013-39936 HHS

Case No. ██████████

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 ██████████. Appellant appeared on his own behalf. Appellant's witness was his friend ██████████. ██████████, Appeals Review Officer, represented the Department of Community Health (Department). ██████████, Adult Services Supervisor and ██████████, Adult Services Worker (ASW) appeared as witnesses 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 who has been diagnosed with schizophrenia, lumbago, and rheumatoid arthritis. (Exhibit A, p 17)
2. Appellant lives alone in an apartment. (Testimony)
3. On ██████████, the Department's ASW ran into Appellant in a local grocery store. The ASW noticed that Appellant was not using any adaptive equipment, i.e. his cane, and was moving about freely while carrying a shopping basket. The ASW spoke with Appellant for approximately 10 minutes and Appellant did not seem to be in any pain or duress. (Exhibit A, pp 8-9; Testimony)
4. Based on her meeting with Appellant on ██████████, the ASW reviewed Appellant's latest rankings for Activities of Daily Living (ADL's) and Incidental Activities of Daily Living (IADL's) and noted that the only ADL Appellant was ranked 3 or higher on was mobility. The ASW also noted that Appellant was not receiving any HHS payment for mobility because Appellant was able to get around with the use of a cane.

Appellant ranked a 1 on all other ADL's. Given that the ASW observed Appellant without his cane, she determined that he no longer needed assistance with the ADL of mobility and terminated his HHS. (Exhibit A, p 18; Testimony)

5. On ██████████, the Department sent Appellant an Advance Negative Action Notice informing him that his HHS would be terminated effective ██████████. (Exhibit A, pp 5-6; Testimony)
6. Appellant's Request for Hearing was received by the Michigan Administrative Hearing System on ██████████. (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 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.
- 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 ASW testified that on ██████████, she ran into Appellant in a local grocery store. The ASW noticed that Appellant was not using any adaptive equipment, i.e. his cane, and was moving about freely while carrying a shopping basket. The ASW spoke with Appellant for approximately 10 minutes and Appellant did not seem to be in any pain or duress. The ASW also testified that she had observed Appellant several other times in the past when he was not using his cane. The ASW indicated that based on her meeting with Appellant on ██████████, she reviewed Appellant's latest rankings for Activities of Daily Living (ADL's) and Incidental Activities of Daily Living (IADL's) and noted that the only ADL Appellant was ranked 3 or higher on was mobility. The ASW also noted that Appellant was not receiving any HHS payment for mobility because Appellant used a cane to get around. Appellant was ranked a 1 on all other ADL's. Given that the ASW observed Appellant without his cane, she determined that he no longer needed assistance with the ADL of mobility and terminated his HHS. The ASW testified that on ██████████, she sent Appellant an Advance Negative Action Notice informing him that his HHS would be terminated effective ██████████.

Appellant testified that on ██████████, ██████████, he had to go to the store to buy some bread and milk because he was out of those items and his provider was not available. Appellant indicated that he did not have his cane, but that he was in pain. Appellant testified that his condition is serious, but that he does sometimes have to do things on his own if his provider is unavailable. Appellant testified that he has problems with his back and with his hands and that his abilities are very limited. Appellant testified that he needed help with cooking, cleaning and laundry.

Appellant's friend testified that he has known Appellant for over ██████ years and that Appellant used to be very active before he became disabled. Appellant's friend indicated that a person really cannot tell if another person is in pain or disabled just by looking at them.

Based on the evidence presented, Appellant has failed to prove, by a preponderance of evidence, that the termination of his HHS was inappropriate. The evidence showed that the only ADL Appellant was ranked 3 or higher on was mobility and Appellant was not receiving any HHS payment for mobility because Appellant used a cane to get around. Appellant's ASW observed him on more than one occasion walking without a cane. It also bears pointing out that Appellant did not bring his cane to the hearing.

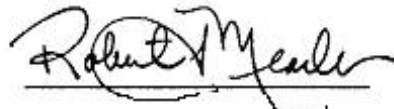
The evidence was not sufficient to establish that Appellant had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, based on the information available to the ASW when she terminated Appellant from the HHS program. The ASW provided credible, detailed testimony regarding her observations of, and discussions with, Appellant. Furthermore, neither Appellant nor his witness testified that Appellant needed assistance with any ADL's. Accordingly, the termination of Appellant's HHS is upheld.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]

Date Signed: 5/29/2013

Date Mailed: 5/30/2013

***** 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.