

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2009-15212 HHS

Case No. ██████████

Load No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████, the Appellant's ██████████ appeared on behalf of the Appellant. ██████████, represented the Department of Human Services (DHS or Department). ██████████ appeared as a witness on behalf of the Department. ██████████ appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly eliminate payment for dressing assistance in the Appellant's Home Help Services case?

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 ██████████ who is moderately mentally retarded, according to her doctor's correspondence. She resides with her mother and family.
2. The Appellant suffers scoliosis but does not otherwise have physical anomalies preventing her from performing her own ADL's or IADL's. The Appellant does have limited judgment as a result of her condition.

3. The Appellant is a Medicaid beneficiary who participates with the Adult Home Help Services program.
4. The Appellant's case was scheduled for re-assessment in [REDACTED]. On [REDACTED], the Adult Services Worker completed a home call for the purpose of completing the assessment.
5. On [REDACTED], the Appellant was notified her HHS payment would be reduced from approximately [REDACTED] to [REDACTED] per month.
6. On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing.

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.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (FIA-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 redetermination.

- 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 for food and other necessities of daily living
- Laundry
- 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 three (3) level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of three (3) or higher, based on interviews with the customer and provider, observation of the customer'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:

- 5 hours/month for shopping for food and other necessities of daily living
- 6 hours/month for housework
- 7 hours/month for laundry
- 25 hours/month for meal preparation

These are maximums; as always, if the customer needs fewer hours, that is what must be authorized. **Hours should continue to be prorated in shared living arrangements.** (emphasis added)

Department policy addresses the need for supervision, monitoring or guiding below:

Services Not Covered By Home Help Services

Do **not** authorize HHS 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 - Medical transportation policy and procedures are in Services Manual Item 211.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;

- Adult day care

The Department witness testified that she performed the comprehensive assessment in accordance with Department policy. The only reduction made was for the elimination of payment assistance for dressing. She stated she was told at the assessment the Appellant can dress herself and that she requires supervision to make appropriate choices. She further testified she learned at the assessment the Appellant participates in making crafts and assists her father with returning bottles and cans at the store. She said the reduction was in accord with the Department Policy indicating no payment can be authorized for assistance that is supervisory.

The Appellant's mother testified. She asserted the Appellant is not capable of putting her bra on and tying her shoes. She stated she does dress herself 3 days per week. She requires supervision to make appropriate choices regarding dress. She insists her daughter has no fine motor skills and cannot write and school records reflect this.

This ALJ has sufficient evidence the Appellant's mother is supervising her daughter's dressing activities to uphold the Department's action. The testimony provided by the Appellant's mother that her daughter is not physically capable of putting a bra on without assistance is not credible. First of all, not all bras are fastened in the back and/or with hooks. Sports bras have no fastening devices. There was no evidence the Appellant is not able to put a sports bra on without assistance. Furthermore, if the Appellant is able to participate in some craft making activities, it tends to evidence the testimony from her mother is more likely an overstatement. Specifically, the testimony that her daughter has no fine motor skills is found to be a self serving overstatement not supported by the evidence in the record.

Additionally, the testimony provided by the Appellant's mother caused this ALJ to have grave concern for the Appellant's emotional well being. Her mother was inappropriate at best and cruel at times during the hearing. The Adult Services Worker should encourage the Appellant to find a caretaker who does not belittle or degrade her. Additionally, the testimony convinced this ALJ the Appellant's mother insists on doing things "for" her daughter simply because she would take a longer time or not do it exactly as she believes is best. This is not the standard by which abilities must be determined. There was scarce evidence the Appellant had physical impairments preventing her from performing much of her own personal care, albeit with supervision (which is not compensable).

After careful consideration of the evidence in the record, this ALJ finds the Department's evidence of the reason for the case reduction is supported by competent, credible evidence of the Appellant's actual abilities. Relevant evidence of the Appellant's physical abilities was considered by the worker.

The Department's Home Help Services program is designed to provide physical assistance to those who have physical limitations interfering with their ability to perform ADL's and IADL's. In this case, there is no evidence the Appellant has the physical inability to perform the tasks the worker determined she could. The evidence in the record is insufficient to establish the Department failed to authorize a sufficient amount of time for Appellant's

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ADLs or IADLs. In short, the Appellant's guardian failed to establish the Department erred.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly authorized Appellant's Home Help Services.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 5/26/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.



