

**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. 2009-20164 HHS

Case No. ██████████

Load No. ██████████

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 ██████████. The Appellant appeared without representation. She had no witnesses. ██████████, appeals review officer, represented the Department. Her witnesses were; ██████████ and ██████████.

ISSUE

Did the Department properly reduce Home Help Services payments to the Appellant?

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, Medicaid and SSI beneficiary.
2. The Appellant is afflicted with pelvic inflammatory disease, chronic arthritis, back and neck pain, headaches, and anxiety. (Department's Exhibit A, pp. 11a, 13, 14, Appellant's Exhibit #1)
3. On ██████████, ASW ██████████ sent the Appellant an advance negative action notice that home help services were being reduced in the areas of transferring, feeding and dressing effective ██████████. (Department's Exhibit A, pp. 2, 8)

4. The ASW said the reduction was based on her in-home observations and discussions with the Appellant during the in-home visit conducted on ██████████ (Department's Exhibit A, pp. 2, 10 and See Testimony)
5. On the face-to-face home visit the ASW documented that the Appellant was able to eat, transfer and dress without assistance – even though some efforts required additional time. (See Testimony)
6. Following receipt of DHS 1212 and notice of appeal rights the Appellant filed a request for hearing on ██████████. (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 23, 9-1-2008.

The Department witness testified that on in-home assessment she observed the Appellant moving in a fluid manner sufficient to persuade the ASW that the Appellant was capable of transferring, dressing and personal mobility. She further explained that she observed the Appellant pull out a chair, cross her legs raise her hands over her head, drum her fingers and use a key. She added that the issue of eating was deleted following discussion with the Appellant during the assessment.

The Appellant testified that the ASW observed her on a good day – and that she had been dressed that day by her chore provider. She said that on certain days the pain is so bad she has to have someone feed her and she can't get out of bed. She added that the ASW never let her talk during the assessment.

On review of the evidence the ALJ finds that the comprehensive assessment was accurate and drawn according to policy. By definition the Appellant showed to the ASW

that she was in an improved condition – needing some assistance – but not as much as previously granted. The ASW observations were consistent with improved physical ability – albeit not total independence.

On review the ALJ agreed with the following task and time adjustments prepared by the ASW following her in-person assessment:

Bathing – was increased from 4:35 minutes to 5:01 minute.
Grooming – was increased from 3:09 minutes to 4:01 minute.
Dressing – was eliminated for the reasons referenced above – although the ASW did note that some tasks might take the Appellant a little longer.
Transferring – was eliminated for the reasons stated above.
Eating – was eliminated for the reasons stated above.
Housework – was reduced from 6:01 minute to 3:26 minutes.
Laundry – was reduced from 7:01 minute to 4:01 minute...

[the remaining tasks were unchanged]

The Appellant did not preponderate that the Department erred in the adjustment of her grant based on the ASW observations as of ██████████. Accordingly, I find that the HHS reduction was correctly decided based on today's record.

A comprehensive assessment is the responsibility of the ASW and I find that it was properly measured and applied to this Appellant.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

Docket No. 2009-20164
Hearing Decision & Order

cc:

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Date Mailed: 6/30/2009

***** 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.