

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2009-33282 HHS

Case 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, an in-person hearing was held ██████████. ██████████ was represented by ██████████. The Appellant's mother and sister were also present.

██████████, represented the Department. ██████████ was present as a Department witness.

ISSUE

Did the Department properly reduce the 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. The Appellant is a ██████████ Medicaid beneficiary who has been participating in the Adult Home Help Services program.
2. The Appellant is single and resides with her father and mother.
3. The Appellant is diagnosed with moderate mental retardation. (Appellant's Exhibit A).

4. The Department implemented the pro-rating policy for her IADL Home Help Payments, effective [REDACTED], resulting in a reduction in monthly payment from [REDACTED] to [REDACTED].
5. The Department did not change her functional rank or time allowed for any of the tasks for which she receives payment assistance.
6. The Department sent a negative action notice [REDACTED].
7. The Appellant objected to the reduction, requesting a formal, administrative hearing [REDACTED].

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 physician and may be provided by individuals or by private or public agencies.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

Adult Services Manual (ASM) 9-1-2008

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
 - A complete comprehensive assessment and determination of the customer's need for personal care services.
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- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer 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

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or 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 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 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
- 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 the 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.

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. If there is a need for expanded hours, a request should be submitted to:

* * *

Service Plan Development

Address the following factors in the development of the service plan:

- The specific services to be provided, by whom and at what cost.
- The extent to which the Client does not perform activities essential to the caring for self. The intent of the Home Help program is to assist individuals to function as independently as possible. It is important to work with the recipient and the provider in developing a plan to achieve this goal.
- The kinds and amounts of activities required for the client's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the client to perform the tasks the client does not perform. Authorize HHS only for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- Do not authorize HHS payments to a responsible relative or legal dependent of the client.
- The extent to which others in the home are able and available to provide the needed services. Authorize HHS only for the benefit of the client and not for others in the home. If others are living in

the home, prorate the IADL's by at least 1/2, more if appropriate.

- The availability of services currently provided free of charge. A written statement by the provider that he is no longer able to furnish the service at no cost is sufficient for payment to be authorized as long as the provider is not a responsible relative of the client.
- HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for the same time period).

Adult Services Manual (ASM) 9-1-2008

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

Adult Services Manual (ASM) 9-1-2008

Uncontested evidence establishes the Appellant resides with her parents in the family home. While the Appellant's guardians seek to contest the implementation of Department policy by asserting she is not being treated as an individual, the assertions

of the Appellant's guardian have no bearing on the Department's actions with respect to the particular reduction made. Pro-rating the compensation authorized for Instrumental Activities of Daily Living is the policy implemented in this case. The Appellant resides with her parents, who would otherwise be cleaning their own home, whether she lived in it or not. To fail to implement the policy is to pay the Appellant's guardians for cleaning their own home. Additionally, they would be preparing their own meals daily whether she lives with them or not. The guardians assert the Appellant's special dietary needs should justify not pro-rating the time for meal preparation. They cite diverticulitis and acid reflux as the cause of her need for a special diet at times. Also, they point to medication that is administered at meal time. This is not part of meal preparation, nor are conditions such as acid reflux or diverticulitis a cause to disregard the policy pertaining to meal preparation. She may not eat everything that is prepared at every meal, however, that does not justify disregarding policy that will not compensate people for making their own meals, which are by and large shared with the other family members living in the home. A real and compensable need for a special diet is better evidenced by someone who cannot eat any solid foods and must have only soft foods prepared especially for them, at every meal. The evidence of record of the Appellant's dietary restrictions are not such as to justify a special meal be prepared separately for her 3 times a day each and every day. This ALJ finds the Policy was properly implemented with respect to meal preparation and housework. The family is still compensated for meal preparation, it is simply pro-rated to reflect that others also are residing in the home. The Appellant's guardians objected to the time allowed for shopping and errands. Again, shopping for food and medicine is compensated, simply reduced to reflect that shopping and errands would be performed by the family regardless of whether the Appellant was residing with them or not. This ALJ considered the evidence presented of how much time is spent performing the shopping and errands on behalf of the Appellant. It did not establish any good reason to disregard the Department's policy pertaining to this task.

The Department's witness asserted all he did was implement the Department policy pertaining to pro-rating of the IADL's, based upon the number of people residing in the home.

The Appellant's guardian sought to contest every aspect of the determinations made by the Department's worker at hearing. The Department objected, citing the only negative action having been a reduction based upon implementation of the policy to pro-rate the IADL's. This ALJ finds the hearing request is objecting to the determinations of the worker, thus can properly be addressed at hearing. The Appellant has a right to contest the determinations made by the Department and did so timely in the hearing request.

This ALJ considered the evidence presented in writing and at hearing concerning the Appellant's needs. She also observed the Appellant directly. She is obviously well cared for. She sat quietly with a paper and pen or pencil and wrote during the entire length of the hearing. She attended public special education schooling for her entire childhood. Her own medical record establishes she is moderately mentally retarded.

This is in contrast to severely mentally impaired or severely multiply impaired. This ALJ believes she could perform much more of her own personal care needs with training, guidance and supervision. There was no evidence presented persuading this ALJ the Department's authorization of time was inadequate, except with respect to medication administration. The Appellant does suffer asthma and is on a lengthy list of medications. There is ample uncontested evidence of the number of medications the Appellant must take and have administered to her each day. Two minutes per day is an insufficient amount of time to administer all the pills at the appropriate times and breathing treatments necessary. It should be adjusted upward. Other than the medication time, there was no other area in which the time allowed is found to be insufficient.

In fact, this ALJ finds the time allowed for bathing, dressing and eating is too generous, given the Appellant's physical abilities. She requires guidance and supervision to make appropriate decisions pertaining to clothing and may need a little assistance on occasion, however, 14 minutes each and every day for dressing is excessive for someone who can largely accomplish the task without physical assistance but for having her shoes tied.

Additionally, she is able to participate in some bathing activity herself. She does not require 16 minutes each and every day for hands on physical assistance with bathing. There was no evidence of a need for 16 minutes per day every day for that task. Supervision and monitoring are not compensable under the program, thus even if the Appellant's guardians are providing the supervision and monitoring of the Appellant for each of the tasks, they are not to be compensated for that aspect of the assistance under the program, only the hands on assistance required to accomplish the task. Additionally, should the Appellant's guardians chose to perform that task on behalf of the Appellant because she is slow about it or less than perfect in her execution, again, this is the choice they are making. Because someone performs a task slowly or in an imperfect manner according to the personal standards of her guardian, this does not evidence the guardian is entitled to be compensated for performing it on her behalf. The testimony presented by the Appellant's guardian concerning what he perceives to be her need for assistance was that she did not do it right. His demonstration was that she did not fold clothing to his exacting standard. This ALJ does not find the policy requires payment assistance for performing tasks that do not meet the guardian's personal demands and exacting standards. She is able to participate in bathing herself to a large extent, with some supervision and guidance. A reduction must be implemented for that task.

As far as eating is concerned, it does not take 10 minutes to cut food up each and every day. The Appellant otherwise self feeds. A reduction is required for that task.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department has properly implemented the pro-rating policy in this instance. The time authorized for bathing, dressing and eating is too high and must be reduced. The time authorized for medication administration is too low and must be increased.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED** in part and **REVERSED** in part.

The Department is hereby ordered to **REDUCE** the HHS payments for the tasks of eating to 4 minutes per day, dressing to 2 minutes per day and bathing to 6 minutes per day.

The Department is further ordered to **INCREASE** the time authorized for medication administration to 10 minutes per day.

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

cc:



Date Mailed: 11/24/2009

***** 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.