

**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. 2009-36322 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, a hearing was held ██████████. ██████████ represented herself at hearing. ██████████, was present as a witness on her behalf and did testify.

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

ISSUE

Did the Department properly authorize 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 applied for Adult Home Help Services.
2. The Appellant is single and resides in her own apartment.

3. The Appellant's known medical conditions at the time of the in home assessment include severe emphysema, coronary artery disease and bipolar disorder.
4. The Department's worker conducted an in-home assessment of the Appellant's functional abilities. She determined the Appellant requires maximum assistance and should be ranked a 5 for shopping and laundry. She further determined the Appellant requires nearly maximum assistance with housework and meal preparation. She ranked a 4 for those activities.
5. Following the assessment, the worker authorized assistance with the Instrumental Activities of Daily Living, specifically, housework, meal preparation, shopping and laundry.
6. The worker authorized 2 hours and 52 minutes per month for housework, 4 hours and 18 minutes per month for laundry, 2 hours and 9 minutes per month for shopping and 3 hours and 35 minutes per month for meal preparation. The total payment authorized for assistance is ██████████ per month.
7. The maximum time allowable for IADL's under the policy is 5 hours per month for shopping, 6 hours for housework, 7 hours for laundry and 25 hours per month for meal preparation. The Department authorized less than the maximum number of hours of assistance even for tasks for which it was determined the Appellant is unable to perform or assist with at all.
8. Notice of the authorization was mailed on or about ██████████.
9. The Appellant contested the amount of time authorized for each task. She submitted a hearing request, received on ██████████.

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.

- 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

In this case Department testimony establishes the Appellant was authorized to receive less than the maximum amount of time allowed for the services she needs each month, despite being ranked as needing maximum assistance for both laundry and shopping. She was ranked a 4, indicating she requires near maximum assistance for the remaining two tasks she requires help with, meal preparation and housework. She

received less than ½ of the available time for housework and again for laundry. The worker testified she believes the shopping can be accomplished in 30 minutes per week 1 time per week. This was supposed to compensate the provider for shopping for food and picking up all medications for the Appellant each month. The worker determined the Appellant is unable to shop for herself at all due to her severe COPD and shortness of breath. She is unable to walk to the store near by or shop for herself if she is taken to the store. She was asked if all the shopping could be accomplished in 30 minutes and testified she believed that was possible. With respect to housework, she testified the apartment is small and the Appellant has full use of her hands, thus the time allotted is sufficient to accomplish the task. She authorized 2 days per week for housework. The laundry was authorized for 4 hours per month. She testified the laundry could be completed with washing 1 time per week. The Department's representative asserts Department policy does not compensate providers for waiting for the wash cycle or dryer to run, only the task of filling the machines and turning them on. With respect to meal preparation, the worker testified at the interview the Appellant told her she does not prefer to eat in the senior complex where she lives. Lunch is provided most days. She further testified the Appellant told her she prefers to prepare her own food but could use someone 1 time per week to assist her. She based her authorization of 3 hours and 35 minutes per month on the information learned at the interview.

The Appellant testified she is unable to shop for herself at all, she needs more help getting the house cleaned and has insufficient time authorized for each task. She said she told the worker she does not like to eat the food available in her complex and would like to make her own food but she is unable to. She said the worker's testimony that she told her she preferred to prepare her own food was not the complete information she provided. Additionally, she said the time for shopping is insufficient. She has a lot of medication that has to get picked up and it is not all at one time. They are to be picked up at different times during the month from the pharmacy at ██████████. She further provided testimony the worker had informed her she would get in excess of 40 hours each month for assistance and indicated this by writing the numbers down on the margin of the provider log she left with her at the interview. She said she hired her provider and told her she would be paid for between 41-44 hours each month based upon the representation of the worker. She sought compensation for her provider dating back to ██████████ for at least 40 hours per week, based upon her assertion that the worker told her she would get that level of assistance. She further requested to be assigned to a different worker. She was informed by this ALJ that a new worker could not be assigned her as a result of a hearing and that she could seek to have her concerns addressed at the local office.

Department policy supports authorizing less than the maximum time allowable for IADL's, if the comprehensive assessment supports such a determination. This ALJ believes it is incongruent to determine the Appellant's rank for shopping and laundry is 5, but then authorize less than the maximum assistance allowable without good reason. If the Appellant had other supports in place to assist with the tasks, lower authorization makes sense. This ALJ reviewed the evidentiary record to determine if the evidence

Docket No. 2009-36322 HHS
Decision and Order

supports both a determination that the Appellant is fully dependent on her provider to complete her shopping and that it could be completed in 2 hours and 9 minutes per month. The evidentiary record was reviewed to determine how congruent the time authorizations were compared to the functional rank for each of the remaining tasks as well, laundry, housework and meal preparation. Finally, the Appellant's assertion of having been "approved" for at least 40 hours per month was considered.

The evidence in the file establishes the notice approving assistance with home help was not authorized in writing by the Department until the notice sent [REDACTED], despite the interview taking place in [REDACTED]. The worker confirmed she had left a log with the Appellant but stated it was not her practice to indicate the number of hours until she enters the information into the computer. She testified she did not know if that was her writing on the log sheet or not. Given the notice authorizing home help assistance was not mailed until [REDACTED], this ALJ finds the Appellant had no reason to rely on the Department to compensate a chore provider until she had received notice in writing of the approval. This ALJ does not find Department error in not compensating a provider for services provided in excess of what was authorized in the Notice.

As for the congruency between the time authorized and the functional rank, this ALJ did not find the Department's worker provided persuasive testimony or any real reason for her failure to authorize maximum assistance for tasks ranked a 5. The maximums allowed by policy are barely sufficient to accomplish the tasks, even with organization, for any person. The worker ranked the Appellant a 5 for shopping and errands, then approved her for less than ½ the time allowed, 2 hours and 9 minutes. There is no evidence of any other formal or informal support in place for the Appellant. She has many medications that must be picked up each month. They are not all picked up on the same day. Pharmacy rules do not allow medications to be picked up more than a day or two before one runs out. Because the rules governing medication pick up are so restrictive, this places a larger burden on those who provide services to people who require medication pick up. Additionally, this ALJ takes official notice of the fact that check out at the pharmacy and then the grocery section even of the same store can easily take at least 30 minutes. That is simply check out, not shopping for the food. This ALJ disagrees with the testimony from the worker opining that food and medicine shopping can be accomplished in one 30 minute segment per week. The time allowed for shopping and errands is not sufficient by any reasonable measure, especially for someone who cannot do the shopping at all for themselves. The maximum assistance for shopping and errands is clearly called for in this case, where the Appellant is ranked a 5. No valid reason was provided for, departing from the Department's policy allowing 5 hours for those ranked a 5.

The other task ranked 5 was laundry. At hearing the worker testified she thought the Appellant could fold her own laundry, if sitting in her own apartment. This ALJ does not take issue with that, however, if that was her determination, it was left unexplained why she ranked the Appellant a 5 for laundry. A 5 is for those who cannot participate in the task at all. Her rank should be lowered to reflect the worker's actual determination. In

this instance, the Department authorized 4 hours for laundry. This is not the maximum, which is 7 hours. However, the evidence does not support a rank of 5 for this task. The time authorized is congruent for a person ranked a 3 or 4. The time does not need to be adjusted.

The time for housework is a little tight, but probably manageable for light housework. Based upon the testimony of the worker regarding the size of the apartment and ability of the Appellant to participate in some of the lighter tasks, such as cleaning counter tops, nearly 3 hours per month is adequate.

The issue of meal preparation involved contested evidence. The Appellant asserts she told the worker she could not do it, despite her preference for doing so. The worker testified she was told by the Appellant that she would like to have some assistance 1 time per week. The worker thereafter ranked her a 4. The rank is inconsistent with the authorization for help 1 time per week. A rank of 4, according to the functional assessment definitions in the manual's appendix, indicates the Appellant requires another person to prepare most meals and do clean up. Either the rank or the time authorized is incorrect in this case as 3 hours and 35 minutes per month for meal preparation for a person ranked as a 4 is incongruent. This ALJ considered the evidence presented by the Appellant concerning meal preparation. She asserted she can use the microwave and make sandwiches. She is not bed ridden, although she has some stamina problems. This is not persuasive of the fact that she requires more assistance than was authorized. Based upon the testimony at hearing, this ALJ finds the time authorized sufficient. It appears to be the rank that is incongruent. The Appellant's own testimony establishes she is able to prepare breakfast and lunch. She could prepare her own simple hot meal and could reheat a hot meal that had been prepared on her behalf but does not require an elaborate hot meal multiple times per day. The assistance authorized is sufficient to provide her with adequate meal preparation assistance each month, at this time.


DECISION AND ORDER

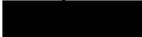
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Appellant has established the Department improperly determined the home help assistance payments for some tasks.

IT IS THEREFORE ORDERED that:

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

The Department is hereby ordered to authorize the maximum assistance allowed for shopping each month, 5 hours.


Docket No. 2009-36322 HHS
Decision and Order

The Department's authorization for the remaining tasks is adequate based upon the  comprehensive assessment.

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

cc:



Date Mailed: 12/1/2009

***** 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.