

**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. 2009-37161 HHS

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 ██████████. ██████████, appeared on behalf of the Appellant. ██████████ represented the Department. ██████████ (ASW), and ██████████, appeared as witnesses for the Department.

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. Appellant is a ██████████ woman with Down's Syndrome.
2. Appellant resides with her father.
3. Appellant's chore provider is her father.
4. Appellant is a Medicaid beneficiary.
5. Appellant is enrolled in her county CMH and participates in community programs with CMH.
6. On ██████████, Appellant's Adult Services Worker and an intern observer made a visit to Appellant's home to conduct a Home Help Services six month review. Appellant, her father, and her father's daughter-in-law ██████████ were present in their home. The worker asked questions and received answers from

both the Appellant and her father during assessment.

7. On ██████████, the Department sent a Negative Action Notice notifying Appellant that her Home Help Services payments would be reduced to ██████████ (from the previous ██████████) effective ██████████. The reason given was "Based on last review: worker told to take [Appellant's] statements made during the assessment. [Appellant] reports she is able to do many aspects of her laundry - laundry reduced. Meal Prep was fully divided by 3 in home." (Exhibit 1 Pages 6 and 11).
8. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 1 Page 4).

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 agencies.

The ASW witness testified that during the ██████████ six month review, after she had completed asking Appellant's father/chore provider the six month review questions, Appellant's father told her to ask Appellant about her functional abilities. The ASW testified that after asking Appellant six month review questions, Appellant's father instructed her to use Appellant's answers to configure the assessment amounts. The ASW stated that use of Appellant's answers resulted in a reduction in laundry (from 30 minutes per week to 2 minutes per week) and meal preparation (from 21 minutes per day to 17 minutes per week). The reduction resulted in an overall reduction of ██████████ per month.

The DHS intern, also present at the assessment, testified the ASW's account was accurate.

During the hearing and in the hearing request, Appellant's father/representative asserted that Appellant does not have the mental capacity to understand questions directed at her. Appellant's father/representative added that he did not intend for the ASW to use Appellant's literal answers to configure the assessment amount and therefore it was incorrect to reduce the HHS authorization based on Appellant's answers during the assessment. (Exhibit 1 Page 4).

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, address the issue of assessment:

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 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 April 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 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.

This Administrative Law Judge asked numerous questions of the ASW and the Appellant's father, as well as allowed Appellant's father to give a detailed recounting of the assessment conversation. It became apparent from the testimony and evidence in the record that the parties may have a strained relationship that impacts their communication.

This Administrative Law Judge was not present at the ██████████ assessment. This Administrative Law Judge does not possess equitable jurisdiction and accordingly cannot

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decide disputes between parties about whether assessment answers should be taken literally or in a qualified sense. This Administrative Law Judge cannot interpret policy that is clearly written, as is the case here. This Administrative Law Judge's jurisdiction is limited to whether the Department properly applied Department policy.

The evidence of record demonstrates the Adult Services Worker properly performed a HHS six month review assessment in accordance to Department policy. She went to the Appellant's home for the six month review, and asked review questions of the Appellant and her chore provider. Based on the information the worker was provided by the Appellant at the time of the assessment the worker reduced HHS authorization.

It was clarified during the hearing that the ASW was not prorating an amount previously prorated as a result of a application of new DHS policy.

Based on the credible evidence in the case and the limitations of administrative law, it is determined that the Department's actions were not improper. The Appellant may request a HHS assessment, if she believes her authorization does not meet her medical need for services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced her Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 12/23/2009

***** 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.