

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[REDACTED]

Appellant

Docket No. 2009-5077 HHS
Case No. [REDACTED]
Load No. [REDACTED]

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 [REDACTED]. [REDACTED] was represented by her provider, [REDACTED]. Her two children [REDACTED] and [REDACTED] were present. Her son [REDACTED], who has a companion case, was also present. [REDACTED], represented the Department of Human Services (DHS or Department). [REDACTED], appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services payments?

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 an [REDACTED] year old Medicaid beneficiary with an ongoing Home Help Services case.
2. The Appellant resides in her own home with two of her adult sons, [REDACTED] [REDACTED], who has a companion case, and another son, [REDACTED].
3. The Appellant suffers congestive heart failure, insulin dependent diabetes,

dementia, Parkinson's disease, arthritis and hypertension. She is wheelchair bound.

4. The Appellant is ranked as a 5 for the tasks for bathing, grooming, dressing, continence, medication, housework, laundry, shopping for food and meal preparation. She is ranked a 4 for the tasks of toileting, transferring and mobility. She is ranked a 3 for eating.
5. The Appellant has 2 different chore providers, only one of whom is an enrolled provider. Her adult son ██████████, who is mentally retarded, provides hands on assistance with toileting and transfers during the daytime for the Appellant. Her other provider is her ex-daughter-in-law, who performs meal preparation, bathing, grooming and dressing assistance, as well as housework chores.
6. The Appellant's case was scheduled for a re-determination in ██████████. Following a home call, she was notified she would receive a reduction in payment assistance for Home Help Services. She was notified she would no longer receive payment assistance for the tasks for meal preparation, toileting, transferring and eating.
7. The Appellant requested a formal, administrative 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.

The Department witness testified. She stated she removed toileting assistance because the Appellant's son ████████ performs this and he is not the provider. She testified further the provider works full time and is not there during the day time. She said she saw ████████ providing this assistance, as well as help with transferring the Appellant from her wheelchair to a recliner. The worker did not dispute the Appellant requires assistance with both of these tasks but testified she removed them from the payment grant because the person being paid to do it was not the person performing the task. She further testified she

removed eating because the enrolled provider was not there during lunch so she was not feeding the Appellant. She was asked how she determined whether the Appellant is actually eating. She said she never asked how the Appellant eats or if she was getting assistance, such as food cutting. The worker stated she removed assistance for meal preparation because ██████████ the Appellant's mentally retarded adult son, told her he can make lasagna and other food as well. The worker conceded she did not think the time allotted for laundry services was sufficient, given that the Appellant is incontinent of bladder. She stated she had not set the case up and had not noticed it was insufficient.

The Appellant's witness testified. She stated she did not dispute the time allotted for bathing, grooming, medication or housework. She disputes the time allotted for laundry, shopping and disputes the removal of meal preparation, toileting, transferring and eating. The Appellant's witness continued that she has to test the Appellant's blood sugar every day and determine how much insulin to put in the injection and prepare them. Then ██████████ can administer an injection for the Appellant at lunch time. She also makes the meals and takes over dinners for both of them. She said ██████████ is capable of making simple meals but exaggerates and has the mind of a young child and cannot even read. He cannot make lasagna or marinate chicken or do elaborate meal preparation. She stated the Appellant requires her meals to be prepared for her and her food cut up. She stated ██████████ will go to the local store to buy himself pop or chips but cannot and does not perform shopping and errands. She stated she does a lot of laundry because of the Appellant's incontinence.

The Appellant's adult son ██████████ testified. He apparently does nothing to aid his mother despite being laid off from work.

This ALJ considered the credible evidence of record. I cannot find the Department's witness conducted an adequate comprehensive assessment under the circumstances. Her reductions cannot be sustained. The worker was unable to state whether or how the ██████████ year old Appellant requires assistance with eating, yet removed it from the payment grant anyway. She stated she did not notice the time allotted for laundry was insufficient, yet has information in the case stating the Appellant is incontinent. She acknowledged the Appellant is dependent upon others for assistance with toileting and transferring, yet simply removed payment from her case rather than perform case management tasks necessitated by what she learned at the time of the home call. The Adult Services Manual Policy required her to engage in active problem solving to determine how services could aid the Appellant, a medically fragile elderly woman residing in her own home. She was not there simply to conduct an audit. Once she learned ██████████ is providing the assistance with toileting and transferring, she had to determine if it was appropriate to enroll him as the provider and pay him for the necessary hands on assistance the Appellant was actually getting, or if the Appellant required another provider who was available during the time her enrolled provider was not available. A person can have more than one provider. The Adult Services Worker cannot simply make a reduction because the wrong provider is being paid. There was no determination made that the Appellant does not require the assistance, thus the reduction is not supported by policy. She does not have to locate a provider but she at least needed to discuss the Appellant's needs with the Appellant, if she is able to participate in decision making in a meaningful manner, or one of her adult children, to determine what steps needed to be taken regarding her services and payment for those

services.

The chore provider's testimony regarding the Appellant's needs was found credible by this ALJ. The testimony regarding what meals [REDACTED] is capable of preparing leads me to conclude he is capable of making simple meals and snacks, such as breakfast and lunch. Assistance with dinner preparation is still necessary. It must be prorated by 3 due to the number of people residing in the home. The Appellant requires assistance with toileting, transferring, cutting up of food (eating). The time allotted for those tasks must be restored after the provider is identified and enrolled. The time for shopping is sufficient because of the pro-rating of the task by 3. The time for laundry is insufficient. Laundry should not be pro-rated because of the Appellant's incontinence. The time for laundry must be increased to the maximum allowed as stated in the policy manual. The worker must determine if [REDACTED] is qualified to be the hands on provider for the tasks of toileting and transferring. If he is determined to be qualified to be enrolled, then he should be enrolled and paid for these tasks. The worker cannot simply cut payment for these necessary tasks without documenting an attempt to ascertain whether [REDACTED] is eligible to be paid as an enrolled provider and if not, then how the responsible party for the Appellant wants to handle the situation. This ALJ recognizes this case is not simple or cut and dry, however, the fact of being dependent on services is undisputed for this Appellant. The case cannot be handled simply by making cuts in payments.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is hereby ordered to make the case adjustments as specified in this Decision and Order.

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

cc: [REDACTED]

Date Mailed: 3/17/2009

***** 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.

[REDACTED]

