

**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. 2009-10160 HHS
Case No. ██████████
Load 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 ██████████. ██████████ (Appellant) ██████████
██████████ Mr. Willie Burrell, was present. ██████████ represented the Department of Community Health (Department). ██████████, appeared as a witness for the Department. ██████████ was also present as a Department witness.

ISSUE

Did the Department properly reduce payment for the Appellant's Home Help Services (HHS)?

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 Medicaid beneficiary who has been receiving Home Help Services (HHS).
2. The Appellant's medical diagnoses include seizure disorder, arthritis, Hepatitis C, depression and COPD. She has had a hip replacement dating back to ██████████. She is ██████████ years old.
3. Following a move, the Appellant was assigned to a new case worker and her case was due for a re-determination in ██████████

4. The Department's Adult Services Worker made a home call on ██████████ for the purpose of interviewing the Appellant, her provider and conducting the comprehensive assessment.
5. The Appellant's chore provider was present for the home call.
6. At the home call, the worker discussed each task the Appellant is being assisted with. She sought input from the Appellant and her provider regarding each task and how she is assisted.
7. As a result of the information obtained at the home call and review of the provider logs returned to the Department, the Worker completed the comprehensive assessment of the Appellant. She reduced payment for the tasks of laundry and shopping only.
8. The Appellant retained the same level of assistance payments for all other tasks for which she receives payment assistance.
9. On ██████████, the Department sent a Negative Action Notice notifying Appellant that her Home Help Services payments would be reduced. The effective date of the action was ██████████.
10. On ██████████, the State Office of Administrative Hearings and Rules for the Department of Community Health received Appellant's Request for 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.

Adult Services Manual (ASM 363 10-1-04), pages 2-4 of 26, addresses the issue of assessment:

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 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.

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.

Necessity for Service

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

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

Exception: The DCH will accept a DHS-54A completed by a VA physician or the VA medical form in lieu of the medical needs form.

The medical professional certifies that the client's needs for service is related to an existing medical condition. The medical professional does not prescribe or authorize personal care services.

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version date 9/1/2008

In this case, the Adult Services Worker testified that a comprehensive Home Help Services assessment was performed in [REDACTED] in accordance with the Department policy listed above. The Adult Services Worker stated that she reviewed the provider logs that had been returned when reviewing the case materials. She asked about the Appellant's medication, bathing, and observed she walks with the aid of a cane. She noted the Appellant now resides alone, rather than with her provider. She testified policy does not allow for payment assistance for reminding, supervision, or guiding.

The Appellant testified she had never been restored from the cut in payments made when she did temporarily reside with her provider and wanted the issue of "back payments" addressed. She was asked the date of that cut and notice relative to the cut and stated that had occurred in [REDACTED]. She was informed the issue could not be addressed at this hearing because she had to have made the hearing request within 90 days of being informed about the reduction. She then stated her understanding. She went on to state she does not have sufficient time allowed for laundry or shopping. She stated one (1) hour per month is insufficient and her provider deserves more because of what he does for her. She stated she is unable to get around in the store and he goes and gets the things she needs. She also stated she really enjoys cooking and when she is working in the kitchen she gets "cramped up" after five (5) minutes and has to rest. She then amended her testimony to state when she tries to do things in the kitchen she gets "cramped up" after five (5) minutes.

This ALJ addressed the issues of medication and bathing with the Appellant, despite the fact the worker had not made cuts on payments for either of those two (2) areas. The Appellant was asked why she needs help taking medication. She answered sometime she forgets and her provider reminds her. She was asked how she is aided with bathing. She stated she needs help getting into and out of the tub, washing her feet and hair. This ALJ asked the Appellant why she could not use an electric scooter at the supermarket to get her own items. She said the store she frequents does not have one.

This Administrative Law Judge (ALJ) reviewed the evidence in the record. There is no persuasive evidence the Appellant is not physically capable of taking care of her personal care needs with the exception of requiring assistance into and out of the bathtub and perhaps assistance washing her feet and hair. That would most likely change if she were to get a shower chair. The Appellant is able to walk with the aid of a cane, and requires no hands on help with medication. There is no evidence she cannot attend to the remainder of her personal care needs. This leaves assistance with housework, laundry, shopping errands and meal preparation. This ALJ would not expect the Appellant is able to perform all housekeeping without assistance, thus the rank, time and task appears to be appropriate for the Appellant's post hip replacement status. The assistance with laundry is also sufficient given the Appellant's need for help in carrying it to and from the machine. There is no evidence she is unable to sort, fold, and put away her laundry. This is the bulk of the work and the policy does not pay for waiting time while the machines wash and dry the clothing. The assistance with laundry would simply be for carrying the clothes to and from the machines and possibly transferring them from the washer to the dryer. The time allowed for shopping and errands is sufficient given her ability to substantially participate with shopping and errands as evidenced by her ability to get around with the aid of a cane

and push and cart at least part of the time. While the task area of meal preparation was not reduced and the Appellant did not contest the Department's action for this task, this ALJ believes the Appellant is able to prepare her own meals and clean up after as evidenced by her testimony. She does actually participate in the task and testified she has to rest after working for five (5) minutes. Accommodating her physical needs by resting is appropriate and anticipated under the HHS policy. There is no policy indicating that a person who experiences fatigue or discomfort is unable to perform a task. Resting or taking breaks while performing tasks of all types is common, appropriate, and evidences the ability to actually perform the task rather than evidencing the inability to perform the task. This ALJ will not specifically issue an order overriding the worker's determination that payment assistance is necessary for meal preparation, however, given the evidence of record, wanted to address the issue in the decision. In contrast to the Appellant's assertion that insufficient time was allotted her for HHS assistance, this ALJ finds the Worker's determinations were generous and were based upon credible competent evidence of the Appellant's physical abilities.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 3/6/2009

***** 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.