

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. 2009-17320 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 ██████████. ██████████ represented herself at hearing. ██████████, 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. The Appellant is a Medicaid beneficiary who has been receiving Home Help Services.
2. The Appellant's medical diagnoses include high blood pressure, vascular insufficiency and lumbar back pain according to Department case record.
3. The Appellant resides with her grandson, who is ██████████ and her legal dependant.
4. The Appellant's case was transferred to a different worker and was due for a comprehensive assessment. The worker scheduled and completed the assessment in the Appellant's home on or about ██████████.

5. The Appellant's chore provider was interviewed in the office following the in home assessment.
6. The Department's worker sent the Appellant a DHS 54, a medical needs form for her doctor to complete and return. The form was returned to the worker with bathing indicated as a task the Appellant required assistance with.
7. The worker thought it inconsistent with her observations of the Appellant that assistance for bathing was indicated by the doctor as a task the Appellant could not perform without assistance, thus sought out information directly from the doctor's office.
8. The doctor's office faxed a copy of the original DHS 54 the doctor had signed. Bathing was not circled. The office worker informed the Department's worker the doctor had not signed the form with bathing circled.
9. As a result of the comprehensive assessment and interview with the provider, the worker determined reductions and elimination of payment for certain tasks was warranted. An Advance Negative Action Notice was mailed [REDACTED] informing the Appellant her HHS payment would be reduced from [REDACTED] to [REDACTED] per month.
10. The Appellant retained the maximum level of assistance payments for housework, shopping and errands and laundry. All other tasks for which she received payment were terminated.
11. The Appellant requested 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 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.

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 customer does not perform activities essential to 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 customer's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer does not perform. Authorize HHS **only** for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.
- Do **not** authorize HHS payments to a responsible relative or legal dependent of the customer.
- 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 customer 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 customer.

- HHS may be authorized when the customer is receiving other home care services if the services are not duplicative (same service for same time period).

Adult Services Manual (ASM) 4-1-2004, Pages 6-7 of 27

The Adult Services Worker testified that a comprehensive Home Help Services assessment was performed in ██████████. She observed the Appellant was mobile and quite capable of performing her ADL's on her own. She also determined the Appellant was capable of making her own meals. The worker further testified about her interview of the provider. The provider told her he was doing yard work, shoveling snow and transporting her son (grandson) to school each day. If he is performing any housework, none was specified or otherwise evidenced in any manner. He informed the worker he would no longer drive her grandson to school with the cuts she had made to the Appellant's grant. There was no evidence presented he informed the worker that he made meals, did laundry, cleaned the bathrooms, mopped the floors, made beds or vacuumed the house.

The worker further testified she did not pro-rate the payments for laundry, housework or shopping because the person living in the home is a minor. She presented no testimony she considered what tasks the ██████████ of the Appellant (and legal dependant) could perform on behalf of his grandmother, if necessary. The worker was asked about the reasonable time and task schedule for the rank of 3 the Appellant was given. She was scored a 3 for laundry, shopping and housework. This ALJ did not find the testimony from the worker regarding the Appellant's abilities particularly compelling. It lacked specificity or description of an impairment that results in an actual need for assistance. The testimony that the Appellant takes prednisone for unspecified breathing problems is normally insufficient to establish she is unable to perform laundry, shopping or housework without a compensable level of assistance being required. Additionally, there was inadequate reason for paying the Appellant, who is ranked a 3, the maximum number of hours available under the policy. The worker approved payment for the same number of hours for the tasks as a person who is fully disabled and ranked a 5, a quadriplegic, for example. According to the Policy cited above, explanation must be provided for straying from the reasonable time and task schedule. None was provided at hearing. Despite the lack of compelling evidence of an actual need for assistance, this ALJ will not disturb the worker's determination the Appellant should receive a rank of 3 for laundry, shopping and housework.

Additionally, the policy states when a household is shared, payment for the tasks of laundry, shopping and housework is to be pro-rated by ½ or more. Policy requires this. It is not discretionary on the part of the worker, unless specifically justified by a documented reason. An example may be to not pro-rate laundry because of one person's incontinence resulting in not doing all laundry together. No such reasoning was evidenced in the record. Finally, Policy specifically directs the worker to consider the availability of a legal dependent (or spouse) to perform the work on behalf of the Appellant. Policy further prohibits payment to a legal dependent for those tasks which may be performed on behalf of the Medicaid beneficiary. There was evidence provided the worker did not consider the ██████████ legal

dependant's ability to assist with laundry, shopping and housework.

The Appellant stated her medical condition had not changed therefore there is no reason to cut her payments. She said she is out of breath and cannot walk to the bathroom without being short of breath. She otherwise offered no evidence of an inability to perform laundry, shopping or housework for herself. She made no complaints of debilitating pain of any kind or provided any evidence consistent with lumbar back pain. When asked she stated she could not remember circling bathing herself on the form at issue. She claimed not to have any idea how it could have happened.

This Administrative Law Judge (ALJ) reviewed the evidence in the record. There is no persuasive evidence the Appellant is incapable of taking full care of her ADLs, just as determined by the Adult Services Worker. This ALJ concurs with the worker's determination in that regard. The worker's assessment fails to consider all the relevant policy however, thus an order must issue relative to the remaining policy which was not considered and implemented.

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. However, the Department's determination fails to consider the [REDACTED] ability to assist with laundry, shopping and housework. The worker is to consider this specifically and determine if he is capable of assisting with these tasks. A determination that he is unable to do so must be supported by case notes explaining the reasons therefore. Additionally, if it is determined he is unable to assist and the case remains open for assistance, it must be pro-rated by at least ½, if he is the only other person residing in the home. This change is in accordance with policy and is not discretionary. Additionally, if the case remains open, the worker is to implement any payment for the tasks of laundry, shopping and housework consistent with the reasonable time and task schedule as published in the ASCAP system for the rank of 3 (as determined by the worker) and if she adjusts the payments upwards or downwards, must document the reasons therefore in the case file. This is also in accordance with the Policy as cited above.

This ALJ would like to note that the Policies are intended to be enforced consistently amongst the population benefiting from them. Furthermore, this ALJ did not disturb the determination of the worker that the Appellant may require assistance with laundry, shopping and housework, despite the paucity of persuasive evidence or medical support. This ALJ did not conduct the comprehensive assessment, thus will not order case closure. Finally, there is strong evidence of an attempt to defraud the Department regarding bathing. I would strongly consider a referral to the appropriate authorities regarding that issue.

IT IS THEREFORE ORDERED THAT:

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

[REDACTED]
Docket No. 2009-17320 HHS
Decision and Order

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

cc:

[REDACTED]

Date Mailed: 5/27/2009

***** 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.