

**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. 2009-26804 HHS

Case No. ██████████

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 ██████████. ██████████ represented herself at hearing. ██████████, was also present. ██████████, represented the Department of Community Health. ██████████, appeared as a witness on behalf of the Department. ██████████, was present as a witness 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. The Appellant is a ██████████ Medicaid beneficiary who participates in the Home Help Services (HHS) program.
2. The Appellant suffered a stroke, resultant in paralysis; she is non-ambulatory and wheelchair bound.
3. The Appellant's case was transferred to another Adult Services Worker within the Department of Human Services, resulting in a home call by the newly assigned worker.

4. The worker made a home call in ██████████. At the home call it was learned the Appellant resides with her daughter and her son-in-law. Her daughter is also her provider.
5. The Department reduced the Appellant's HHS payments for shopping, meal preparation, housework and laundry due to the fact that Appellant resides in a shared household.
6. The functional assessment and rank for the tasks of shopping, meal preparation, housework and laundry were not changed or reduced as a result of the home call. The reduction was strictly the result of implementing the policy regarding shared households.
7. The Appellant requested a 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 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

In this case the Appellant's functional assessment is not contested. The Appellant's request for hearing asserts the cut in her allotted hours is unfair given her availability to her mother. This ALJ views this hearing request as contesting the reduction implemented as a result of pro-rating the payment for tasks that benefit all members of the household, such as shopping and errands, meal preparation, housework and laundry. While testimony was elicited and taken concerning transferring and toileting, given the hearing request is disputing only the reduction, which was implemented due to the policy regarding shared household, the assessment for those tasks will not be addressed in the Decision and Order. Should the Appellant wish to contest the time allotted for the tasks that were not reduced as a result of the shared household policy, she is able to submit a hearing request within 90 days of the last assessment for that purpose.

The policy implemented by the worker is recognition of the fact that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks by the number of adults residing in the home together, as the Appellant's daughter and/or husband, would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. The program will not compensate for tasks that benefit members of the same household. This is the reasoning behind the policy and what the worker sought to implement following the home call. However, a worker is able to adjust where the individual needs of the beneficiary warrant. An example would be laundry. If laundry is not done together for good reason, such as incontinence, the worker is able to make the adjustment in the case and not pro-rate. The case file must be documented appropriately to reflect the reasoning behind not pro-rating. Additionally, the worker can even adjust the time allotted upwards, with appropriate circumstances and case documentation. This is why home calls are made. To address the individual needs of a specific client. In this case undisputed evidence was presented the Appellant is not able to toilet herself on the toilet due to mobility restrictions. She uses an adult diaper. She does have accidents and soils the bed linens as a result. The worker, in fact, was able to discern that the bed linens become soiled. This is a good reason to do laundry separately from the rest of the family, thus a good reason not to implement the policy for pro-rating for this task. The rank for the Appellant is a 5 for laundry, thus the worker has determined she requires maximum assistance. Given the Appellant's toileting routine and evidence of soiled linens and testimony regarding how frequently the laundry should be done, it is appropriate to compensate for at least the maximum number of hours for laundry, which is 7.

There was evidence taken for meal preparation. The uncontested evidence from the Appellant is that she is diabetic and does eat meals that are different from and prepared separately from her daughter and son-in-law 3 to 4 times per week. This ALJ found the Appellant credible and there was no evidence offered to contest this testimony. This ALJ also took evidence the Appellant has use of left arm and hand and only partial use

of her right arm. Evidence was presented that the Appellant is able to do some knitting and/or crocheting. She has some ability to use her upper extremities, thus is likely able to get her own snack or make toast or a sandwich and do other simple tasks with respect to meals. Despite the credible testimony that the Appellant is eating meals that are different from her family members, at least some of the time, the time allotted for meal preparation is appropriate given that she is able to do some things for herself with respect to meals. The reduction is sustained.

The evidence regarding shopping is that the maximum was assigned due to the Appellant's restrictions. Then it was reduced to 1 hour per month based upon the fact of shared living arrangement. The maximum is 5 hours per month, which totals 300 minutes. The number of adults living in the home is 3. This should result in payment of 1.6 or 1.7 hours per month for shopping, or 100 minutes. The payment authorized is only for 64 minutes per month. Policy does not support a payment of only 64 minutes per month given the circumstances. The payment must be adjusted to reflect the shared household, yet there was no evidence supporting reducing the payment to such a low number of minutes, given the Appellant's assigned rank. Payment should be for 100 minutes of shopping per month given the worker's assessment and rank of 5 for this task.

No evidence was taken regarding household chores, such as cleaning. There is no evidence of any reason not to fully implement the shared household policy with respect to cleaning chores. This reduction is sustained.

There was evidence taken the Appellant's daughter must be at or very near home 24 hours a day to provide care to her mother. Given the Appellant's significant physical restrictions and need for care, she may wish to consider enrollment in the Medicaid Waiver program. It is not known if she was provided information regarding this program. This ALJ requests the Appellant be provided with information pertaining to the Medicaid Waiver program so that she may decide if she wants to pursue obtaining those program benefits.

DECISION AND ORDER


The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS payments in the areas of household chores and meal preparation. The reductions for laundry and shopping are not supported by the credible evidence of record of the Appellant's circumstances.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED** in part and **REVERSED** in part. The payment for laundry should not be subject to pro-rating. The payment for shopping is to be adjusted consistent with pro-rating policy and assigned rank, thus should be 100 minutes per month.

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

cc:



Date Mailed: 8/11/2009

***** 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.