

**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. 2009-28328 HHS

Case 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 himself at hearing. ██████████ represented the Department. ██████████ was present as a Department witness. ██████████, was present as a Department witness.

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 has been receiving Adult Home Help Services.
2. The Appellant is single and shares his home with another adult.
3. The Appellant is diagnosed with congestive heart failure, obesity, diabetes, sleep apnea and high blood pressure. He reports poor circulation and COPD.

4. The Appellant recently moved from his family home to another home in a neighboring county. Following transfer of his case, the Department sent a worker to conduct an in home assessment.
5. Following the assessment, the worker reduced the home help payment authorization from [REDACTED] per month to [REDACTED] per month.
6. Notice of the reduction was mailed [REDACTED].
7. 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 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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

Adult Services Manual (ASM) 9-1-2008

Necessity For Service

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

- Customer choice.

- A complete comprehensive assessment and determination of the customer's need for personal care services.

- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer 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

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

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 re-determination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department 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
- 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 the interviews with the client and provider, observation of the client'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. When hours exceed the RTS rationale must be provided.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication. The limits are as follows:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven hours/month for laundry
- 25 hours/month for meal preparation.

These are maximums; as always, if the client needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements. If there is a need for expanded hours, a request should be submitted to:

* * *

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

Note: Unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- Do not authorize HHS payments to a responsible relative or legal dependent of the client.
- 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 client 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 client.
- HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for the same time period).

Adult Services Manual (ASM) 9-1-2008

Department testimony establishes reductions were made for the tasks of bathing, grooming and dressing. Payment for laundry assistance was increased. Transferring was eliminated from the payment authorization. Meal preparation was pro-rated to reflect his shared household. Payment assistance for medication was unchanged. The worker's testimony indicated bathing was reduced after talking with the Appellant and learning he needs help in and out of the tub, and washing the lower half of his body. The time was reduced from 16 minutes per day to 8 minutes per day. The worker was told (by the Appellant) that a doctor cuts his nails and he requires help shaving 3 or 4 days per week. The assistance for grooming was reduced from 7 days per week to 3 days per week, based upon this information. Additionally, the worker was told the Appellant is able to dress himself but he requires assistance putting his shoes on. He was reduced from 14 minutes per day to 2 minutes per day assistance with dressing based upon this information. He was still authorized to receive payment assistance all 7 days for dressing. The worker testified that she directly observed the Appellant transfer without assistance during the assessment, thus she removed authorization for payment assistance for that task. She increased the payment assistance for laundry. No authorization for shopping is included because the Appellant is able to and does drive. He is capable of completing shopping unassisted. Housework and meal preparation were pro-rated to reflect the fact the Appellant resides with another adult and her child. Additionally the worker determined at the assessment that the Appellant was able to get his own breakfast and lunch for himself without assistance. She eliminated payment assistance for those two meals and authorized payment assistance for 1 meal per day and then pro-rated it due to his shared household.

The Appellant testified that he told the worker he has a problem with his knees and he requires help to get up and around sometimes. He stated sometimes he does not need help, but sometimes he does. He stated he has only a partial lung, sleep apnea causes him to dose off and he uses a cane for walking assistance. He said his provider prepares his meals and he microwaves them. He also read a letter from his medical provider into the evidentiary record. He stated he is residing with a female friend and

her daughter. He said he realizes now that his family did a lot for him that they were not compensated for in the past and now that he no longer lives with them he realizes how much help he really needs. He further stated sometimes he cannot lift his legs without using his hands to move them out of bed for him. He has to move them over the side of the bed with his hands and then get out of bed because he is unable to lift them at times.

The evidence was reviewed in its entirety. This ALJ finds the evidence presented by the Department's worker was credible and persuasive. It specifically addressed each task and takes into account what the Appellant told her at the assessment. The evidence presented by the Appellant was found credible, however, is not sufficient to establish the Department's assessment was incorrect or the payment authorized insufficient to address the Appellant's needs. The evidence provided by the Appellant did not establish the assessment was inaccurate or otherwise unreliable. While it is likely true the Appellant had many tasks performed for him while residing with his family, this is insufficient to establish he is actually unable to do them for himself. While it may be difficult or take a long time to accomplish some of the tasks, the length of time required to accomplish a task does not evidence an inability to do it.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department has properly determined the home help assistance payments for the Appellant.

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

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Date Mailed: 9/11/2009

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Decision and Order

***** 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.