

**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. 2009-36816 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 on ██████████. The Appellant appeared without representation. She revoked, on the record, her designation of ██████████ as her representative. Her witnesses at hearing included; ██████████ chore providers and ██████████, spouse. ██████████ appeals review officer, represented the Department. Her witnesses were ██████████ Rodgers, ASW, ██████████ ASW supervisor, ██████████, Health Staff Inc., ██████████ Health Staff Inc., [manager], ██████████ ASW.

PRELIMINARY MATTER

The admission of Appellant's Exhibit #2 was taken under advisement at hearing. The ALJ ruled that only the material shown to be pre petition would be admissible – post hearing review revealed no such material.

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. At the time of hearing the Appellant is a ██████████ disabled, Medicaid and SSI beneficiary. (Appellant's Exhibit #1)

2. The Appellant is afflicted with; MS, collagen vascular disease, UTI, allergies, arthritis, pharyngitis, and fibromyalgia. (Department's Exhibit A, p. 18)
3. On ██████████, the ASW conducted an in-home assessment of home help needs for the Appellant. This review demonstrated the Appellant only required assistance with her IADLs. (See Testimony and Department's Exhibit B, p. 6)
4. On ██████████, the ASW sent the Appellant an advance negative action notice that home help services were being reduced or eliminated in the areas of; bathing, grooming, dressing, toileting – the remaining areas of IADL, previously established, were not disturbed. (See Testimony and Department's Exhibit A, pp. 2, 8)
5. The ASW said the reduction was based on her in-home observations and discussions with the Appellant during the in-home visit conducted on ██████████. (Department's Exhibit A, pp. 2, 10 and See Testimony)
6. On the face-to-face home visit the ASW documented that the Appellant was able to walk and prove adequate mobility. She said her home was neat and clean and the Appellant was well groomed. Her chore provider was absent for the in-home visit. (See Testimony)
7. Following receipt of DHS 1212 and notice of appeal rights the Appellant filed a request for hearing on ██████████.

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 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 (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 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
- Laundry
- Light 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 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.

Adult Service Manual (ASM), §363, pp. 2, 3 of 23, 9-1-2008.

The Department witness testified that on in-home assessment that she observed the Appellant moving well enough to demonstrate functional mobility in the home. She said that the Appellant told her she could use the bathroom, do dishes, fold laundry, bathe, groom and dress herself – most of the time.

She added that the Appellant said she had “good days and bad days.”

The Appellant testified that the in home assessment was rushed because the ASW was late in arriving and that her visiting parents had assisted her with her morning routine that day.

The Appellant’s home help provider – not present at in home assessment – testified that in the past she had helped bring in the fire wood, prepared some food and sometimes washed the Appellant’s hair. She reiterated that the Appellant had good days and bad days.

The Appellant concluded her testimony stating that the Department witnesses were largely disgruntled employees with some long standing grievance against her.

On review of the evidence the ALJ finds that the comprehensive assessment was accurate and drawn according to policy. By definition the Appellant demonstrated to the ASW that she was in an improved condition – needing some assistance – but not as much as previously granted. The ASW observations were consistent with improved physical ability – albeit not total independence.

On review, the ALJ agreed with the following task and time adjustments prepared by the ASW following her in-person assessment:

Bathing – was eliminated (previously 9 hours)¹.
Grooming – was eliminated (previously 5 hours).
Dressing – was eliminated (previously 7 hours).
Toileting – was eliminated (previously 11 hours)

Eating – was not changed.
Housework – was not changed.
Laundry – was not changed.
Medication – was not changed.
Meal preparation - was not changed.

The Appellant did not preponderate that the Department erred in the adjustment of her grant based on ASW observations of ██████████. I gave no weight to the allegation that the in-home assessment was too brief simply because the ASW was late to arrive. The ASW acknowledged under oath that she arrived late – but nevertheless managed a 15-20 minute visit which was proven to be adequate based on today’s record and evidence. Accordingly, I find that the HHS reduction was correctly decided.

¹ Per month at ██████████ an hour.

A comprehensive assessment is the responsibility of the ASW and I find that it was properly measured and applied to this Appellant.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced the Appellant's HHS.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 12/4/2009

***** 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.