

**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. 2009-37172 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 ██████████. ██████████ was not present. ██████████ appeared as Appellant's Representative. ██████████, Appeals Review Officer, represented the Department (DHS). ██████████, Adult Services Worker, appeared 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. Appellant is an ██████████ woman with rheumatoid arthritis, chronic hearing loss, gall stones, P.U.D., sleep disorder, and debility. (Exhibit 1, page 18).
2. Appellant is a Medicaid beneficiary.
3. Appellant lives in a house with her daughter.
4. Appellant's daughter is her chore provider.
5. On ██████████, a DHS Adult Services Worker made a visit to Appellant's home to conduct a Home Help Services assessment. Appellant and her provider were present in the home. (Exhibit 1, page 7).

6. As a result of the information gathered from the Appellant at the assessment and the information from the Appellant's physician, the worker's supervisor decreased the HHS hours authorized for meal preparation and shopping due to the household composition of █████ adults. (Exhibit 1, page 7).
7. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated by the number of people living in the home. The Department applied the proration policy to Appellant's authorized meal preparation and shopping hours.
8. On ████████████████████, the Department sent an Advance Negative Action Notice notifying Appellant that her Home Help Services payments would be reduced to ██████████ per month, effective to ████████████████████ (Exhibit 1, pages 6, and 11-12).
9. On ████████████████████, the State Office of Administrative Hearings and Rules received Appellant's Request for Hearing. (Exhibit 1, pages 3-5).

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, 9-1-08), pages 2-5 of 24 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 client in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the client'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 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 client'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.

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
- 6 hours/month for light housework
- 7 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.

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 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.
- 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 same time period).

Adult Services Manual (ASM) 9-1-2008, Pages 2-5 of 24

On ██████████, the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1 page 7) The worker testified that using the functional scale, based on his observations and the information he was provided by the Appellant at the time of the assessment, HHS hours authorized for shopping and meal preparation were decreased. The worker testified proration was applied to the HHS hours for shopping and meal preparation in accordance with Department policy requiring that these activities be prorated based upon the number of adults living in the home.

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The Appellant's representative testified that she disagreed with the reduction for shopping time because ██████████ per month, which would average about ██████████ per day, is not enough. Appellant's representative also testified that she disagreed with the reduction for meal preparation to ██████████ a month because Appellant is old and has trouble chewing therefore her food must be cooked for a long time.

The policy implemented by the Department recognizes 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 ██████████ would have to clean her own home, make meals, shop and do laundry for herself if she did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy.

In the present case, the Department only reduced the shopping and meal preparation hours. It is noted that the other IADL's which required proration, housework and laundry, were not reduced at the time the ██████████, case action notice was sent. The Appellant is ranked as a level 5 for these activities and authorized hours were already at half of the maximum allowed under policy. (Exhibit 1 pages 13 and 15)

Department policy allows for a maximum of ██████████ for meal preparation each month. The worker ranked Appellant as a level 5 for this activity, indicating she is dependant on others and does not participate in meal preparation even with assistance. (Exhibit 1 pages 13 and 20) The worker's note from the ██████████, assessment indicates that it is dangerous for Appellant to cook for herself. (Exhibit 1 page 7) After proration for a household of █ persons, the Department authorized ██████████ for meal preparation per month. (Exhibit 1 page 15) This is approximately half of the maximum allowed hours. The meal preparation reduction is sustained.

Department policy allows for a maximum of ██████████ for shopping each month. The worker ranked Appellant as a level 5 for this activity, indicating she is dependant on others and does not participate in shopping even with assistance. (Exhibit 1 pages 13 and 20) The worker's note from the ██████████, assessment indicates that Appellant does not shop or drive. (Exhibit 1 pg. 7) The maximum of 5 hours per month totals ██████████. The number of adults living in the home is 2. After proration, this should result in authorization for ██████████ per month for shopping, or ██████████. However, the authorized time for shopping after proration was only ██████████, about ██████████ of the maximum allowed by department policy. (Exhibit 1 pg. 15).

The worker did not provide a sufficient explanation as to why shopping was approved for such a significantly reduced time. The worker testified that the activity was approved for only ██████████ instead of seven. Shopping may not need to be performed on a daily basis, however the approved time of ██████████, totaling ██████████ per month, is not consistent with the ranking of 5, indicating Appellant is totally dependant on others for this activity. (Exhibit 1 pgs. 13 and 15) Policy does not

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support a payment of only [REDACTED] per month given the circumstances. The hours must be adjusted to reflect the shared household, but the evidence does not support reducing the payment to such a low number of minutes, given the Appellant's assigned rank. Authorization should be for [REDACTED] of shopping per month given the worker's assessment and rank of 5 for this task.

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 area of meal preparation based on the household composition of [REDACTED] adults. The reduction for shopping is 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 shopping is to be adjusted consistent with pro-rating policy and assigned rank, thus should be [REDACTED] per month.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 12/18/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 March 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.



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