

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2009-9174 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 ██████████ ██████████, the Appellant's mother and legal guardian appeared on behalf of the Appellant. ██████████ ██████████, represented the Department of Human Services (DHS or Department). ██████████ appeared as a witness on behalf of the Department. ██████████ appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly authorize Appellant's Home Help Services?

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 ██████████ man with Autism. He resides with his mother. He does not have physical anomalies preventing him from performing his own ADL's or IADL's, however, has limited judgment as a result of his condition.
2. The Appellant is a Medicaid beneficiary who participates with the Adult Home Help Services program.
3. The Appellant moved, with his family to a home served by a different DHS county. On ██████████, the Adult Services Worker completed a home

call, in conjunction with the case transfer and comprehensive assessment requirements for the program.

4. On [REDACTED], the Appellant was notified his HHS payment would be reduced from [REDACTED] per month to [REDACTED] per month. The notice effective date was [REDACTED].
5. On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's Request for 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 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.

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 three (3) level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of three (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.** (emphasis added)

Department policy addresses the need for supervision, monitoring or guiding below:

Services Not Covered By Home Help Services

Do **not** authorize HHS for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - Medical transportation policy and procedures are in Services Manual Item 211.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care

The Department witness testified that she performed the comprehensive assessment in accordance with Department policy. The Department witness further testified that the payment for shared household responsibilities such as cleaning and housework were prorated to reflect the fact that the Appellant resides with his mother and the Department cannot pay for tasks that would benefit other, non-participating members of the same household. She further testified as a result of the assessment, payment for some tasks was added or increased and payment for others reduced or eliminated altogether. She stated no payment could be made for reminding, guiding or supervising. Each task for which payment was reduced will be discussed below.

Bathing: The DHS worker stated payment for bathing was eliminated based upon the fact that the Appellant bathes without assistance. She stated his mother reluctantly, eventually stated he does not have assistance from her for bathing. She stated the Appellant's mother was greatly offended she had asked the question. The elimination of payment for bathing resulted in a reduction of ██████████ per month from the check. The Appellant's mother stated at hearing she does not help her son with bathing and he does not require help with that task. She offered no reason to continue payment assistance for that task.

Grooming: There was a dispute about grooming at hearing. Grooming covers such tasks as maintaining personal hygiene and near appearance, to include hair combing and brushing, oral hygiene, shaving, fingernail and toenail care according to the functional assessment definitions and ranks listed in the Adult Services Manual. The dispute between the worker and the Appellant's mother included assistance with shaving and haircuts. As the functional assessment definitions do not state that haircuts are something for which payment assistance may be made, this ALJ will uphold the removal of grooming for haircuts. There was no evidence presented tending to show the Appellant would require anything more than supervision while shaving. He has no physical impediments to accomplishing this task. The worker's determination to remove payment for grooming is sustained.

Dressing: The Department witness testified the Appellant is able to dress himself with the exception of help with a tie on Sunday for Church. She reduced the time from 16 minutes per day 7 days per week to 1 minute per week, or 9 minutes per month. The payment was reduced from ██████████ per month to ██████████ per month. The Appellant's mother agreed at hearing he only requires help with his tie and otherwise dresses himself. Again, she offered no reason to continue paying for assistance 16 minutes per day, 7 days per week for a task the Appellant accomplishes without physical assistance except for his tie.

Housework: The payment allotted for housework was decreased from ██████████ per month to ██████████ per month. This was a direct result of pro-rating the payment previously authorized to reflect the shared household.

Shopping and errands: The payment authorized for shopping and errands was decreased as a result of pro-rating the authorized amount to reflect the shared household.

Meal preparation: The time allotted for meal preparation was reduced from 50 minutes per day 7 days per week to 17 minutes per day 7 days per week. It is uncontested the

Appellant is capable of making a peanut butter and jelly sandwich and performs no cooking. The time allotted for cooking was pro-rated, resulting in a reduction in monthly payment from ██████████ per month to ██████████ per month.

Laundry: The time authorized for assistance with laundry was increased. There is no dispute between the parties regarding the increase.

Medication: Payment for assistance with medication was added as a result of the comprehensive assessment performed by the worker. The Appellant's mother disputes the time authorized for medication, despite the fact no decrease was made. She asserts his doctor has ordered a gradual decrease in medication requiring monitoring of her son. She offered no support in policy to authorize payment for such monitoring. The time authorized by the worker for medication assistance is adequate and was not shown to be otherwise at hearing.

The Appellant's mother/guardian asserted at hearing that the time for the case transfer to be completed was inexplicably lengthy and many records were lost. This ALJ has no authority or jurisdiction over these complaints. The Appellant's mother was advised to seek redress within the DHS chain of authority for those and other issues. The Appellant's mother otherwise presented no relevant, credible or material evidence at hearing. It was obvious the Appellant is well cared for by his care-takers, mother and himself. No other issues for which jurisdiction exists were raised at hearing.

After careful consideration of the evidence in the record, this ALJ finds the Department's evidence of the reason for the case adjustments are all supported by competent, credible evidence of the Appellant's actual abilities. Each task was carefully reviewed and relevant evidence of the Appellant's physical abilities considered by the worker, as evidenced by the specific notes taken regarding each task assessed. The fact that housework and meal preparation time had to be pro-rated is mandated by the policy. If the former worker failed to do that, resulting in higher payments, that does not evidence a requirement the current worker continue making the same error. Finally, the supervision of the Appellant is not something the Department can compensate his provider for.

The Department's Home Help Services program is designed to provide physical assistance to those who have physical limitations interfering with their ability to perform ADL's and IADL's. In this case, there is no evidence the Appellant has the physical inability to perform the tasks the worker determined he could. The evidence in the record is insufficient to establish the Department failed to authorize a sufficient amount of time for Appellant's ADLs or IADLs. In short, the Appellant's guardian failed to establish the Department erred.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly authorized Appellant's Home Help Services.

[REDACTED]
Docket No. 2009-9174 HHS
Decision and Order

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

cc:

[REDACTED]

Date Mailed: 4/9/2009

***** 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.



