

**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. 2010-12345 HHS
Case ██████████

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 ██████████ ██████████, son, appeared on the Appellant's behalf. ██████████ appeared and testified. ██████████ 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. The Appellant is a ██████████ Medicaid beneficiary who has been diagnosed with left occipital CVA, vertigo, unsteady gait, lower back pain, high cholesterol, diabetes, and arthritis. The Appellant also suffered from breast cancer about 7 or 8 years ago. (Testimony)
2. The Appellant resides in a home with her spouse, one of her sons and his wife and child. (Testimony)
3. The Appellant's daughter in law, who does not reside in the home, is her chore provider. (Testimony)
4. On ██████████, a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. (Testimony)

5. As a result of the information gathered from the Appellant at the assessment, the worker decreased the HHS hours authorized for housework, shopping, laundry and meal preparation for the Appellant. (Exhibit 1, page 6)
6. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated by the number of people living in the home. (Exhibit 1, page 7)
7. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be reduced to ██████████ per month, effective to ██████████ (Exhibit 1, page 5)
8. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3 and 4)

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

██████████
Docket No. 2010-12345 HHS
Decision and Order

On ██████████, the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, HHS hours authorized for housework, laundry, shopping and meal preparation were decreased. The worker testified proration was applied to the HHS hours for these activities in accordance with Department policy requiring that these IADL's be prorated based upon the number of adults living in the home.

The Appellant's representative disagrees with the reduction and testified that he believes his wife, the Appellant's chore provider, provides services for the Appellant only. The Appellant's representative stated that there is a second small kitchen where the Appellant's meals are prepared as her meals contain less sugar, salt and seasonings. However, he also stated that if the Appellant's husband needed an item laundered, he believed his wife would include when she did the Appellant's laundry.

The Appellant's representative explained that other adult household members do not provide any care services for the Appellant. He stated that the Appellant's husband is ██████████ old and due to his own impairments, he can not care for the Appellant; the Appellant's son works all day; and the Appellant's daughter in law is at home but she is making sure her husband's and child's needs in the home are met. However, the Appellant's representative did state that the Appellant's son and daughter in law cook for the Appellant's husband. The Appellant testified that she is very ill and lays down most of the day due to weakness, dizziness, fatigue, and problems keeping her balance. The Appellant stated that she does not want to burden the family members she lives with.

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 spouse, son and daughter in law would have to clean their own home, make meals, shop and do laundry for themselves if they 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.

The Department testified that the only reduction made to the Appellant's case was the proration in the areas of shopping, laundry, and meal preparation. Department policy allows for a maximum of ██████████ per month for shopping, ██████████ per month for laundry and ██████████ per month for meal preparation. In the present case, the Department testified that the Appellant was ranked as a level 3 or 4 for these activities, indicating she can participate in these activities to some extent and does not need the maximum level of assistance. The testimony presented did not establish that the assistance the Appellant needs with shopping, laundry, and meal preparation must be performed totally separately from the other family members residing in the home. After proration for a household composition of ██████████, the department authorized 0.39 hours per month for

shopping, 0.52 hours per month for laundry, and 6.01 hours per month for meal preparation. (Exhibit 1 pg. 6) The authorized hours are reflective of the Appellant's household composition and rankings for these activities.

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 shopping, laundry and meal preparation.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:



Date Mailed: _____

***** 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.