

**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. 2010-13440 HHS

██████████

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 ██████████. ██████████ appeared on her own behalf. ██████████, nephew and chore provider, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department (DHS). ██████████, Social Services Specialist, 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.
2. The Appellant is a ██████████ woman who has been diagnosed with COPD, asthma, seizures, sleep apnea, anemia, obesity and allergies. (Exhibit 1, page 10)
3. On ██████████, a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant and chore provider were present for the home visit. (Exhibit 1, page 8)

4. As a result of the information gathered from the Appellant and chore provider during the assessment, the worker removed the HHS hours authorized for the tasks of bathing, grooming, dressing, medication and toileting. The worker also reduced the HHS hours authorized for the tasks of housework, shopping, meal preparation and laundry and increased the HHS hours authorized for mobility. (Exhibit 1, page 8A)
5. 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 ██████████. (Exhibit 1, pages 5-7)
6. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3-4)

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

On ██████████, the Social Services Specialist (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1, page 8) The worker testified that she talked with the Appellant first and then the chore provider came down stairs for the rest of the home visit. The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, the HHS hours authorized for bathing, grooming, dressing, medication and toileting were removed. The worker also reduced the HHS hours authorized for the tasks of housework, shopping, meal preparation and laundry based upon the household composition in accordance with the Department policy requiring that the hours for these activities be prorated. The HHS hours

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authorized for transferring were unchanged and the HHS hours authorized for mobility were increased. (Exhibit 1, page 8A)

The worker testified that the removal of bathing, dressing, grooming, medication and toileting from the time and task authorization was based upon the statements made by the Appellant and the chore provider during the home visit. The worker noted that at the home visit, the chore provider could not state his daily routine for assisting the Appellant without prompting for specific activities. The worker testified that the removal of bathing was based on the chore provider's statement during the home visit that he did not assist the Appellant with this task. The worker explained that the provider only stated that he makes sure the Appellant gets into the bathroom, and then he gives her privacy until he assists her in getting back to the couch. The worker testified that grooming and dressing were also removed because the chore provider was unable to describe how he assists the Appellant with these activities at the home visit. The workers assessment note also indicates that the Appellant stated she does not need help with toileting and takes her own medications. (Exhibit 1, page 8) The worker testified that it was not until a [REDACTED], phone conversation that the chore provider told the worker that he does help the Appellant with bathing, grooming and dressing.

The worker testified that the reductions to the IADL's: housework, shopping, laundry and meal preparation, were made in accordance with the Department policy requiring that the authorized hours for these activities be pro-rated based upon the household composition. The worker testified that the Appellant told her that the chore provider did not live in the home, however when the chore provider came down stairs, he stated that he did live in the home. The worker explained that she determined 5 adults were living in the home based upon information provided by the Appellant and the chore provider at the assessment as well as information obtained from address and benefits searches. Therefore, the HHS hours for these tasks were authorized at approximately 1/5 of the maximums allowed by policy.

Department policy 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 other persons living with the Appellant would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. Accordingly, the authorized hours for these activities must be prorated under Department policy.

The Appellant disagrees with the task removals and time reductions made by the worker. Regarding the activities the Department removed from the time and task authorization, the Appellant testified that her chore provider never said he did not assist her with grooming during the home visit. The Appellant also explained that due to her multiple impairments she has severe limitations with standing and lifting and therefore needs assistance. For example, the Appellant stated she can not wash her feet in the tub so her provider does this for her when she is on the couch. The Appellant also stated that she can not lift or hold things because of pain and therefore she needs help with cooking, dishes and combing her hair.

The Appellant's chore provider testified that he helps the Appellant with everything because she can not do anything herself. Upon further questioning, the chore provider was able to state the he helped the Appellant with some specific tasks such as washing her feet and doing laundry.

Regarding the household composition, the Appellant testified there may have been some confusion because there had been a fire at her previous residence and some people may not have changed their address as they planned to go back once the old home was repaired. The Appellant further testified that some of the people the Department determined reside in the current home have since moved out or never actually lived with her. The Appellant explained that she let two of these persons use her address to apply for Social Security benefits. The Appellant stated that one of these persons has since moved out and that the other never really lived in the home. The Appellant also testified that a third person included by the worker in the household composition was only living there temporarily and is no longer in the home.

This ALJ has carefully reviewed the testimony of the Appellant and her chore provider and can not find it fully credible due to inconsistencies and overly broad answers. For example, the testimony regarding where the chore provider lives was inconsistent. At different points during this hearing, the Appellant and chore provider stated that the chore provider lives in the home, or that he occasionally spends the night, or that he goes back and forth between homes. Additionally, the chore provider was not able to provide detailed testimony regarding the tasks he assists the Appellant with. The chore provider's testimony that he helps the Appellant with everything because she can not do anything herself is overly broad. The chore provider did not describe any specific tasks until further questioning. The chore provider is required to complete logs which are submitted to the Department to document the work he performs for the Appellant. Accordingly, the chore provider should be able to describe in detail how he assists the Appellant with each task, without prompting.

This ALJ must review the action taken by the Department with the circumstances and information available at that time. The Appellant did not meet her burden of proving, by a preponderance of evidence, that the Department improperly removed the tasks of bathing, grooming, dressing, medication and toileting assistance based on the information available at the time of the assessment. The statements made by the chore provider to the worker during the [REDACTED], conversation occurred after the negative action and therefore this information was not available to the Department at the time of the assessment. Further, based upon the available information, the worker did increase the time allowed for mobility in accordance with the information she received that the chore provider assists the Appellant with getting to and from places in the home, such as the bathroom, rather than providing assistance with toileting itself.

Additionally, the evidence supports the Department's proration of the IADL's based upon the household composition at the time of the assessment. The Appellant's testimony acknowledges that she did allow others to use her address to apply for benefits programs. The Appellant also acknowledged that some persons have moved out of the

home, which indicates that there had been additional household members. When the household composition changes, the Appellant should notify the Department of which household members have moved out so that her ongoing benefits can be appropriately adjusted.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly removed the tasks of bathing, grooming, dressing, medication and toileting assistance and properly reduced the HHS hours for housework, shopping, laundry and meal preparation based on the information available at the time of the assessment.

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: 3/9/2010

***** 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.