

**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. 2010-13793 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 ██████████. ██████████, mother and chore provider, appeared as the Appellant's representative. ██████████, Appeals Review Officer, represented the Department (DHS). ██████████, Adult Services Worker, and ██████████, Services Supervisor, appeared as witnesses 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 with diagnoses of sleep disorder, multiple sclerosis, chronic sinusitis, migraines, low blood pressure, pseudotumor cerebri, neuropathy, history of suicide attempts, edema of feet, fibromyalgia, white matter brain disorder, severe asthma, diabetes, TIA's, borderline personality disorder, major depression, adjustment disorder, congestive heart failure, and chronic obstructive pulmonary disease. (Exhibit 1, pages 10 and 12)
3. The Appellant lives in a home with her mother, who is also 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. The Appellant and her provider were present in the home. (Exhibit 1, page 10)
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 due to the household composition of 2 adults. The worker also reduced the HHS hours authorized for bathing, grooming and medication. (Testimony)
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 18)
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. (Exhibit 1, pages 4-6)
8. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, page 3).

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).

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On [REDACTED], the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1 page 10) The worker testified that using the functional scale, based on her observations and the information provided by the Appellant and her mother at the time of the assessment, the HHS hours authorized for housework, shopping, laundry and meal preparation were decreased. The worker testified proration was applied to the authorized HHS hours in accordance with Department policy requiring that these activities be prorated based upon the number of adults living in the home. However the worker also stated that she allowed extra time for the tasks of shopping and laundry due to the number of trips it takes to obtain all of the Appellant's medications each month and incontinence resulting in additional laundry for the Appellant.

The Appellant's mother testified that she disagreed with the reductions for housework, shopping, laundry and meal preparation. The Appellant's mother, who is also her chore provider, stated that the time allowed by the Department for these activities is not enough. The Appellant's mother stated she has to make numerous trips to the store each month for the Appellant's medications because of insurance limitations on when refills can be obtained. She further explained that it takes over an hour to do a load of laundry and that she does at least 2 loads of the Appellant's laundry per week, more if there are accidents. The Appellant's mother stated that the time allowed for housework, 6 minutes per day, is unreasonable. She also stated that it takes longer than 25 minutes per day to prepare 3 meals and snacks for the Appellant.

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 mother, 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.

Department policy allows for a maximum of 6 hours for housework, 7 hours for laundry, 5 hours for shopping, and 25 hours for meal preparation each month. The worker ranked the Appellant as a level 5 for these activities, indicating she is dependant on others and does not participate in these tasks even with assistance. (Exhibit 1 page 10) After proration for a household of 2 persons, the Department authorized 3 hours and one minute for housework, 2 hours for laundry, 3 hours and 13 minutes for shopping, and 12 hours and 32 minutes for meal preparation per month. (Exhibit 1 page 11)

The worker did acknowledge that the authorization for laundry was less than one half of the maximum allowed under policy, which conflicts with her testimony that she allowed extra time for this task. The worker testified she would correct the HHS hours authorized for the task of laundry. The reductions in the areas of housework and meal preparation are sustained as they are approximately one half of the maximum allowed under Department policy for these activities. The reduction to the activity of shopping is

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also sustained as the worker did allow more than half of the maximum allowed time due to the numerous trips that have to be made to obtain the Appellant's medications.

The reduction of HHS hours for bathing, dressing and medication are also at issue in this case. The worker testified the she made these determinations based on the information provided by the Appellant and the chore provider during the home visit as well as the Department's reasonable time schedules for these activities.

The worker testified that the HHS hours authorized for bathing were reduced from 7 days per week to 4 days per week based on the Appellant's mother's statements during the home visit. The worker explained that she could not allow the full time the Appellant stated it takes her to shower because the Department's reasonable time schedule only allows for 16 minutes per day for bathing, and she would have to have clear documentation of the reasons more time is required.

The worker testified that the HHS hours authorized for grooming were reduced from 30 minutes per day to the reasonable time schedule allowance of 8 minutes per day. The worker explained that the Appellant could not clearly state why it takes her 30 minutes per day.

The worker testified that the HHS hours authorized for medication were also reduced, but she did authorize 8 minutes per day instead of the reasonable time schedule allowance of 2 minutes per day due to number of medications the Appellant takes. The worker stated that she did not allow the full 20 minutes per day the Appellant's mother stated it takes her to set up the medications noting that she sets up the medications and hands them to the Appellant to take herself, rather than having to physically help the Appellant take the medications.

The Appellant's mother did not provide any testimony regarding the activities of bathing and grooming. Regarding medications, the Appellant's mother stated that she has timed herself and it takes 20 minutes because there are 17 prescriptions and some over the counter items. The Appellant's mother explained that she has to pick up each bottle to check how many times per day that medication is taken. The Appellant's mother again noted how many trips it takes to the store to get the Appellant's monthly refills.

While this ALJ understands that the Appellant takes a significant number of medications, the Department did allow time in excess of the reasonable time schedule allowance for this activity. The stated time of 20 minutes per day is excessive as this would imply it takes about a minute to set up each medication. The numerous trips to the store are considered under shopping and can not be considered as part of the time allowed for activity for taking medication. (Exhibit 1 page 21) The reductions to the HHS hours authorized for bathing, grooming, and medication are sustained.

Based upon the testimony of the Appellant's mother, it also appears there as been a recent significant change in the Appellant's heath and need for assistance. The Appellant's representative testified that the Appellant is undergoing nerve testing for loss of feeling and strength in her legs and feet. This ALJ must review the action taken

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by the Department given the circumstances and information available at that time. The reductions made by the worker were proper given the information available at the time of the assessment. The Appellant may wish to provide the Department with updated medical documentation and information regarding the Appellant's further limitations and need for additional assistance, which could be taken into consideration for authorizing future HHS payments.

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 housework, shopping and meal preparation based on the household composition of 2 adults. The reductions in HHS hours for bathing, grooming, and medication are also sustained. The reduction in the area of laundry was not appropriate given the Appellant's household composition and need for assistance with this activity.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. If the Department has not already done so, the HHS hours for the task of laundry are to be increased in accordance with the worker's testimony she would correct the time authorized for this task.

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

cc:



Date Mailed: 3/15/2010

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***** 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.