

**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. 2010-13909 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 ██████████. ██████████, sister and Guardian, appeared as the Appellant's representative. ██████████, Support Coordinator for ██████████, appeared as a witness for the Appellant. ██████████, 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.
2. The Appellant is a ██████████ woman who has been diagnosed with depression, GERD, back pain, hypertension, mental retardation, and high cholesterol. (Exhibit 1, page 13)
3. The Appellant lives with her sister, who is also her chore provider and partial Guardian. (Exhibit 11 and Testimony)
4. The Appellant also receives services from a ██████████ aid through Community Mental Health. (Testimony)

5. 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 aid from ██████████ were present. (Exhibit 1, page 11)
6. As a result of the information gathered at the assessment, the worker removed the HHS hours authorized for the tasks of bathing, grooming and range of motion exercises; reduced the HHS hours authorized for the tasks of dressing, housework, laundry, transferring, mobility, and toileting. (Exhibit 1, page 11)
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 ██████████. (Exhibit 1, pages 5-7)
8. 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 Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1 page 8) The Appellant and her provider from ██████████ were present for the interview, but not the Appellant's sister/HHS chore provider/Guardian. (Exhibit 1, page 11) The worker testified that using the functional scale and based on the

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information provided at the time of the assessment, the HHS hours authorized for bathing, grooming and range of motion exercises were removed; the authorized HHS hours were reduced for the tasks of dressing, housework, laundry, transferring, mobility, and toileting. The worker explained that the removals and reductions were based upon the statements made by the ██████████ aid regarding what services she provides for the Appellant. (See also Exhibit 1, page 11) The worker's testimony also acknowledged that the Appellant did not provide much information at the home visit and most of the information came from the ██████████.

The Appellant's sister disagrees with the removals and reductions made by the worker, and testified that the ██████████ aid has a knack for the flair in describing her role. The Appellant's sister explained that the goal for the services authorized through Community Mental Health (CMH) is different than the Home Help Services program, the ██████████ aid is there to provide keep the Appellant active and encourage her to do things for her self. The Appellant's sister also stated that she has had to tell the ██████████ aid to perform only the activities she is authorized for by CMH and not to perform extra tasks because she gets bored and wants to help.

The Appellant's sister also objects to the assessment being completed without her involvement as the chore provider and Guardian for the Appellant. The Appellant's sister explained that there had been an emergency regarding the Appellant's medications and therefore she had to leave the home briefly the Monday morning of the home visit. The Appellant's sister stated that she told the ██████████ provider to let the worker know she would be back in 30-45 minutes or that the home visit could be re-scheduled.

The worker testified that the ██████████ provider only let her know that the Appellant's sister had to leave for an emergency. The worker stated she did not try to reschedule because there had not been any message at her office requesting rescheduling of the home visit. The worker explained that she proceeded with the home visit without the Appellant's sister because she did not have time to wait for her to return due to the other appointments the worker had scheduled that day. The worker further stated that she told the ██████████ aid to tell the Appellant's sister to call if she had any questions. The Appellant's sister testified that the ██████████ aid never told her the worker said to call if she had any questions.

Department policy outlines requirements for the comprehensive assessment, including:

- 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.

Adult Services Manual (ASM) 9-1-2008, Page 2 of 24. It was not appropriate for the worker to complete the assessment without the involvement of the Appellant's sister, particularly in this case where the Appellant suffers from mental impairments and is unable to provide much information herself. The Appellant's sister should have been interviewed for the assessment because she is the chore provider. Additionally, the Appellants sister should have been included in the assessment because the Appellant is not able to provide much information and her sister is the ██████████, as

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documented by the Letters of Guardianship of Individual with Developmental Disability attached to the Hearing Request form.

A new assessment, allowing the Appellant's sister to participate, is necessary to determine the ongoing Home Help Services Authorization in this case. Clarification is needed regarding what services Community Mental Health authorized the [REDACTED] aid to provide, as they are often services that are not covered by the Home Help Services program such as supervising, monitoring, reminding, guiding or encouraging. The [REDACTED] aid should only be performing the services CMH has authorized and reductions should be made only for duplications in services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did properly perform the comprehensive assessment that resulted in the time and task removals and reductions.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department is hereby ordered to reinstate the Appellant's HHS payments to the amount authorized prior to the [REDACTED] Advance Negative Action Notice. Additionally, the Department is ordered to conduct a new comprehensive assessment, allowing the chore provider/Guardian to participate.

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

cc:

[REDACTED]

Date Mailed: 3/23/2010

***** 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.