

**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. 2010-13910 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 ██████████. The Appellant appeared without representation. Her witness was ██████████, choreprovider. ██████████, appeals review officer, represented the department. Her witness was ██████████.

ISSUE

Did the Department properly reduce Home Help Services (HHS) 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. At the time of hearing the Appellant is a ██████████, female, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with PAD, CAD, COPD, mitral valve prolapse, apnea, back pain and osteoarthritis, HTN, and an unspecified swallow disorder. (Department Exhibit A, pp. 15, 16 and Appellant's Exhibit #1, p. 1)
3. On ██████████, the ASW conducted a yearly reassessment for the Appellant that led to a reduction in services through the elimination of the tasks of transferring, mobility, grooming, dressing, eating and toileting, (Department's Exhibit A, pp. 10, 11)

4. The tasks of cooking, cleaning and laundry were increased owing to the client's status as living alone. (Department Exhibit A, p. 11 and See Testimony)
5. The ASW sent the advance negative action notice on ██████████ [effective ██████████] with a proposed dollar amount authorized of ██████████. (Department's Exhibit A, p. 10)
6. The instant appeal was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████. (Appellant's Exhibit #1)

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services 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 (DHS-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 re-determination.

- 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
- 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. When hours exceed the RTS rationale must be provided. (Emphasis supplied)

Adult Service Manual (ASM), §363, pp. 2, 3 of 24, 9-1-2008.

The Department witness testified that on annual assessment it was determined that the Appellant was able to transfer, ambulate with a cane and demonstrate other ADL skills when she served her guest baked goods, lit her cigarettes – in the presence of the ASW.

The Department witness further testified that the Appellant could get up from a straight chair, use her fingers and raise her hands over her head. She determined that elimination of the ADLs of transferring, mobility, grooming, eating and toileting were appropriate.

The Appellant and her witness testified that the ASW assessment failed to account for the aggravating factor of the Appellant's frequent coughing spasms – which cause the Appellant to suffer frequent toileting accidents on the way to the bathroom.

The choreprovider testified that she often cleans the bathroom 7-times a day owing to these events. She added that dressing the Appellant is usually accomplished on the toilet following cleanup as the Appellant generally wears pajamas which are easier to handle than street clothes. The choreprovider also testified that while the Appellant might be capable of raising her hands above her head on occasion - utilizing scissors to self groom was neither possible nor safe.

The Department did not provide evidence of the prior rankings for the reduced and eliminated ADLS. The ALJ establishes new rankings, based on the testimony and the evidence, below.

The following items summarize the ADL reductions and the ALJ's disagreement:

- Grooming was improperly reduced as the clear weight of the evidence showed that the Appellant requires hands on assistance with such items as hair cutting, shampooing and other arm intensive activities. She would be at risk if left alone. Proposed ranking is 4.
- Mobility was improperly eliminated as the credible testimony of the Appellant's witness showed that the Appellant, at a minimum, requires assistance getting from chair to foot and cane - and then to successfully navigate her way to the bathroom. Proposed ranking is 3.
- Transferring was improperly eliminated as the credible testimony of the Appellant's witness established the Appellant's inability to seat herself – without assistance – on the toilet. While not totally dependent the Appellant obviously requires a significant amount of help to accomplish this task. Proposed ranking is 4.
- Toileting was improperly eliminated. The Appellant stated that her coughing and choking causes an uncontrollable release of bowel and bladder – often [up to 7 times day] before she can get to the bathroom where she requires a good deal of human assistance. Proposed ranking is 4.
- Eating was improperly eliminated. The Appellant explained and the medical evidence confirmed that the Appellant has difficulty swallowing – her food must be minced to enable her to swallow. Accordingly, she requires occasional assistance during her meals – but retains the ability to put hand and fingers (with utensils) to mouth. Proposed ranking is 3. [See Appellant's Exhibit 1 at page 5]
- Dressing was improperly eliminated. The Appellant and her witness explained that the majority of her clothing consists of pajamas – which are worn throughout the day for ease of dressing while on the pedestal toilet. The Appellant's witness said that for doctor visits or rare outside excursions she dresses the Appellant in jeans and has to button the Appellant's jeans. Proposed ranking is 3.

The following items summarize the IADL¹ status and the ALJ's agreement:

- Housework was not reduced.
- Meal preparation was not reduced
- Shopping was not reduced.
- Laundry was not reduced.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was inaccurate and failed to account for the Appellant's coughing/choking afflictions which results in significant, hands on, cleanup of both the Appellant and her bathroom. While the Department witness correctly observed that the

¹ Increase for lack of shared household. Department's Exhibit A, p. 2

HHS program does not cover supervision – the bulk of the evidence presented today described hands on rankings of 3 or 4. The Appellant is neither totally disabled nor totally dependent. However, she clearly requires significant assistance in most ADLs.

Based on the record established today the Appellant has preponderated her burden of proof to demonstrate her need for reinstatement of the ADLs of transferring, mobility, grooming, dressing, eating and toileting.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly reduced the Appellant's HHS payment.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

IT IS FURTHER ORDERED that:

The Department shall reassess the Appellant within 90-days receipt of this order and establish ADL rankings.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 4/1/2010

***** 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.