

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2010-14780 HHS
Case No. 25664047

██████████,

Appellant

_____ /

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 April 15, 2010. ██████████, daughter, appeared as the Appellant's representative. ██████████ appeared and testified. ██████████, daughter-in-law and chore provider, appeared as a witness for the Appellant. Ms. Janet Kalbfell, Appeals Review Officer, represented the Department (DHS). Ms. Robin O'Dowd, Adult Services Worker, appeared as a witness for the Department.

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. The Appellant is a Medicaid beneficiary.
2. The Appellant is a 75 year-old woman with diagnoses osteoporosis, osteoarthritis, compression fracture and hypertension. (Exhibit 1, page 11)
3. The Appellant's daughter in law is her chore provider. (Exhibit 1, page 8)
4. On December 7, 2009, a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant and her family, including the chore provider, were present in the home. Upon returning to her office that day, the Adult Services Worker called the Appellant's family back to further discuss the assessment. (Testimony and Exhibit 1, page 10)

5. As a result of the information gathered from the assessment, the worker decreased the HHS hours authorized for housework, shopping, laundry, and meal preparation due to the household composition of three (3) adults. The worker also eliminated the HHS hours authorized for bathing, grooming dressing, toileting and transferring. (Exhibit 1, page 9)
6. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated by the number of people living in the home. (Adult Services Manual (ASM) 9-1-2008, pages 4-5 of 24)
7. On December 7, 2009, the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be reduced to \$124.16 per month effective January 1, 2010. (Exhibit 1, pages 4-6)
8. On January 7, 2010, 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).

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;

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- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

*Adult Services Manual (ASM) 9-1-2008,
Pages 2-15 of 24*

On December 7, 2009, the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1 page 9) The worker testified that using the functional scale, based on her observations and the information provided by the Appellant and her family 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. There was no evidence or testimony presented on the Appellant's behalf relating to these specific tasks or contradicting the household composition or three (3) adults.

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 family members 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.

Department policy allows for a maximum of six (6) hours for housework, seven (7) hours for laundry, five (5) hours for shopping, and 25 hours for meal preparation each month. The worker ranked the Appellant as a level three (3) for laundry and shopping and a level four (4) for housework and meal preparation, indicating she requires assistance but is not totally dependant on others for these tasks. (Exhibit 1 page 7) After proration for a household of three (3) persons, the Department authorized one (1) hour and 30 minutes for housework, one (1) hour and 30 minutes for laundry, two (2) hours and 30

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minutes for shopping, and nine (9) hours and two (2) minutes for meal preparation per month. (Exhibit 1 page 8) The reductions in the areas of housework, laundry, shopping, and meal preparation are sustained as they are reflective of the Appellant's rankings and household composition.

The elimination of HHS hours for the tasks of bathing, grooming, dressing, toileting and transferring are also at issue in this case. The worker testified she made these determinations based on the information provided by the Appellant, the chore provider, and other family members during the December 7, 2009, home visit and follow up telephone conversation. The worker testified that the HHS hours for these activities were removed because there was no evidence that the Appellant required physical assistance with these tasks.

The worker testified that bathing hours were removed because the Appellant's family reported she only needed the chore provider with her in case she gets dizzy. The worker stated the family reported a medical condition with her blood causes dizziness, however they also reported she takes medication for this.

The worker stated that grooming hours were removed because the chore provider indicated the client did not know how to do things like brush her hair or cut her nails. However, the worker noted that there is no evidence that the Appellant suffers from any cognitive problems nor did she observe physical limitations that would prohibit the appellant from performing these tasks herself.

The worker testified that dressing hours were removed because the family reported that the Appellant only needs help if she gets dizzy. The worker noted that the family did not give a specific timeframe for how often assistance is needed but did report that it was sporadic and not very often.

The worker stated that the toileting hours were removed because the family reported that the Appellant can do this on her own and only needs supervision in case she gets dizzy.

The worker testified that the transferring hours were removed based on her observations that the Appellant is able to get up and down from a chair. The worker noted that the Appellant does use a cane, but is able to walk on her own.

The Appellant's daughter disagrees with the removals and explained that the chore provider does not speak English well enough to clearly explain the Appellant's circumstances to the worker. For example, the statement that the Appellant does not know how to brush her hair referred to blow drying and brushing her hair out after bathing as the Appellant does not know how to use the hair dryer. The Appellant's daughter further testified that the medication does not fully prevent the dizziness episodes which result not only from the blood condition, but also from anxiety or panic attacks.

The Appellant testified that she has these attacks one a day or every other day and they come out of nowhere. The Appellant noted that she has fallen and injured herself in the past. The Appellant's chore provider testified that the Appellant gets tired and feels like she is going to fall. The Appellant's chore provider noted that the Appellant has a fear of getting dizzy and falling.

The Appellant's daughter testified that the Appellant has additional medical diagnoses, for which she takes medications, beyond the diagnoses documented by the Department in the case file. The worker acknowledged that no updated medical documentation was requested in this case because the Appellant is an SSI recipient and Department policy does not require obtaining a new Medical Needs form for SSI recipients. (Adult Services Manual (ASM) 9-1-2008, Page 7 of 24) However, policy does not preclude the Department from obtaining an updated Medical Needs form, which may be appropriate in the Appellant's case to document additional diagnoses.

Based upon the testimony of the Appellant and her family, the Appellant mostly needs assistance to have someone with her because of a fear of falling and panic attacks. While this ALJ understands the Appellant's concerns, Department policy does not allow authorization of HHS hours for supervision. (Adult Services Manual (ASM) 9-1-2008, Page 14 of 24. The evidence did not support a finding that the Appellant needs direct physical assistance and should have remained at a ranking of three for the activities of daily living. The removal of HHS hours for the tasks of bathing, grooming, dressing, toileting and transferring is sustained.

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 based upon 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:



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Date Mailed: 5/3/2010

***** 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.