

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████,

Appellant

**Docket No. 2010-17433 HHS
Case No. ██████████**

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 on her own behalf. The Appellant's daughter was present.

██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Supervisor; and ██████████, Independent Living Specialist, 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. Appellant is a ██████████ woman. (Exhibit 2).
2. Appellant is a Medicaid beneficiary.
3. Appellant's chore provider is her daughter, ██████████. (Exhibit 1, Page 18).
4. Appellant's representative at hearing is her daughter.
5. Appellant lives with at least her adult son, ██████████. Appellant's son also receives home help services. (Exhibit 1, p 4, 5).

Docket No. 2010-7814
Hearing Decision & Order

6. The Appellant has osteoarthritis. (Exhibit 1, Page 11).
7. On [REDACTED], Appellant's Adult Services Worker (ASW) made a visit to Appellant's home to conduct a required Home Help Services reassessment for Appellant and for her adult son. During the assessment the ASW asked questions and received answers from the Appellant. (Exhibit 1, Page 5).
8. During the reassessment the ASW observed the Appellant. The ASW noted that based on observations and Appellant's answers, Appellant's need for assistance with bathing and grooming was limited. (Exhibit 1, Page 7, 9).
9. The ASW also noted that the Appellant's housework and meal preparation had not been prorated by the number of adults living in the home. (Exhibit 1, Pages 4-6).
10. On [REDACTED], the Department sent a Negative Action Notice notifying Appellant that her Home Help Services payments would be reduced effective [REDACTED]. (Exhibit 1, Pages 4-6).
11. On [REDACTED] the Department received Appellant's Request for Hearing. The Department sent Appellant a notice to appear for hearing but she failed to appear for hearing and her case was dismissed. (Exhibit 1, Page 3).
12. The Appellant protested the dismissal on [REDACTED], and was granted another hearing opportunity.
13. The ASW added time authorization for shopping and laundry for the Appellant. (Exhibit 2).

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 agencies.

The ASW testified that a comprehensive assessment was completed on [REDACTED], at which the Appellant was asked questions and provided answers.

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

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 redetermination.
- 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

Docket No. 2010-7814
Hearing Decision & Order

- Transferring
- Mobility

Instrumental Activities of Daily Living (IADL)

- Taking Medication
- Meal Preparation and Cleanup
- Shopping for food and other necessities of daily living
- Laundry
- 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 April 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 customer and provider, observation of the customer's abilities and use of the readaughterable 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:

- Five (5) hours/month for shopping .
- Six (6) hours/month for light housework.
- Seven (7) hours/month for laundry.
- 25 hours/month for meal preparation

These are **maximums**; as always, if the customer needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements. (Underline added by ALJ).

Adult Services Manual (ASM 363 9-1-08), page 5 of 24 requires a DHS worker to address:

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 customer 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. (Underline added by ALJ).

Based on the document and testimony evidence it was established that between the Appellant's ██████████ assessment, her failure to appear at hearing, and her second opportunity for hearing in ██████████ eight months passed. In those ██████████ actions were taken. To provide clarification the following actions are summarized:

- Authorization for assistance with bathing and grooming was reduced to a functional scale ranking of 2.
- Authorization for assistance with laundry and shopping was added.
- Authorization for assistance with housework and meal preparation was prorated.
- At all times, the time authorization for medication remained the same.

Removal of authorization for assistance with bathing and grooming–

The ASW testified that during the reassessment the Appellant informed the ASW of tasks she could perform and what level of assistance, if any, was necessary. The ASW testified that while the Appellant needed some assistance with bathing and grooming, the needed assistance was limited and not above a functional scale ranking of level two. Because the Appellant had no functional scale ranking above a level two for bathing and grooming the time authorization was removed in accordance to policy.

The Appellant testified that she sometimes has “bad days.” The Appellant explained that on her bad days she needs her chore provider to help her get out of bed and do her bathing and

████████████████████
Docket No. 2010-7814
Hearing Decision & Order

grooming. The Appellant said that her chore provider wants to be paid at least ██████████ per month.

This Department responded that it is not allowed to issue payment based on what a chore provider requests. The Department clarified that it must follow policy and authorization for payment must correspond to a medical assistance need with a functional scale ranking of level three or higher.

The Appellant also testified that she cannot go into the basement to do her laundry. The document and testimony evidence demonstrates the ASW added time and payment for the chore provider to perform the task of laundry for the Department.

IADL of Housework and Meal Preparation prorated -

As stated above in Department policy, the DHS **must** divide the number of authorized hours for IADLs by the number of people in the household. After the ██████████ assessment and the ASW discovered that the Appellant's IADL time authorization for housework, and meal preparation had not been prorated for the fact there was a second adult living in the home. The DHS worker assigned the maximum time/payment for the two IADLs and prorated the IADL time authorization to reflect two adults lived in the home.

The evidence in this case establishes that both the Appellant and at least her adult son were living in the home at the time the DHS worker performed the ██████████ assessment. The DHS worker was mandated to prorate the IADL time authorization and did so properly.

The Appellant testified that she didn't think it was right that her housework and meal preparation were reduced solely because her son lives with her. The Appellant explained that she shouldn't be penalized because her son is disabled and has his own chore provider. It is important to note that proration is required by policy and not subject to ASW discretion. The evidence demonstrates that the Department's reduction was not based on the son having his own chore provider, rather on proration policy and therefore the reduction in authorization was proper.

Addition of laundry and shopping authorization –

The Appellant did not dispute the addition of the laundry and shopping tasks and accompanying payment for those tasks.

Summary -

The Appellant bears the burden of proving by a preponderance of evidence that the Department's reduction was not proper. The Appellant did not provide a preponderance of evidence that the Department's reduction was not proper. The Department must implement the Home Help Services program in accordance to Department policy.

[REDACTED]
Docket No. 2010-7814
Hearing Decision & Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced her Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 4/9/2010

***** 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.