

**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. 2010-19034 HHS
Case No. [REDACTED]

[REDACTED]
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 [REDACTED] [REDACTED] appeared without representation. She had no witnesses. [REDACTED] represented the Department. Her witnesses were [REDACTED].

PRELIMINARY MATTER

At the threshold of hearing the ALJ took the admission of Appellant's proposed Exhibits 2 and 3 under advisement over objection from the Department. I find the exhibits admissible – but of little weight in proving that the Appellant's daughter and grandson did not live with the Appellant.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services (HHS)?

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 [REDACTED]-year-old, disabled, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with lupus, pulmonary fibrosis, and lung disease. (Appellant's Exhibit #1)
3. On [REDACTED], the ASW [REDACTED] conducted a yearly reassessment for the Appellant that led to a reduction in services owing to a shared household. (Department's Exhibit A, throughout)

4. The Appellant brought proof to hearing that she was hospitalized for a total of seven (7) days – not 21 days¹. (Department’s Exhibit A, p. 5)
5. The Department representative said that recoupment was not an issue for hearing today. (Department A, pp. 3, 5, 7 and See Testimony)
6. On [REDACTED] an Advance Negative Action Notice was sent to the Appellant informing her of the reduction in accordance with proration policy. She was advised of her further appeal rights. (Department’s Exhibit A, pp. 2, 4)
7. The effective date of the negative action was [REDACTED]. (Department’s Exhibit A, p. 4)
8. The instant appeal was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED]. (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.

¹ The Appellant is acknowledged by ASW [REDACTED] as “...usually” ... hospitalized for “at least a week.” See Department’s Exhibit A, p. 7

- 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.

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

Service Plan Development

Address the following factors in the development of the service plan:

- 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).

(Emphasis supplied) *Supra*, p. 5 of 24.

The Department witness, [REDACTED] testified that on in-home assessment the evidence at the Appellant's residence strongly suggested that more than one person lived in the single family dwelling.

A child's toys were scattered about. The Appellant's choreprovider/daughter had informed the ASW earlier [REDACTED] that she lived within the dwelling - "Unit B" according to ASW [REDACTED]. She shares the same street address with the Appellant.

Further physical investigation by [REDACTED] revealed that the Appellant did not have a townhouse or any separate unit or apartment within her home. The street addresses on record with the Department were identical – except for the suspect "unit" information. [See Department's Exhibit A at pages 8 and 9].

The Appellant admitted on cross examination that she had plans to build an addition and that her daughter and son-in-law were in the process of divorce and that the daughter used this address as a place to get her mail.

The Appellant testified that the in-home visit and resulting reduction in HHS by [REDACTED] was motivated from personal animus and that her daughter provides many services. She added that this in-home visit was very stressful.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was accurate and drawn according to policy. The Appellant shares a household with her chore provider. The evidence did not support the concept of a multiple family unit construction.

The following indicates the application of proration to the Appellant's IADLs and the ALJ's agreement:

- Housework was prorated by a factor of (2) two.
- Laundry was not prorated.
- Shopping was prorated by a factor of (2) two.
- Meal preparation was prorated by a factor of (2) two.
- Medication was not prorated.

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Any remaining home help services were not adjusted on in-home assessment. The testimony revealed a net dollar reduction of [REDACTED].

A comprehensive assessment and the application of proration policy is the responsibility of the ASW. Based on the information presented at hearing I found the proration policy to be correctly applied.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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

cc:

[REDACTED]

Date Mailed: 4/29/2010

***** 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.