

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

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IN THE MATTER OF:

[REDACTED]

Appellant

_____ /

Docket No. 2010-2221 HHS
Case No. [REDACTED]

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 on behalf of the Appellant. Her witness was [REDACTED] [REDACTED] appeals review officer, represented the Department. Her witnesses were; [REDACTED]

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. At the time of hearing the Appellant is a [REDACTED] Medicaid beneficiary.
2. The Appellant is afflicted with, mental retardation, ADHA, Dysthymia, and autistic features. (Department's Exhibit A, p. 17)
3. On [REDACTED], the ASW sent the Appellant an advance negative action informing him that his home help services (HHS) were being reduced effective [REDACTED]. (Department's Exhibit A, p. 9 and See Testimony of Williams)

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4. On ██████████, the request for hearing was timely brought by the Appellant's representative – appealing the retroactive application of the advance negative action levied on ██████████. (See Appellant's Exhibit #1)
5. On or about ██████████, the Appellant received the first of two unilateral reductions in HHS payment. There was no notice to the Appellant – who disagreed with the reductions then assigned. (See Testimony of Ann Plegue)
6. The next reduction was dispatched on ██████████, and retroactive to ██████████. (See Department's Exhibit A, at page 9 and See Testimony of Williams)
7. The instant appeal was received by SOAHR 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 (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.

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 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 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
- 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. (Emphasis supplied) Adult Service Manual (ASM), §363, Pages 2, 3 of 24, September 1, 2008.

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.

[•]

- 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*, pp. 4 and 5 of 24.

Federal Regulations

The Code of Federal Regulations requires advance notice:

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and §§431.214 of this subpart.

(Emphasis supplied) 42 CFR 431.211

The Department witness testified that she failed to provide the Appellant with notice of proposed reductions. There was no information about whether a face-to-face home visit had been conducted on ██████████. The ASW said that she made the Appellant whole¹, yet the record shows time allotments and payments for ADLs which simply do not line up with other information presented by the Department in its exhibit. Department's Exhibit A at pages 15, 16.

¹ She was apparently referring to two post petition payments reflected in Appellant's Exhibit #2.

The Appellant, who brought much information to the hearing, was placed at a significant procedural disadvantage in preparation for hearing owing to the lack of notice.

The Federal regulations and Department policy require an advance notice in these circumstances to allow petitioners an opportunity to resolve their disputes or prepare for hearing. Today – the only thing the parties agreed to was the notion that the Appellant lives in a shared household, i.e. he lives with mom and dad.

The Appellant did preponderate that the Department erred in the adjustment of his grant based on the ASW proofs and testimony. Accordingly, I find that the HHS reduction was not correctly decided based on today's record.

Advance notice of negative action is the responsibility of the ASW and I find that it was not properly applied to this Appellant.

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 home help services.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

IT IS FURTHER ORDERED that:

The Department shall return the Appellant to the status quo ante in effect on [REDACTED]

When the Department conducts its next scheduled in-home assessment of the Appellant program reductions, if any, shall be properly noticed to the Appellant.

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

cc:

[REDACTED]

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Date Mailed: 12/29/2009

***** 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.