

**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. 2010-23432 HHS

██████████

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 as his own representative. His witnesses included ██████████ and ██████████, appeals review officer, represented the Department. Her witnesses included ██████████ ASW supervisor and ██████████, ASW.

ISSUE

Did the Department properly reduce HHS payment 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 ██████████ male, Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with Muscular Dystrophy. He is wheelchair bound. (Appellant's Exhibit #1)
3. On ██████████, following in home assessment, the ASW reduced the Appellant's HHS via DHS 1212 based on chores actually performed owing to a period of hospitalization of the Appellant. (Department's Exhibit A, p. 7)
4. Unknown to the ASW the questioned services had been provided – albeit at a different location. (See Testimony)

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5. On [REDACTED], the Appellant sought the instant appeal. (Appellant's Exhibit #1)
6. On [REDACTED] the Department, on its own motion, reinstated the Appellant's prior payment retroactive to [REDACTED]. (Department's Exhibit A, - throughout)
7. The Appellant's HHS services were referred to the Department of Community Health's central office for an assessment of extended home help services (EHHS) to conducted by [REDACTED] (Department's Exhibit A, p. 12)
8. The instant appeal was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED] [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.
- 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.

Expanded Home Help Services (EHHS)

EHHS eligibility exists if **all** HHS eligibility criteria are met **and** the assessment indicates the client's needs are so severe that the cost of care cannot be met within the HHS monthly maximum payment. (Emphasis supplied)

ASM §362, *Supra* at page 2.

The Department witness testified that on annual assessment she determined that owing to a recent hospitalization undergone by the Appellant that services had been paid for, but were not provided. After the fact she discovered that the services had been provided – but at a different location than the Appellant's residence. Home Help Services were then reinstated to their prior level retroactive to ██████████ and the case referred for EHHS evaluation.

The Appellant testified that the reduction was a malicious act perpetrated by the ASW and that an error in hourly wage had not been addressed in the retroactive payments to the choreprovider.

The ASW supervisor testified that the hourly rate had been accounted for but that owing to the check dispersal the Appellant had not fully accounted for the retroactivity, including the hourly raise in compensation and attendant payroll deductions to the chore provider. See Testimony of Davis.

On review, the record did not support whether the Department or the Appellant (or both) erred in the communication of requested hospital stay data. Irrespective of that issue the record preponderates that the Appellant was made whole and his case was properly referred for [in person] EHHS evaluation. The Appellant's grievances with his ASW were voiced to supervision.

Accordingly, based on the information before it in ██████████ the Department's actions were proper. When error was discovered - HHS was reinstated in full – also a proper action under policy.

Based on the record established today the Appellant has not preponderated his burden of proof to demonstrate that the Department erred in its proposed reduction of his HHS payment in ██████████

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 – and then properly reinstated HHS retroactively on ██████████

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:



Date Mailed: _____

***** 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.