

**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. 2010-25089 HHS
Case ██████████

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 ██████████. ██████████, grandparents and Guardians, appeared as the Appellant's representatives. ██████████, Appeals Review Officer, represented the Department. ██████████ and ██████████, Adult Services Workers, appeared as witnesses 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 who has been diagnosed with autism, severe mental impairment, epilepsy, attention deficit disorder, pica, sleep disorder, elevated liver levels, type II diabetes, seizure disorder and rumination. (Exhibit 1, page 15)
2. The Appellant resides in a home with his grandparents. (Testimony)
3. The Appellant's grandmother is his chore provider. (Exhibit 2, pages 1-2)
4. On ██████████, a DHS Adult Services Worker made a visit to the Appellant's home to conduct a HHS assessment. (Exhibit 1, pages 6 and 14)

██████████
Docket No. 2010-25089 HHS
Decision and Order

5. As a result of the information gathered at the assessment, the worker increased the HHS hours authorized for bathing, grooming, dressing and eating. The worker decreased the HHS hours authorized for toileting, medication, housework, laundry and meal preparation. No changes were made to the HHS hours for shopping. (Exhibit 1, page 13 and Exhibit 2, page 1)
6. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated if others are living in the home. (Exhibit 1, pages 16-18)
7. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that his HHS payments would be reduced to ██████████ per month, effective ██████████. (Exhibit 1, pages 4-7)
8. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3-4)
9. On ██████████, the Department re-printed the Advance Negative Action Notice. (Exhibit 1, pages 8-11)
10. The Department has since adjusted the Appellant's HHS hours to eliminate the reductions made to the tasks of toileting and medication with an effective date of ██████████. (Testimony and Exhibit 2, page 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 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).

██████████
Docket No. 2010-25089 HHS
Decision and Order

On ██████████ the Adult Services Worker (worker) completed a home visit as part of the HHS comprehensive assessment for redetermination. The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, HHS hours for most tasks were changed. Increases were made to the HHS hours for bathing, grooming, dressing, and eating. The HHS hours were decreased for the tasks of toileting, medication, housework, laundry, and meal preparation. (Exhibit 1, page 13 and Exhibit 2, page 1)

However, the worker subsequently adjusted the HHS hours eliminating the reductions made for the tasks of toiling and medications in the Appellant's case. (Exhibit 21, page 2) The worker testified that this adjustment was made effective ██████████, the same effective date as the negative action that the present hearing request was filed upon. (Exhibit 1, pages 4-7) In effect, the Department replaced the original reduction to ██████████, with the new chore grant of ██████████. (Exhibit 1 pages 4-7 and 13, Exhibit 2, page 2)

Accordingly, this ALJ will review the newest time and task assessment. The only reductions still in effect with the new chore grant were made to the tasks of housework, laundry, and meal preparation. The worker testified proration was applied to the HHS hours for these activities in accordance with Department policy requiring that these IADL's be prorated based upon the number of adults living in the home. The worker explained that in the Appellant's case, the HHS hours for these tasks were divided by three as the Appellant lives with his grandparents. However, the worker testified that she did not prorate the HHS hours for shopping because extra shopping is done just for the Appellant.

The Appellant's representatives disagree with the reductions. The Appellant's grandmother testified that the Appellant has a special diet due to high cholesterol and diabetes. The Appellant's grandmother explained that she therefore prepares some foods for the Appellant separately, such as egg beaters instead of regular eggs. The Appellant's grandmother testified that she does extra loads of laundry for the Appellant due to overnight incontinence. The Appellant's grandmother also explained that they got a dog for the Appellant due to his seizures, which results in extra housework to pick up the pet hair.

The Appellant's grandfather raised several additional issues regarding assistance with tasks that are not part of the HHS program and the assessment process itself. However this ALJ can only review tasks that are included in the HHS program. Further, this ALJ does not have the authority to change Department policy and the worker has established that she conducted the assessment in accordance with the applicable policy.

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 grandparents 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 6 hours per month for housework, 7 hours per month for laundry and 25 hours per month for meal preparation. In the present case, the Department ranked the Appellant at level 5 for these activities, indicating he is dependant for others with these activities. (Exhibit 1, page 12) After proration for a household composition of 3 adults, the Department authorized 2 hours per month for housework, 5 hour and 1 minute per month for laundry, and 10 hour and 2 minutes per month for meal preparation. (Exhibit 2, page 2) The worker testified she allowed some extra time for laundry because of the extra loads of laundry just for the Appellant. The worker explained that she also allowed some extra time for meal preparation due to the Appellant's specific needs.

While this ALJ sympathizes with the Appellant's family's circumstances, the Department has established that the reduction was in accordance with policy. In reviewing Home Help Services cases, the Department is required to bring the Home Help Service authorizations into compliance with Department policies, including proration. This ALJ does not find that picking up pet hair is sufficient justification to add time to the prorated HHS hours for housework. The Department did allow extra HHS hours for the Appellant's extra needs with shopping, laundry and meal preparation. The authorized hours are reflective of the Appellant's the household composition and rankings.

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 in the areas of housework, laundry and meal preparation.

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

[REDACTED]
Docket No. 2010-25089 HHS
Decision and Order

[REDACTED]

Date Mailed: 6/15/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 March 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.