

**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. 2010-26893 HHS
Case No. [REDACTED]

[REDACTED],

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 [REDACTED]. [REDACTED] was represented by [REDACTED], the provider, was present.

[REDACTED], represented the Department of Community Health. [REDACTED], appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly authorize 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 participates in the Home Help Services program.
2. The Appellant receives payment assistance for the tasks of bathing, grooming, dressing, housework, laundry, shopping, and meal preparation.
3. The Appellant has custody of and resides with two (2) grandchildren, ages [REDACTED] and [REDACTED].

4. The Appellant is ambulatory without use of walker, cane, or other mobility assistance device such as a wheelchair.
5. The Appellant is █████ years old. Her physical ailments, as reported, are shoulder pain caused by arthritis and high cholesterol. At hearing she claimed carpal tunnel. No documents are in evidence to corroborate the Appellant has any physical impairment resulting in limitation upon or inability to perform ADL or IADLs.
6. The Appellant's ongoing HHS services case was due for a review in ██████████. Following the most recent home assessment, the Department continued payment assistance for authorized payment assistance for bathing, grooming, dressing and all instrumental activities of daily living. The IADL's were pro-rated by three (3) to reflect the number of people currently residing in the home. No other reductions were made.
7. The Department notified the Appellant of a payment reduction ██████████, effective ██████████.
8. The Appellant is dissatisfied with the reduction authorized as a result of the ██████████, home call.
9. The hearing request was received by the State Office of Administrative Hearings and Rules for Department of Community Health on ██████████

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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

Adult Services Manual (ASM) 9-1-2008

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.
- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician
 - Nurse Practitioner
 - Occupational Therapist
 - Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

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 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 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.

Time and Task

The worker will allocate time for each task assessed a rank of 3 or higher, based on the 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.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication. The limits are as follows:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven 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. If there is a need for expanded hours, a request should be submitted to:

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 the 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.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- 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 the same time period).

Adult Services Manual (ASM) 9-1-2008

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 customer 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 customer's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer 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 customer.
- 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.
- 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 customer.
- HHS may be authorized when the customer is receiving other home care services if the services are not duplicative (same service for same time period).

Adult Services Manual (ASM) 9-1-2008

In this case, the Department's worker conducted a comprehensive assessment at the home call. She implemented the Department policy for pro-rating payments for Instrumental Activities of Daily living in shared living arrangements. The Instrumental Activities of Daily Living are household chores, cooking, shopping and laundry, thus paying a provider to perform these tasks benefits others residing in the home who are not program beneficiaries unless the payment is pro-rated. The other residents of the household are not Home Help beneficiaries, thus are not entitled to the program benefits. The worker found the █████ and █████ year old grandchildren of the Appellant are able to help with the chores, thus believes the pro-rating is appropriate under policy.

The Appellant contests the Department action by asserting her █████ year old grandson has ADHD what she describes as severe asthma, resulting in an inability to help with


meal preparation or chores. She said he does play basketball at school. She stated her █████ year old granddaughter is pregnant, thus cannot be expected to perform the household chores. Additionally, the children are at school between █████. and █████. and her provider is present and doing the work while they are in school. This ALJ asked extensive questions of the Appellant about her circumstances. She was asked why she requires assistance. She said she has pain and cannot lift things. She was asked if she could lift a loaf of bread in order to prepare herself a sandwich. She admitted she could. She then asserted she has carpal tunnel and might drop things too. She was asked if she could then pick them up. She admitted she could. She then asserted she has “extreme” pain. She cannot even groom herself. She was asked to explain why she could not prepare herself a meal or sandwich and why she had a provider do all this for her. She deferred to her undocumented report of “extreme pain”.

This ALJ combed the evidence of record in an effort to find medical evidence of an ailment suffered by the Appellant that would result in a physical limitation so severe that she is unable to dress herself, bath or groom without assistance. None is found. None is obvious by what was directly observed at hearing. The Appellant appeared, transferred, walked, sat, and stood without help from an ambulatory device or an exhibition of any discomfort, slowness, or limitation. This ALJ is not a doctor, nor expert, these are the lay observations made by this ALJ, however, the DHS workers not doctors either. They are lay persons making determinations about a person’s ability to remain living in the community and prevent institutionalization of physically limited people where some physical assistance helps them to live independent of institutions. This ALJ has no idea what the basis for authorizing any services is for this Appellant, however, only the reductions in payment for IADLs is properly noticed, thus these reductions will be the only subject matter of the order.

The Policy most certainly supports an action to pro-rate payment for IADL’s in a shared living arrangement, thus the Department’s action is correct and will not be overturned. This ALJ must bring to the Department’s attention the fact that policy goes further in instructing workers not to authorize payment for tasks that can be performed by legal dependants of a program participant. Here, there is evidence the Appellant has two (2) legal dependants able to perform IADL’s. It is the belief of this ALJ that no payment for IADL’s should have been authorized in this case. However, the Appellant was not provided notice she would be in jeopardy of having that eliminated, thus due process prevents this ALJ from issuing an order to terminate payment for IADLs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced payment for the Instrumental Activities of Daily Living based upon a shared household.


Docket No. 2010-26893 HHS
Decision and Order

IT IS THEREFORE ORDERED that:

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

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 06/04/2010

***** 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.