

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

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IN THE MATTER OF:

██████████,

Appellant,

_____ /

Docket No. 2010-2726 HHS
Case No ██████████

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 ██████████. ██████████ appeared on behalf of the Appellant. ██████████ Appeals Review Officer, represented the Department (DHS). ██████████, appeared as a witness for the Department.

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. The Appellant is an ██████████ woman with diabetes, hypertension, and rheumatoid arthritis who is undergoing treatment for cancer. (Exhibit 1, pages 13 and 14).
2. The Appellant is a Medicaid beneficiary.
3. The Appellant lives in an apartment with two other adults, her husband and her daughter.
4. The Appellant's daughter her chore provider.

5. On ██████████ a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant and her husband were present in the home. (Exhibit 1, page 13).
6. As a result of the information gathered from the assessment and the information from the Appellant's physician, the worker decreased the HHS hours authorized for housework, laundry, shopping and meal preparation for the Appellant and removed the authorization for mobility. (Exhibit 1, pages 8-9).
7. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated by the number of people living in the home.
8. The Department's worker determined the Appellant did not need assistance with mobility.
9. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be reduced to ██████████ per month, effective to ██████████. (Exhibit 1, pages 8-10).
10. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, page 3).

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.

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).

Adult Services Manual (ASM) 9-1-2008, Pages 2-5 of 24

██████████
Docket No. 2010-2726
Hearing Decision & Order

On ██████████ the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, she decreased the HHS hours authorized for housework, laundry, shopping, and meal preparation based on a household of 3 adults. The worker testified she applied proration to these activities in accordance with policy. The worker also testified that she removed mobility from the authorized activities because the Appellant now lives in an upstairs apartment which is not consistent with a need for mobility assistance. The worker also noted that she did not observe a cane, walker, wheel chair or other assistive device for mobility.

The Appellant's representative testified that there are three adults living in the home, but she disagrees with the reduction in HHS hours for the housework, laundry, shopping and meal preparation. The Appellant's representative also disagrees with the elimination of mobility and testified that her mother does have a cane. The Appellant's representative further testified that her mother's ability to walk is limited and she does need assistance with going up and down the steps to the apartment. However, the Appellant only leaves the apartment about once a week to go to the doctor's office.

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 daughter and husband, 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.

In the present case, it is uncontested that three adults live in the home. The Department reduced the authorized hours for housekeeping, laundry, shopping and meal preparation as a result of proration. Policy sets a maximum of ██████ hours for housework which totals ██████ minutes. After proration for a household of ██████ persons, ██████ minutes would be allowed for the month. Using a ██████ month, this would be an average of ██████ minutes per day authorized for housework. However, the Appellant is ranked as a level ██████ for this activity, indicating that she does not require the maximum amount of assistance for this task. The Department authorized ██████ minutes per day for this activity, only ██████ minute per day less than the maximum after proration.

The Department made similar reductions for the activities of laundry, shopping and meal preparation. The Appellant is also ranked as a level 3 for each of these activities. For laundry a maximum of 7 hours a month, or approximately ██████ minutes day, would be allowed for a person needing maximum assistance after proration for a household of three adults. The Department authorized ██████ minutes per day for laundry for the Appellant. For shopping, a maximum of ██████ hours per month, or approximately ██████ minutes per day, would be allowed for a person needing maximum assistance after proration for a household of three adults. The Department authorized ██████ minutes per day

██████████
Docket No. 2010-2726
Hearing Decision & Order

for laundry for the Appellant. For meal preparation a maximum of █████ hours a month, or approximately █████ minutes day, would be allowed for a person needing maximum assistance after proration for a household of three adults. The Department authorized █████ minutes per day for this activity.

The reduced times authorized for these activities are reflective of the shared household and the Appellant's assigned rank. The reductions for housework, laundry, shopping, and meal preparation are sustained.

The removal of mobility from the authorized payment activities is also at issue. The Department and the Appellant's representative disagree as to whether the Appellant has and uses a cane. The Appellant's representative testified that her mother has and uses a cane, which is kept by the bed. The worker testified that she did not see a cane or other assistive device during her home visit. The worker testified she would have at least looked in on the Appellant during the home visit but would not have talked to the Appellant or her husband because they do not speak English.

Whether or not the Appellant has and uses a cane is material to her ranking for mobility. HHS hours can only be authorized for a rank of 3 or higher. A level 3 is appropriate for an individual who performs the activity with some direct physical assistance and/or assistive technology. A cane would be considered assistive technology. However, it is unclear how much human assistance the Appellant needs with mobility as she is able to get around within the apartment during the day while her chore provider is at work.

It is noted that the only two persons present for the home visit on ██████████, were the Appellant and her husband. The Appellant's representative testified that upon receipt of the appointment notice, she called the worker requesting that the home visit be rescheduled to a Thursday, her day off from work, so that she could be present. The worker testified that due to her case load at that time she was unable to accommodate this request. Accordingly, the ██████████ assessment was performed without speaking to the Appellant, her husband or the chore provider. The elimination of mobility, based on the ██████████, assessment can not be sustained.

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 HHS hours for housekeeping, laundry, shopping, and meal preparation based on the household composition of █████ adults. However, the Department did not properly remove mobility from the authorized payment activities.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED** in part and **REVERSED** in part. The Department is hereby ordered to reinstate the Appellant's HHS payments for mobility to the amount authorized prior to the [REDACTED], Advance Negative Action Notice, if it has not already done so.

Furthermore, the Department is ordered to conduct an assessment, allowing the chore provider to be present due to the language barrier, for the purpose of determining the appropriate level of assistance with mobility.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 12/22/2009

***** 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.