

**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:

[REDACTED]

Appellant

_____ /

Docket Nos. 2010-2729 HHS

2010-2728 HHS

Case Nos. [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 Appellants [REDACTED] (hereinafter referred to as [REDACTED]) and [REDACTED] (hereinafter referred to as [REDACTED]). [REDACTED], was present and provided testimony.

[REDACTED], represented the Department. [REDACTED], appeared as a witness for the Department.

ISSUE

Did the Department properly reduce Appellants' Home Help Services?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellants are a [REDACTED] with a history of high blood pressure, high cholesterol, and asthma; and an [REDACTED] with diabetes, high blood pressure, arthritis and cardiomegaly. (Exhibits 1, p 10; 2, p 9).
2. Appellants are Medicaid beneficiaries.
3. Appellants' chore provider is [REDACTED].

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4. On [REDACTED], a DHS Independent Living Services worker made a visit to Appellants' home to conduct a Home Help Services (HHS) assessment. Appellants were present in their home. Appellants' chore provider/son was not present. (Exhibits 1, p 6; 2, p 5).
5. Appellants have limited use of English language and answered some of the DHS worker's questions. [REDACTED], provided interpretation when needed during the assessment.
6. As a result of the information learned and observations made at the [REDACTED], assessment the worker reduced the monthly HHS payment authorization for Appellant [REDACTED] to [REDACTED]. (Exhibit 1, p 4).
7. As a result of the information learned and observations made at the [REDACTED], assessment the worker reduced the monthly HHS payment authorization for Appellant [REDACTED] to [REDACTED]. (Exhibit 2, p 3).
8. The Independent Living Services worker also applied HHS proration policy and therefore time authorizations for housework, shopping, laundry and meal preparation were prorated for a three-person household.
9. On [REDACTED], the Department sent a Negative Action Notice notifying Appellants that their Home Help Services payments would be reduced. (Exhibits 1, p 4; 2, p 3).
10. On [REDACTED], the DHS received Appellants' Request for Hearing.

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 outlines the Department's policy regarding assessment for HHS:

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

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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/his 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 redetermination.
- 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 for food and other necessities of daily living
- 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 March 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 customer and provider, observation of the customer'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 for food and other necessities of daily living
- 6 hours/month for housework
- 7 hours/month for laundry
- 25 hours/month for meal preparation

These are maximums; as always, if the customer needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements. (Underline added).

Proration for IADLs Shopping, Housework, Laundry and Meal Preparation -

As stated above in Department policy, the DHS **must** divide the number of authorized hours for IADLs by the number of people in the household. The DHS worker testified that the Appellants' IADL time authorization had not been prorated, thus she was required to prorate the Appellants' IADL time authorization. The evidence in this case establishes that both of the Appellants and their chore provider/son live in the same home. The DHS worker was mandated to prorate the IADL time authorization and did so properly.

Removal of Appellant ██████ Transferring Authorization -

The Department submitted into evidence its policy definition for transferring:

Moving from one sitting or lying position to another sitting or lying position.

(ASM 365 10-1-99, p 1; Exhibit 1, page 18)

The DHS worker testified that Appellant ██████ time authorization for the task of transferring had been improperly authorized as a need for transportation. The DHS worker stated she was required to remove Appellant ██████ time authorization for transferring because it had been incorrectly authorized and there was no transferring need for Appellant ██████. The evidence in this case establishes that Appellant ██████ had no need for assistance moving from one sitting position to another. The DHS worker was mandated to remove the incorrect transferring time authorization and did so properly.

Removal of Appellants' Meal Preparation Authorization –

Appellant ██████ - Appellant ██████ representative/daughter testified that Appellant ██████ chore provider/son prepares and serves all of Appellant ██████ meals. The credible evidence of record does not support Appellant ██████ representative/daughter's testimony. To the contrary, Appellant ██████ chore provider/son has a full-time job outside of the home and cannot possibly cook and serve all three daily meals to Appellant ██████. In addition, the DHS worker testified she observed Appellant's home alone, yet sitting at the table eating a tray of grape leaves and other food, conclusive evidence that Appellant's set the table, brought the several food trays and serving dishes to the table and served themselves. The DHS worker has also observed Appellant ██████ home without the chore provider, in the kitchen with several pots of food cooking on the stove. The DHS worker stated that when she inquired about observing Appellant ██████ cooking in the kitchen with several pots of food, Appellants' son-in-law stated that Appellant can cook when her chore provider/son is not home. (Ex 1, p 6).

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The Department's removal of Appellant ██████ meal preparation was proper based on the credible evidence of record.

Appellant ██████ - The DHS worker stated that because Appellant ██████ could cook and serve meals for herself, she could do the same for her husband, Appellant ██████. The DHS worker explained that Department policy prohibits the authorization of HHS where another member of the household is available to provide the HHS task.

Adult Services Manual (ASM 363 9-1-08), page 5 of 24 requires a DHS worker to address:

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. (Underline added by ALJ).

Applying the facts to the Department policy demonstrates the Department properly removed meal preparation from Appellant ██████. Appellant's wife, a responsible relative, is available and able to prepare and serve his meals.

Bathing, Dressing, Grooming for Appellants -

The DHS worker testified that during the in-home assessment she asked questions about what help was needed for grooming and dressing, and the Appellant ██████ and her interpreter indicated she did not need assistance with grooming and dressing.

The DHS worker stated that with regard to bathing she was informed that Appellant ██████ needed her chore provider to hand her the shampoo bottle because of her sore shoulder. The DHS worker notes indicate she advised that in advance of bathing the shampoo bottle be place on the side of the bathtub that would not involve using the sore shoulder. The evidence in this case supports the Department's decision to remove bathing. Appellant ██████ doctor did not indicate any medical needs based on a "sore shoulder." Secondly, there are many remedies Appellant ██████ or a family member could take so that a shampoo bottle is placed in a position comfortable for Appellant to grab while in the shower. Those remedies would also afford privacy to Appellant ██████ so that her son would not have to observe her disrobed in the shower or bath.

The DHS worker testified that Appellant ██████ said he could bath and dress himself with the exception that it was difficult for him to pull on his pants. The DHS worker explained that Appellant ██████, his wife, was able and available to assist him with his pants and other needs.

The Appellants' representative/daughter said that Appellants' chore provider/son prepares the bath, places the shampoo bottle and puts out clothes for Appellants, and that is why both Appellants need authorization for bathing, dressing and grooming. A review of medical needs forms for both Appellants does not show medical documentation of breast cancer and back pain for Appellant ██████, and does not show substantiation for the Appellant ██████ medical diagnoses or task needs.

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The DHS worker and the Department representative commented that it is required that an assessment be done of other family or community who could provide services to Appellants. If there is a strong support system, as there is in Appellants' case with a son that lives at home and adult children that live in state, Home Help Service may not be authorized. There was further Department explanation that if a family member chooses to help, for example by laying out clothes or bringing suggested foods, HHS may not be authorized because it is considered as supervising, monitoring or guiding, or done for free. A review of the Department's policy in ASM 363, page 16 of 24, as listed above, unequivocally supports the Department statements that Home Help Services cannot be authorized where the services can be provided for free and where the DHS worker does not assess a need.

The Appellants' representative/daughter requested an opportunity to introduce a doctor letter. An Administrative Law Judge is limited in reviewing the Department's action to the evidence the Department had at the time it made its decision. Appellants' son-in-law clarified that the doctor note was written after the Department's [REDACTED] reduction actions were taken. This doctor note was not available to the DHS worker at the time of her assessment and reduction, and is outside this Administrative Law Judge's authority to review. For these reasons the doctor letter cannot be considered for purposes of this Decision and Order.

The Appellants bear the burden of proving by a preponderance of evidence that the Department's reduction was not proper. The Appellants did not provide a preponderance of evidence that the Department's reduction was not proper. The Department must implement the Home Help Services program in accordance to Department policy. The Department provided sufficient evidence that it properly reduced the Appellants' payment authorization in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced Appellants' Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

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cc:

[REDACTED]

Date Mailed: 1/11/2010

***** 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.