

**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. 2010-30689 HHS
Case No. [REDACTED]

[REDACTED],

Appellant

_____ /

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]. The Appellant, [REDACTED] represented herself at the hearing. [REDACTED], Appeals Review Officer, represented the Department (DHS). [REDACTED], Adult Services Worker, appeared as a witness 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.
2. The Appellant has been diagnosed with the following conditions: asthma, hypertension, carpal tunnel syndrome, chronic low back pain, and general anxiety disorder. (Exhibit 1, page 19; Testimony of [REDACTED])
3. On [REDACTED], a DHS Adult Services Worker (worker) made a visit to the Appellant's home to conduct a HHS assessment. (Exhibit 1, page 14; Testimony of Wallace)
4. As a result of the information gathered from the assessment, the worker decreased the HHS hours authorized for housework, shopping, laundry, and meal preparation due to the household composition of three adults. The worker also eliminated the HHS hours authorized for mobility based

on the Appellant's statement that she could get around on her own. (Exhibit 1, page 14)

5. DHS policy requires that the tasks of housework, laundry, meal preparation and shopping be prorated by the number of people living in the home. (Adult Services Manual (ASM) 9-1-2008, pages 4-5 of 24)
6. On [REDACTED] the Department sent an Advance Negative Action Notice notifying the Appellant that her HHS payments would be reduced to \$ [REDACTED] per month, effective [REDACTED]. (Exhibit 1, pages 4-6)
7. On [REDACTED], 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 Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The purpose of HHS is 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).

The following services are not covered by HHS:

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;

- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

*Adult Services Manual (ASM) 9-1-2008,
Pages 14-15 of 24*

On ██████████, the worker completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1, page 14) The worker testified that using the functional scale, and based on her observations and the information provided by the Appellant at the time of the assessment, the HHS hours authorized for housework, shopping, laundry, and meal preparation were decreased. The worker testified that proration was applied to the authorized HHS hours in accordance with Department policy requiring that these activities be prorated based upon the number of adults living in the home. There was no evidence or testimony presented on the Appellant's behalf to contradict the household composition of three adults.

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 prorate the payment for those tasks by the number of adults residing in the home together, as the Appellant's family members 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 for housework, 7 hours for laundry, 5 hours for shopping, and 25 hours for meal preparation each month. The worker ranked the Appellant as a level 5 for laundry, shopping, housework, and meal preparation (Exhibit 1, page 18) After proration for a household of three persons, the Department authorized 2 hours for housework, 2 hours and 30 minutes for laundry, 1 hour and 30 minutes for shopping, and 8 hours and 32 minutes for meal preparation per month. (Exhibit 1 page 17) The reductions in the areas of housework, laundry, shopping, and meal preparation are affirmed as they are reflective of the Appellant's rankings and household composition.

The elimination of HHS hours for the task of mobility is also at issue in this case. The worker testified she made this determination based on the information the Appellant provided her at the assessment—that the Appellant was able to get around without assistance. (Testimony of ██████████)

The Appellant disagreed with the removal of mobility and explained that she may have told the worker that she was able to get around by herself on the day of the assessment, but she did not tell her that she no longer needed any assistance with mobility. The Appellant testified that she has good days and bad days, and that on her bad days, she is not even able to get out of bed. She referred to her lupus, asthma, and back pain as the reasons for her need for assistance with mobility. (Testimony of ██████████) However, there is no medical documentation to support a diagnosis of lupus.

On redirect, the worker testified that the Appellant did not limit her comments to the day of the assessment. Rather, the worker recalled that the Appellant had moved to a new residence, so she no longer needed assistance because she could get to the bathroom on her own. The worker further testified that a new medical need form was submitted by the Appellant in ██████████, and the Appellant's physician only noted the following diagnoses: asthma, hypertension, carpal tunnel syndrome, chronic lower back pain, and general anxiety disorder, and the Appellant's physician only certified a need for assistance with IADLs, not mobility. (Testimony of ██████████)

Because this ALJ finds the worker's testimony credible, and because the medical documentation does not support a need for mobility assistance, the removal of the HHS hours for mobility must be affirmed.

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.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

[REDACTED]
Docket No. 2010-30689 HHS
Decision and Order

cc:

[REDACTED]

Date Mailed: 7/1/2010

***** 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.