

**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. 2010-31851 HHS

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant was present at the hearing. ██████████ served as the Appellant's translator. The Appellant was represented by her chore provider, ██████████ ██████████, Appeals Review Officer, represented the Department (DHS). ██████████, Adult Services Worker (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 is a ██████████, who has been diagnosed with arthritis of the knee, COPD, hypertension, and breast cancer. (Exhibit 1, page 17; Exhibit 2, page 2)
3. The Appellant lives alone. ██████████ is the Appellant's her chore provider. (Exhibit 1, page 15)
4. On ██████████, the Appellant's former worker met with the Appellant at her apartment. At that time, the worker noted concern about the amount of services the Appellant was receiving. (Exhibit 1, page 16)

5. On ██████████, the chore provider contacted the current worker by phone to inquire about a delay in receiving her check. The worker testified that the chore provider informed her of changes in the Appellant's service. The chore provider told the worker that she was no longer bathing the Appellant and that she only prepared two meals for the Appellant five days per week. (Exhibit 1, page 16; Testimony of ██████████)
6. Based on the information from the chore provider, the worker removed the HHS hours authorized for bathing and reduced the hours authorized for meal preparation. (Exhibit 1, pages 14-15; Testimony of ██████████)
7. 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 ██████████. (Exhibit 1, pages 10-13)
8. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's signed 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.

The Adult Services Manual addresses the issue of assessment as follows:

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).

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It further addresses the need for supervision, monitoring, or guiding below:

Services Not Covered By Home Help Services

Do **not** authorize HHS 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 - Medical transportation policy and procedures are in Services Manual Item 211.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care

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The worker testified that she removed bathing and reduced meal preparation based on her telephone conversation with the chore provider. The worker explained that the chore provider told her that she was no longer bathing the Appellant, because the Appellant can do so on her own, and that she was only preparing two meals per day for the Appellant, five days per week. The Appellant and her chore provider dispute these actions.

Bathing

The Appellant and her chore provider disagree with the removal of bathing. The Appellant's chore provider testified that she does bathe the Appellant two times per week. She further testified that she talked very briefly to the worker in ██████████ to inquire about her check. She disputes telling the worker that she does not bathe the Appellant. She stated that she told the worker that bathing had been reduced—she was not bathing the Appellant as often as she did in ██████████. However, the provider logs from ██████████ do not reflect any bathing being provided during those months. (Exhibit 2, page 1) This ALJ finds the worker's testimony credible. Given the information provided to the worker by the Appellant's chore provider regarding bathing, the removal of HHS for bathing was proper.

Meal Preparation

The Appellant and chore provider also disagree with the reduction in meal preparation. The chore provider testified that she provides two meals a day for the Appellant five days per week, and she also prepares snacks for the Appellant, which she asserts takes her three hours per week. She stated that she told the worker about meal preparation; she did not tell her about the snacks.

The Appellant's chore provider is being paid for preparing two meals for the Appellant five days per week. So the only dispute is the three hours she spends preparing snacks for the Appellant. This ALJ finds three hours for snack preparation excessive, especially given the type of snacks that the Appellant's chore provider testified she prepares—fruits, Jello, and jars of pickled vegetables.

In addition to disputing the removal of bathing and the reduction in meal preparation, the Appellant's chore provider asserts that she provides more services to the Appellant than she is being paid for. Specifically, she asserts that she provides the following tasks for the Appellant in addition to bathing and the IADLs: dressing, transferring, and medications. (Exhibit 1, pages 4-6)

Dressing

The Appellant's chore provider states that it takes her 15 minutes to dress the Appellant after she bathes her. However, the chore provider failed to explain why she needs to dress the Appellant on those days, especially since the Appellant is capable of dressing herself the other five days of the week. Further, the Appellant's doctor has not certified a need for assistance with dressing. (Exhibit 2, page 2)

Transferring

The Appellant's chore provider further states that she is entitled to time for transferring because she drives the Appellant to her doctors' appointments and to the store to shop. The chore provider misunderstands the task of transferring. Transferring is defined as "[m]oving from one sitting or lying position to another sitting or lying position; e.g. from bed to or from a wheelchair or sofa, coming to a standing position and/or repositioning to prevent skin breakdown." *Adult Services Manual (ASM) 365, 10-1-1999, ILS Appendix, Page 2*. The service she is providing is transportation, and HHS does not pay for transportation.

Medications

The Appellant's chore provider also states that she has to remind the Appellant daily to take her medications. However, HHS also does not pay for reminding or supervision.

The Appellant testified that she needs help because she is weak. She is 78 years old, she has a heart condition and arthritis in her hands, and her legs swell. She stated that her chore provider is always quick to respond to her needs. She confirmed that the chore provider bathes her two times per week and prepares her meals five times per week. However, this ALJ notes that there was some assistance from the chore provider in answering questions regarding the services being provided.

The Appellant has the burden of proving, by a preponderance of evidence, that the Department improperly reduced her HHS payments. The Appellant has not met her burden.

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 payment.

[REDACTED]
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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

cc:

[REDACTED]

Date Mailed: 8/2/2010

***** 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.