

**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:

Docket No. 2010-36915 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 was represented by her son and chore provider, [REDACTED]. The Appellant was present for the hearing. [REDACTED] interpreted for the Appellant. [REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Adult Services Supervisor, appeared as a witness for the Department. [REDACTED], Adult Services Worker, and [REDACTED], Chore Services Worker, were also present.

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 suffers from dementia. (Exhibit 1, page 21)
3. The Appellant's son is her HHS chore provider. (Testimony of [REDACTED]; Exhibit 1, page 17)
4. On [REDACTED], the Appellant's son contacted the Adult Services Worker (worker) regarding changes to the Appellant's needs. A new DHS 54-A medical needs form was submitted reflecting these changes. At this time, it was also discovered that Instrumental Activities of Daily Living (IADLs) were not being prorated per policy to reflect the household composition. (Exhibit 1, pages 19-20)

5. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant, indicating that her HHS payments would be reduced to ██████████ per month, effective ██████████ to reflect the changes in need and the proration of the IADLs. (Exhibit 1, pages 4-5)
6. On ██████████, the Appellant's son again contacted the worker, and in that conversation, he advised that he was paying someone else to help take care of the Appellant. (Exhibit 1, page 19)
7. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant, suspending her HHS payments, effective ██████████, because her son was not actually providing her services. (Exhibit 1, pages 6-9)
8. On ██████████, the Appellant's son spoke with the Adult Services Supervisor, whom essentially conducted a review over the telephone. The Appellant's son advised that he worked 40 to 50 hours per week, and while he was at work, he paid someone else to care for the Appellant. (Exhibit 1, page 18-19)
9. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant, advising that her HHS payments would be reduced to \$ ██████████ per month, effective ██████████ to reflect the services actually being provided by her son. (Exhibit 1, pages 10-13)
10. On ██████████, the Department 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.

The Adult Services Manual 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

In the present case, the Department reduced the Appellant's HHS payment based on the Appellant's son's statements that he was not assisting her with certain tasks. Instead, he was paying someone else to assist the Appellant. The Department does not dispute the Appellant's need for services. However, it is concerned with who is actually providing the Appellant's with services.

The Appellant's son disagrees with the reduction because he states that he is now the only person caring for the Appellant. He testified that he quit his job in [REDACTED], and that he does everything for the Appellant. The Appellant's son did acknowledge that he was paying someone else to take care of the Appellant and that he informed the worker of this.

The Department has established that the reduction in the Appellant's HHS payment was in accord with policy. The Appellant's son cannot be paid for a tasks he did not assist the Appellant with himself. However, in light of the Appellant's son's testimony that he is now the sole chore provider, it appears that a new assessment, if one has not already been done, would be in order.

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 .

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]

Docket No. 2010-36915 HHS
Decision and Order

Date Mailed: 7/19/2010

***** 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.