

**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. 2010-38603 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 ██████████.

██████████, represented the Department. ██████████
██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly authorize Appellant's Home Help Services (HHS)?

FINDINGS OF FACT

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

1. Appellant is an ██████████ with Down's Syndrome. (Exhibit 1).
2. Appellant is a Medicaid beneficiary.
3. Appellant lives with his mother. Appellant's mother is also his guardian and his paid HHS chore provider. (Exhibit 1, Page 9).
4. Prior to ██████████ Appellant had not reached the age of ██████████, his mother was a responsible relative, and therefore the HHS program prohibited her being paid as an HHS chore provider.
5. After ██████████ Appellant's mother applied to be the paid Home Help Services chore provider for the Appellant.

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6. On ██████████, an ASW conducted an assessment of Appellant's need for HHS with Appellant present in Appellant's home. During the assessment the ASW asked questions and received answers from the Appellant. (Exhibit 1, Pages 10-12).
7. During the ██████████, assessment the Appellant's mother-Representative told the ASW, or the ASW observed, that the Appellant needed assistance with bathing, grooming, dressing, toileting, eating, housework, laundry, shopping, meal preparation, and medications. Because the Appellant had a need for those HHS services the time and tasks for bathing, grooming, dressing, toileting, eating, housework, laundry, shopping, meal preparation, and medications were authorized for Appellant's HHS payment. (Exhibit 1, Pages 7-8).
8. In or before ██████████, the Department sent a Services and Payment Approval Notice notifying Appellant that Home Help Services payments would be approved for the amount of ██████████, and the effective date would be retroactive to ██████████. (Exhibit 1, Pages 4-5).
9. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 1, Page 3). In the Appellant's request for hearing, the Appellant's mother-representative stated she did not agree with the amount of hours and payment authorized.

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 agencies.

If an applicant for Medicaid covered services is dissatisfied with the amount of assistance he is authorized to receive he may demand in writing a hearing to contest the amount he is about to receive under a Medicaid program. See *MCL 400.37, 42 CFR 431.220(a)(2)*.

The ASW testified that a comprehensive assessment was completed on ██████████, at which the Appellant's mother-representative was asked questions and for which she provided answers. Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-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 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 April only be authorized for needs assessed at the three (3) level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of three (3) or higher, based on interviews with the customer and provider, observation of the customer's abilities and use of the reastepsonable 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:

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- Five (5) hours/month for shopping .
- Six (6) hours/month for light housework.
- Seven (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 by ALJ).

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).

Authorization of bathing, grooming, dressing, toileting, eating, housework, laundry, shopping, meal preparation and medication services –

The ASW testified that during the assessment the Appellant's mother-representative told the ASW, or the ASW observed, that the Appellant needed assistance with bathing, grooming, dressing, toileting, eating, housework, laundry, shopping, meal preparation, and medications. The ASW testified that because the Appellant needed assistance with bathing, grooming, dressing, toileting, eating, housework, laundry, shopping, meal preparation, and medications those services were authorized for Appellant, and to be paid to his mother-representative as a HHS payment. (Exhibit 1, Pages 7-8). The ASW explained that in essence, all the tasks the Appellant's mother-representative told that she performed for the Appellant were authorized for payment.

The Appellant's mother-representative testified that she failed to include all the hands-on care she might perform for the Appellant during the day when he is not in school. As an example Appellant's mother-representative stated that she needs to rub lotion into the Appellant's skin, but she forgot to mention it or didn't know she should have mentioned it to the ASW at the time of the assessment. The jurisdiction of the administrative hearing is limited to information that was provided to the Department at the time the Department took its action, in this case its authorization of HHS payment. Because the Department did not have information such as the application of lotion, at the time it made its authorization, it was proper for the Department to not include such in an authorization. This Administrative Law Judge lacks the equitable jurisdiction to utilize information the Department did not have at time it made its HHS payment authorization.

The evidence demonstrates that the Department's authorization for HHS payment was proper.

Disallowance for the portion of HHS tasks related to verbal assistance such as reminding, guiding and encouraging-

The Appellant's mother-representative stated that in addition to her son having Down's Syndrome and not being able to talk, he is hyperactive, he needs to take Ritalin four times a day, and needs constant supervision. The Appellant's mother-representative asserted that she believed the payment authorization to her of ██████████ was not enough to cover the HHS tasks and constant supervision.

As stated below in Department policy, the Department is prohibited from authorizing HHS payment for verbal assistance such as reminding, guiding, or encouraging. The ASW authorized the Appellant for the hands-on HHS tasks the Appellant's mother-representative stated she performed for the Appellant, but did not authorize HHS payment for reminding, guiding, or supervision.

Adult Services Manual (ASM 363, 9-1-08), page 9 of 24 unequivocally demonstrates that HHS cannot be used for reminding, guiding or encouraging, and the similar act of supervision:

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 April only be authorized for needs assessed at the 3 level or greater.

The evidence of record demonstrates the Adult Services Worker properly performed a HHS assessment in accordance to Department policy. The ASW went to the Appellant's home and asked questions of the Appellant's mother-representative. Based on the information the ASW was provided by the Appellant and his chore provider at the time of the assessment the ASW authorized HHS services for hands-on tasks, but not for supervision or guiding.

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The above policy shows that HHS Medicaid funding cannot be used to provide supervision or guiding. The Department determination that HHS is prohibited from paying for the services of reminding, guiding or encouraging Appellant was proper.

The Appellant bears the burden of proving by a preponderance of evidence that the Department's authorization was not proper. The Appellant did not provide a preponderance of evidence that the Department's authorization 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 assessed 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 authorized his 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

cc:



Date Mailed: 9/21/2010

***** 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.