

**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. 2010-39439 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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, represented herself. ██████████, was present as the Appellant's witness. ██████████, represented the Department. ██████████ was present as a Department witness. ██████████, was also present for the hearing

ISSUE

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

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, who participates in the HHS program.
2. The Appellant suffers from multiple sclerosis and a seizure disorder. (Exhibit 1, page 10; Testimony of ██████████)
3. On ██████████, the worker met with the Appellant, at her home, to conduct an annual assessment. (Exhibit 1, page 9)

4. At the assessment, the Appellant advised the worker that “everything was pretty much the same” and that there were no significant changes in her condition or needs since the last review. (Exhibit 1, page 9)
5. Following the assessment, the worker removed the task of eating from the Appellant’s chore grant, reducing her HHS payment to ██████████ per month. (Exhibit 1, pages 4-6)
6. The Advance Negative Action Notice reducing payments was mailed on ██████████, with an effective date of ██████████.
7. The Appellant requested a formal, administrative hearing on ██████████. (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 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.

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/her 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 re-determination.
- 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 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
- 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 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 the 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. When hours exceed the RTS rationale must be provided.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication. The limits are as follows:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven 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. If there is a need for expanded hours, a request should be submitted to:

* * *

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 the 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.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- 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 the same time period).

Adult Services Manual (ASM) 363, pages 2-5 of 24 9-1-2008

In this case, the worker testified that he conducted an annual assessment on ██████████, and removed eating from the Appellant's chore grant. But he could not articulate any reason for the removal. He stated that when he conducts an assessment, he generally goes over each task with the beneficiary, and he believes that he did so in this case. He also believes that the Appellant must have given him some indication that she no longer needed assistance with eating. However, he admitted that he has no personal knowledge of that fact, nor can he recall the actual questions he may have asked at the assessment or the Appellant's answer. Further, the worker's narrative notes specifically state that there were no "significant problems or changes . . . since the last review." (Exhibit 1, page 10)

On the other hand, the Appellant credibly testified that the worker never asked her about any specific tasks or what she needed assistance with. And the Appellant and her chore provider both testified that the Appellant does require assistance with eating on a daily basis. More specifically, they explained that because of her multiple sclerosis, the Appellant has difficulty holding a cup and utensils because she is shaky. In addition, the Appellant testified that she has cysts underneath her arms that swell and cause her pain when she lifts her arms. However, the Appellant did admit that foods that do not require the use of utensils are manageable for her, such as sandwiches and cold, dry cereal.

The task of eating is defined as follows:

Reaching for, picking up, grasping utensil and cup; getting food on utensil, bringing food, utensil, cup to mouth, chewing, swallowing food and liquids, manipulating food on plate, cutting food. Cleaning face and hands as necessary following a meal.

*Adult Services Manual (ASM) 365, 10-1-1999,
ILS Appendix, page 1.*

Further, the manual states that a rank of three is warranted if “[a]ssistance is needed during the meal; e.g., to apply assistive device, hold beverage, cut up food, or push more food to the within reach, etc., but constant presence of another person is not required.” A rank of four is warranted when the beneficiary “[f]eeds self some foods, but cannot hold utensils, cup, glass, etc., and requires constant presence of another person.”

*Adult Services Manual (ASM) 365, 10-1-1999,
ILS Appendix, page 1.*

Here, the evidence supports that the Appellant needs eating assistance. The chore provider testified that the Appellant needs assistance with holding her silverware and cup on a daily basis. She explained that she assists the Appellant by putting the cup in the Appellant’s hand and helping her put the cup to her mouth. And on days when the Appellant is in pain, she actually feeds the Appellant. Accordingly, the removal of that task from the Appellant’s chore grant was improper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly reduced the Appellant’s HHS payment.

IT IS THEREFORE ORDERED that:

The Department’s decision is REVERSED. The Department shall reinstate the task of eating to the Appellant’s chore grant.

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

cc:



Date Mailed: 9/1/2010

Docket No. 2010-39439 HHS
Decision and Order

***** 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.