

**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:

████████████████████,

Appellant

_____ /

Docket No. 2010-39443 HHS

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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, who was present and testified. The Department was represented by ██████████. Her witness was ██████████. Also in attendance, was ██████████.

PRELIMINARY MATTER:

On ██████████, the ALJ received an unsolicited medical record [DOS ██████████] concerning the Appellant from ██████████. It was not admitted.

ISSUE

Did the Department properly reduce the Appellant's HHS following in-home assessment?

FINDINGS OF FACT

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

1. At the time of hearing the Appellant is a ██████████, female, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with sickle cell anemia, chronic pain, impaired mobility, severe anemia, asthma and constipation. (Department Exhibit A, pp. 11, 12)

3. The Appellant has no cognitive impairment. She is fully oriented and participated effectively in the presentation of her proofs at hearing. (Department's Exhibit A, p. 6 and See Testimony of Appellant)
4. On ██████████, the ASW conducted an in-home assessment of the Appellant. Her mother/representative/choreprovider was present and answered questions posed by the worker. The Appellant answered questions as well. (Department's Exhibit A, p. 6)
5. The Appellant lives with her family. (See Testimony)
6. On ██████████, an Advance Negative Action Notice was sent to the Appellant informing her of the reduction in accordance with policy. She was advised of her further appeal rights. (Department's Exhibit A, pp. 2, 4)
7. The instant appeal was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████.

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.

Home Help Services 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 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 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
- 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. When hours exceed the RTS rationale must be provided.

Adult Service Manual (ASM), §363, pp. 2, 3 of 24, 9-1-2008.

Service Plan Development

Address the following factors in the development of the service plan:

- 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).

Supra, p. 5 of 24.

The Department witness testified that on in-home assessment she observed [and it was reported to her] that the Appellant was in an improved condition and was able to bathe, groom, dress and toilet herself. The ASW said she observed the Appellant walking about the residence.

The Department witness testified further that it was still necessary for the choreprovider/mother to provide the Appellant with her daily injection and to assist with meal preparation, laundry and other chores. She said there were three adults living in the home; mother, father and the Appellant and that services were prorated by a ratio of three (3) according to policy.

The Appellant's representative said that the Appellant had undergone a colostomy prior to ████████, a surgical reversal and the removal of a portion of her colon. Accordingly, bowel management is problematic for the Appellant. This condition, she said, is aggravated by the Appellant's long history of constipation in addition to symptomology resulting from her sickle cell anemia.

The parties agreed that the Appellant has good days and bad days. It was acknowledged that the Appellant's primary diagnosis is a chronic, life-long affliction.

At hearing, the Appellant and her representative testified that they did not share details of the Appellant's toileting management with the ASW – out of embarrassment. The choreprovider/mother testified that she does “everything” for the Appellant from managing her finances to [fecal] clean-up. She characterized the details of the Appellant's care as “so personal” she doesn't tell anybody what she does.

The Appellant testified that she has varying levels of success - owing to pain – when toileting or simply sitting.

On review, the medical evidence supported the ASW's evaluation that the Appellant was in an improved condition on the date of assessment. Neither the Appellant nor her representative disputed what they said on the date of assessment. Faced with her personal observations, the statements of the Appellant and her choreprovider – in conjunction with the medical evidence of record at the time of assessment I believe that the ASW properly assessed the Appellant for purposes of HHS. This led to the elimination of several ADLs and the proration of the remaining IADLs – all legitimate reductions based on the ASW's personal observations and the statements of the Appellant and her mother.

Obviously, candid discussion about service need with the ASW is critical. The ASW cannot assess the validity of statements not voiced.

Absent cognitive impairment or youthful immaturity the ALJ can find no basis to afford weight to the Appellant's testimony regarding embarrassment on discussing the peculiarities of her waste elimination process.

Furthermore, since the ALJ can only make decisions based on facts established in the record, law and relevant policy it is my determination that the assessment conducted by the ASW was accurate when made and that it was consistent with existing policy.

The Appellant did not preponderate that the Department erred in the adjustment of her HHS.

A comprehensive assessment and the application of proration policy is the responsibility of the ASW – any serious medical changes for this Appellant have likely occurred post assessment and would be subject to future review - if requested by the Appellant.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced the Appellant's HHS payment.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

[REDACTED]
Docket No. 2010-39443 HHS
Decision and Order

cc:

[REDACTED]

Date Mailed: 9/15/2010

***** 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.