

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2010-41143 HHS
[REDACTED]

[REDACTED]
Appellant
_____ /

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 [REDACTED], [REDACTED], mother and Guardian, appeared on the Appellant's behalf. [REDACTED], step-father, appeared as a witness for the Appellant. [REDACTED] was also present. [REDACTED], Appeals and Review Officer, represented the Department. [REDACTED], Adult Services Worker, and [REDACTED], Adult Service Supervisor, appeared as witnesses 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 [REDACTED] Medicaid beneficiary who has been diagnosed with cervical palsy, seizure disorder, and chronic encephalopathy. (Exhibit 1, page 12)
2. The Appellant's mother is her chore provider for the Home Help Services program. (Exhibit 1, pages 9-10)
3. The Appellant attends a day program, typically, Monday through Friday from 9:00 am to 3:00 pm, although some days are missed for staff training, holidays, illness, etc. (Mother Testimony)

4. The Appellant's father has visitation the third weekend of every month from 5:30 pm Friday to 6:00 pm Sunday, and the other Saturdays of the month from 10:00 am to 5:00 pm, but he does not always exercise his visitation time with the Appellant. (Mother Testimony and Exhibit 2)
5. The last home visit the completed by the Adult Service Worker (ASW) was in ██████████ and the ASW observed a large addition being built onto the home. (ASW Testimony)
6. In ██████████, the Appellant's mother and step father moved into the separate living space, which has a separate entrance and postal address. (Mother and Step Father Testimony)
7. On ██████████ the Department issued an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payment would be reduced to ██████████ effective ██████████, because of shared living arrangements and to allow for the Appellant's care at the day program and for visits with her father. (Testimony and Exhibit 1, pages 4-7)
8. The HHS hours authorized for mobility were also eliminated, but were not addressed in the ██████████ Advance Negative Action Notice. (Exhibit 1, pages 4-7 and 9-10)
9. On ██████████, the State Office of Administrative Hearings and Rules received the Request for Hearing signed by the Appellant's Guardian. (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.

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 private or public agencies.

Program requirements are set forth in Adult Services Manual item 362, below:

COMPREHENSIVE ASSESSMENT

If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the

personal care needs. Complete the comprehensive assessment (DHS- 324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

CONTACTS

The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and redetermination.

Adult Services Manual (ASM 362) 12-1-2007, Page 3 of 5

Adult Services Manual item 363 addresses program procedures:

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.

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 same time period).

REVIEWS

ILS cases must be reviewed every six months. A face-to-face contact is required with the client, in the home. If applicable, the interview must also include the caregiver.

Six Month Review

Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.
- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- Follow-up collateral contacts with significant others to assess their role in the case plan.
- Review of client satisfaction with the delivery of planned services.

Annual Redetermination

Procedures and case documentation for the annual review are the same as the six month review, with the following additions:

Requirements

- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- A new medical needs (DHS-54A) certification, if home help services are being paid.

Note: The medical needs form for SSI recipients will **only** be required at the initial opening and is no longer required in the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and then annually thereafter.

- A face-to-face meeting with the care provider, if applicable. This meeting may take place in the office, if appropriate.

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In the present case, the Department proceeded with a reduction to the Appellant's HHS hours without completing a home visit, comprehensive assessment and service plan review. The Department explained that the reductions were based upon testimony at a [REDACTED], hearing that the Appellant lived with her mother and step father, attends a day program, and has visitation with her father one day per week and one weekend per month. While this ALJ understands the Departments concerns that a reduction may have been appropriate due to a shared living arrangement and the time the Appellant is out of the home, this should have prompted a comprehensive assessment to determine the appropriate level on ongoing services. Department policy requires the comprehensive assessment and service plan review at least every six (6) months, or more often if necessary. The Advance Negative Action Notice was issued [REDACTED] [REDACTED] regarding the reduction effective [REDACTED]. (Exhibit 1, pages 4-7) The ASW testified that the last home visit was completed in [REDACTED].

The ASW reduced the HHS hours from 7 days per week to 6 days per week for all activities, reduced the HHS hours for toileting from 28 minutes per day to 18 minutes per day, and reduced the HHS hours for eating from 56 minutes per day to 36 minutes per day. (Exhibit 1, pages 9-10) This was based on the time the Appellant spends away from home at the day program and with her father for the one day per week and one weekend per month visitation. (ASW Testimony) However, without performing a comprehensive assessment, the ASW failed to gather the needed information to determine if these reductions were appropriate. The Appellant is only gone for part of the day when she is at the day program (9:00 am to 3:00 pm) or for the Saturday visitation with her father (10:00 am to 5:00 pm). (Mother testimony and Exhibit 2) Accordingly, the Appellant is still at home for morning and evening care which would include bathing, dressing, grooming, breakfast, dinner, etc. Further, the Appellant misses many days of the day program and visitation with her father. (Mother Testimony) It was not appropriate to reduce the HHS hours for all activities to 6 days per week.

The reductions to the minutes per day authorized for toileting and eating seem more reasonable based on the Appellant being out of the home part of the day most days per week. However, the reductions to the minutes per day for toileting and eating can not be supported without a recent comprehensive assessment. For example, the Appellant is ranked as a level 5 for eating, but the ASW testified she had not yet assessed the case further and is unsure if the Appellant really needs the maximum level of assistance for eating, or if she can feed herself with assistance cutting foods. (Exhibit 1, page 8) The Appellant's mother's testimony indicates that the Appellant can feed herself with some hands on assistance (cutting foods) but also requires verbal assistance, reminding, guiding, and encouraging.

The ASW also acknowledged that the HHS hours for mobility were eliminated, which was not addressed in the Advance Negative Action Notice. This was based on a change in ranking to a level 2, which the ASW testified she no longer believes is accurate. (Exhibit 1, page 8) The Appellant's mother and step father also testified that

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the Appellant does need hands on assistance with mobility, not just guiding, reminding, or supervision. They explained that while the Appellant is mobile, at time she throws herself back and forth while walking, can fall if reaching while walking, needs assistance when ever there is a change in height, color of flooring, or through doorways. A note from the chiropractor also documents pelvic instability which is affecting the Appellant's gait. (Exhibit 5) The elimination of HHS hours for mobility can not be sustained.

The ASW also prorated the activities of housework, shopping, laundry and meal preparation. The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks based upon the number of persons residing in the home together, as the Appellant's family members would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. However, exceptions can be made if there is a need to perform these activates separately, such as incontinence leading to separate laundry or special dietary consideration that requires totally separate meal preparation.

The Appellant's mother and step father assert that they no longer live in a shared household with the Appellant and that housework, laundry, shopping and meal preparation are performed separately for the Appellant. They explained they live in the new space, which has separate living areas including, bedroom, bathroom, kitchen and laundry facilities. The ASW testified she saw the large addition being built at the [REDACTED] home visit but did not understand that it was to be a totally separate residence. The Appellant's mother and step father testified that the additional has a separate entrance and postal address. Proration of the IADL's would not be appropriate if the Appellant is living by herself in a separate living space with a separate entrance and postal address, and the IADL's are being performed separately for her.

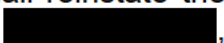
The Appellant's mother and step father further explained that shopping, laundry and meal preparation are performed separately for the Appellant. The continence and dietary issues were also documented in the Appellant's Person Centered Plan from Community Mental Health, which was provided to the Department at the [REDACTED]. (Exhibit 4) However, the ASW testified she did not review this information when making reductions to the Appellant's case. The Adult Service Supervisor stated that because the Appellant's mother and father could eat the Appellant's foods, proration of meal preparation was appropriate. This ALJ disagrees, the issue is not whether the rest of the family could eat the same foods as the Appellant, but rather that the Appellant can not eat the same foods as the rest of the family and requires separate meal preparation. There is sufficient documentation of extensive dietary restrictions and incontinence to support not prorating meal preparation and laundry based on the Appellant's needs. The Appellant's mother also testified that shopping is performed completely separately for the Appellant. She described making separate trips to the store to purchase foods only the Appellant will consume, using the Appellant's separate funds.

The Department's action to implement a HHS payment reduction without completion of a recent home visit, comprehensive assessment, and service plan review can not be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department did not properly reduce Home Help Services payments to the Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department shall reinstate the Appellant's Home Help Services payments retroactive to the , effective date. The Department shall also schedule a home visit and complete a comprehensive assessment and service plan review to determine the appropriate level on ongoing services for the Appellant.

Colleen Lack
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.