

**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. 2010-51274 HHS
[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]. [REDACTED] appeared on her own behalf. [REDACTED], son, appeared as a witness for the Appellant. [REDACTED], Appeals 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 assess and authorized Home Help Services 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 is a [REDACTED] woman with diagnoses including COPD oxygen dependant, hypertension, diabetes, and neuropathy in left leg. (Exhibit 1, pages 13 and 17)
3. The Appellant lives in a home with two other adults, her son and daughter. (Exhibit 1, page 10)
4. The Appellant's son is her chore provider. (Exhibits 1, pages 10-11 and 15-16)
5. On [REDACTED], a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 10)

6. On [REDACTED], the Appellant's physician completed a DHS 54-A Medical Needs form indicating that the Appellant had a medical need for assistance with transferring, mobility, meal preparation, shopping, laundry, and housework. (Exhibit 1, page 17)
7. As a result of the information gathered for the assessment, the worker the worker authorized HHS hours for the activities of housework, laundry, shopping, and meal preparation. (Exhibit 1, page 11)
8. On [REDACTED], the Department sent a Services and Payment Approval Notice to the Appellant indicating that Home Help Services payments were approved for [REDACTED] per full month starting [REDACTED]. (Exhibit 1, pages 6-8)
9. On [REDACTED] the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 4-5)

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 private or public agencies.

Adult Services Manual (ASM 363, 9-1-08), pages 2-5 of 24 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).

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;

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- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

*Adult Services Manual (ASM) 363, 9-1-2008,
Pages 2-15 of 24*

On [REDACTED], the Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant and her son were present for the home visit. The ASW testified that the Appellant stated she did not need assistance with any activities of daily living. (ASW Testimony and Exhibit 1, page 9) As a result of the information provided for the assessment, the worker ranked the Appellant at level 4 for housework, laundry, shopping and meal preparation, and as a level 1 for all other activities. (Exhibit 1, page 12) The ASW stated that HHS hours were authorized for housework, laundry, shopping, and meal preparation in accordance with the rankings and household composition. (ASW Testimony and Exhibit 1, page 11)

The Appellant disagrees with the HHS payment authorized by the ASW and asserted that the ASW's notes indicating she can make a few light meals and microwave meals is not accurate. (See Exhibit 1, page 10) She testified that due to being on oxygen 24/7, she can not go into her kitchen. The Appellant explained that her doctor told her to not go near heat or flames and that she has a gas stove which has a pilot light. The Appellant testified that she can not use the microwave because it is too high and because it is in the kitchen. The Appellant acknowledged that she would physically be able to put cereal in a bowl, but stated that she can not do this for herself because she can not go into the kitchen to get the needed items. (Appellant Testimony)

The Appellant further testified she has limited movement due to congestive heart failure and her lungs fill with fluid if she moves too much. She stated that she can not go up or down stairs to do the laundry, but could fold clothes if they were brought to her. Regarding bathing, the Appellant explained that her son sets up the bath or shower for her, washes her hair and her back. She testified that her son also helps with her socks/shoes and combs/brushes her hair, but was not sure if the ASW specifically asked about this during the home visit. The Appellant further stated that her son has to be with her 24/7 to watch her for dizziness and tremors. The Appellant's son testified that he does more for his mother than what the ASW wrote down.

The HHS program does not compensate for all types of assistance the Appellant's son may be providing. Supervision and monitoring, such as watching the Appellant for

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dizziness or tremors, and transportation assistance are not covered under the HHS program. The HHS program only compensates for the specific activities of daily living and instrumental activities of daily living listed in the above cited policy.

It appears that personal care activities such as bathing, dressing and grooming were not sufficiently discussed during the [REDACTED] home visit. The ASW testified the Appellant reported no need for assistance with these activities at the Assessment. The Appellant testified that her son is providing hands on assistance with some aspects of these activities. However, the Appellant's physician did not certify a medical need for assistance with these activities. (Exhibit 1, page 17) The documentation from the Appellant's physician supports the ASW's determination that HHS hours should not be authorized for these activities.

The ASW ranked the Appellant as a 4 for housework, shopping, laundry and meal preparation and authorized prorated HHS hours for these activities. 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. Accordingly, the authorized hours for these activities must be prorated under Department policy. Exceptions can be considered when there is justification for performing a task completely separately, such as laundry that is washed separately due to incontinence. However, it does not appear that the Appellant's incontinence resulting in extra laundry was reported at the [REDACTED] home visit. (Appellant Testimony) Accordingly, the ASW could not have considered this when he made the initial HHS payment authorization.

The Appellant acknowledged that she is able to fold clothes and did not challenge the accuracy of the ASW's notes indicating that she can go with her provider for shopping to help select items. Accordingly, a ranking of 4 for shopping and laundry was appropriate as the Appellant requires much assistance from her provider with these tasks, but can participate to a limited extent. The Appellant testified she can not do any housework besides folding laundry. The ASW's note indicates he determined the Appellant would only be able to straighten or clean an area from a seated position due to neuropathy and breathing condition. (Exhibit, page 10) This is consistent with the ability to fold clothes once they are brought upstairs from the laundry facilities. The evidence support's the ASW's ranking the Appellant as a 4 for housework, shopping and laundry.

The accuracy of the ASW's notes from the home visit and ranking regarding meal preparation is questionable. (Exhibit 1, page 10) Given the Appellant's credible testimony, she would not have reported being able to use the microwave or prepare light meals. In a home with a small kitchen, the Appellant may not be able to enter the kitchen without being too close to the gas stove to comply with home oxygen safety standards. The Department should re-assess the Appellant's needs with this activity,

including obtaining documentation of her home oxygen safety requirements. If she is unable to safely enter the kitchen with the home oxygen, her ranking should be adjusted to a 5 for this activity.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department may not have properly assessed and authorized Home Help Services payments to the Appellant in the area meal preparation.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARITALLY AFFIRMED. The Department is ORDERED to conduct an assessment to obtain additional information regarding the home oxygen safety restrictions that may prohibit the Appellant from entering her kitchen.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 11/15/2010

***** 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.