

**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. 2010-52387 HHS

██████████

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 without representation. His witness was his choreprovider, ██████████. ██████████, appeals review officer, represented the Department. Her witness was ██████████.

PRELIMINARY MATTER

The Appellant offered Exhibit #2 at hearing – admission of which was taken under advisement at hearing. The exhibit is admitted over the objection of the department – but afforded little weight for the Appellant on review.

ISSUE

Did the Department properly reduce the 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. At the time of hearing the Appellant is a ██████████, disabled, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with Behcet's Disease, osteoporosis, severe osteoarthritis – right wrist, emphysema, legal blindness and hearing impairment. (Appellant's Exhibit #1)

3. On ██████████, the ASW ██████████] conducted a six-month reassessment for the Appellant that led to a reduction in services owing to a shared household. (Department's Exhibit A, pp. 4 - 11)
4. The Appellant brought a letter to hearing from ██████████, advising that the he was debilitated by severe arthritis, Behcet's disease and other maladies. There was no DHS 54A in the file. (See Record, throughout)
5. The Department representative said the Appellant was still in need of high levels of care and that services were reduced in August based only on a shared household theory. (See Testimony)
6. On ██████████ the negative action notice was sent to the Appellant advising him of the proposed reduction. (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 ██████████ (Appellant's Exhibit #1).

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).

(Emphasis supplied) *Supra*, p. 5 of 24.

The Department witness, ██████████, testified that on in-home assessment the evidence showed that the Appellant was living in a shared household arrangement with his choreprovider, ██████████. She said that shared household policy for IADL was applied with the resulting reduction in benefits for shopping, housework, laundry and meal preparation – by half.

The Appellant testified that he understood the policy – but that he had ██████████ move in owing to a recent “down slope” in his health. He added that as of the date of review he had not yet sought a reassessment based on an adverse change in his medical condition.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was accurate and drawn according to policy. The Appellant had not preponderated his burden of proof that the department erred in the assessment of his HHS benefit.


The following indicates the application of proration to the Appellant’s IADLs and the ALJ’s agreement:

- Housework was prorated by half.
- Laundry was prorated by half
- Shopping was prorated by half.
- Meal preparation was prorated by half.

A comprehensive assessment and the application of proration policy is the responsibility of the ASW. Based on the information presented at hearing I found the proration policy to be correctly applied.

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.


Docket No. 2010-52387
Hearing Decision & Order

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

cc:



Date Mailed: 11/24/2010

***** 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.