

**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. 2010-53461 HHS
Case No. 42597336

██████████,

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 on ██████████. ██████████ appeared on her own behalf. ██████████, appeared as a witness for the Appellant. ██████████, represented the Department. ██████████, and ██████████, appeared as witnesses for the Department.

ISSUE

Did the Department properly assess and authorized 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 ██████████ Medicaid beneficiary.
2. The Appellant has been diagnosed with hypertension, osteopenia, renal disease, mixed hyperlipidemia, cardiomyopathy, arthritis, sick sinus syndrome, gout, and vitamin D deficiency. (Exhibit 1, page 10)
3. The Appellant's ██████████ is her chore provider. (Exhibits 1, page 7)
4. On ██████████, a DHS Adult Services Worker (ASW) made a visit to the Appellant's home to conduct the initial Home Help Services assessment. The Appellant was present, as well as with her ██████████ and ██████████ (Exhibit 1, page 8)

5. As a result of the information gathered for the assessment, the worker authorized HHS hours for the activities of bathing, grooming, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 7)
6. On ██████████, the Department sent a Services and Payment Approval Notice to the Appellant indicating that Home Help Services payments were approved for \$██████████ per month starting ██████████. (Exhibit 1, page 4)
7. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's signed Request for Hearing. (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 Social Welfare Act, 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.

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;
- 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 ██████████, the ASW made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant was present as well as her ██████████ and ██████████. The ASW testified that the Appellant stated she can do some things herself slowly, such as dressing. (ASW Testimony and Exhibit 1, page 8) As a result of the information provided for the assessment, the ASW assigned rankings and authorized a total of 53 hours and 45 minutes HHS hours per month for assistance with bathing, grooming, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, pages 5-7)

The Appellant disagrees with the HHS payment authorized by the ASW and testified that her ██████████ help her 4 hours per day Monday through Friday, three hours per day on Saturday, and two hours per day on Sunday. However, the HHS program does not base the authorization of hours on the total number of hours per day or week a provider is present. Rather, the HHS program only compensates for the specific activities of daily living and instrumental activities of daily living listed in the above cited policy, and HHS hours are authorized based on the assigned ranking.

The Appellant's ██████████ testified that she does more than what the rankings indicate. However, the HHS program does not compensate for all types of assistance the Appellant's ██████████ may be providing. The Appellant's ██████████ specifically discussed bathing, housekeeping and laundry.

Bathing

The Appellant's ██████████ testified that the Appellant's hair washed in a separate sink, tinted, curled and blow dried. This goes beyond the basic aspects of bathing that are covered under the HHS program. The ASW ranked the Appellant as a level 3 for bathing based on her report that she needs help in and out of the tub. (ASW Testimony and Exhibit 1, page 8) The ASW's justification notes also show that the Appellant's provider washes her hair. The ranking at level 3 for bathing based on a need for assistance with getting in and out of the tub and washing hair is consistent with the DHS policy describing the functional assessment definitions and ranks for Activities of Daily Living. (See Exhibit 1, page 14) The ASW appropriately authorized HHS hours bathing 7 days per week in accordance with the ranking of 3. (ASW Testimony)

Housework and Laundry

The Appellant's [REDACTED] testified that she does more than the light housework authorized by the ASW and does laundry three times per week. She explained that the bed is striped often due to incontinence overnight, she scrubs floors, washes windows inside and out, and irons the laundry.

This ALJ does not doubt that the Appellant's [REDACTED] provides more assistance to the Appellant than what was authorized by the ASW. However, DHS policy sets out what tasks are included within each activity within the functional assessment definitions and ranks for the Instrumental Activities of Daily Living. (Exhibit 1, page 15) Further, DHS policy limits the maximum hours per month that can be authorized for these Instrumental Activities of Daily Living. (Exhibit 1 pages 12-13) The ASW ranked the Appellant as a level 5 for housework and laundry, indicating she is totally dependant on her provider for these activities. The ASW appropriately authorized the maximum number of hours per month for housework and laundry assistance allowed under DHS policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly assessed and authorized Home Help Services payments to the Appellant.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 12/21/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 March 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.