**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:

[redacted],

Appellant
_____/

Docket No. 2010-5348 HHS
Case No. [redacted]

## 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], represented the Appellant. The Appellant's chore provider/daughter-in-law was present.

[redacted], represented the Department of Community Health. [redacted], was present as a witness for the Department.

## ISSUE

Did the Department properly reduce 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 who participates in the Home Help Services (HHS) program.

2. The Appellant resides with his son, daughter-in-law and grandchild.

3. The Appellant receives payment assistance for the tasks of bathing, dressing, medication, housework, laundry, shopping and meal preparation.

4. The Appellant's case was recently reviewed, per Department guidelines for annual review and comprehensive assessment.

5. Following the most recent review, payment assistance for the tasks of housework, laundry, shopping and meal preparation was divided by 3, to reflect the number of adults residing in the home. No other reductions were implemented at that time.

6. The Appellant was notified of the reductions in an Advance Negative Action Notice dated [redacted]. The effective date on the Notice was indicated as [redacted].

7. The Department sent a second negative action notice, dated the same day, [redacted], with an effective date of [redacted].

8. The Appellant requested a hearing [redacted], within the 10 days the negative action is supposed to be pending.

## 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.

### ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

#### Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

*Adult Services Manual (ASM) 9-1-2008*

**Necessity For Service**

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.

• Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:

- Physician
- Nurse Practitioner
- Occupational Therapist
- Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

**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 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 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
- 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 the 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.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication. The limits are as follows:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven 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. If there is a need for expanded hours, a request should be submitted to:

**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 the 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 the same time period).

*Adult Services Manual (ASM) 9-1-2008*

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- The kinds and amounts of activities required for the customer's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer 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 customer.
- 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 customer 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 customer.
- HHS may be authorized when the customer is receiving other home care services if the services are not duplicative (same service for same time period).

*Adult Services Manual (ASM) 9-1-2008*

The home help service payments cannot be used to benefit other adults who are residing in the same home as the beneficiary according to Department policy. Tasks such as laundry, housework, shopping and errands are those which benefit all members of the same household in normal or usual circumstances. In other words, the home would be cleaned regardless of whether the Appellant lived in it or not, so the fact that he cannot participate in cleaning only causes the members of the house to lose his assistance with his share of the chores. Therefore, the fact he cannot perform his share of the housekeeping is addressed by the program. The housekeeping is not performed for the benefit of those who are able to and would be doing it for themselves anyway. The policy requiring pro-rating of shared household chores has few, if any exceptions. Evidence demonstrating a need for an exception must be presented to the worker or at hearing that would establish a medical need for the exception. An example would be a need to perform laundry separately due to bowel incontinence of a participant. Without medical evidence of bowel incontinence, simply asserting laundry is separate or "he does not eat what we eat" is insufficient evidence of a medical need to perform the tasks separately from others residing in the same household.

In this case, no evidence was presented establishing a medical need to have meal preparation, housework, laundry or errands performed separately from other adults sharing the home. The only reduction implemented by the Department was pro-rating the shared chores in accordance with Policy. The Department's actions were proper in the circumstances of this case.

The Notice of the reduction was not proper when first printed, however, the proper Notice was thereafter sent by the Department. In this case, the request for hearing was received during the period of time the action should be pended. In other words, the reduction should not have been implemented, pending the outcome of the hearing because the hearing had been timely requested. There is no evidence in the record relative to whether or not the reduction was implemented or if it had been stopped because of the hearing request. Because the Department has prevailed in the matter, if the action had been stopped pending outcome of the hearing, action to recoup would have to be undertaken against the Appellant to pay back the money; thus the Appellant's monetary position is not damaged if the Department did implement the negative action rather than delete it. This ALJ will not issue an order for the Department to make payment to the Appellant for difference in the payment assistance checked, only to have the Department proceed to a recoupment action, therefore, no order will issue pertaining to the implementation of the reduction pending outcome of the hearing.

## DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS payments in the areas of laundry, household chores, shopping and meal preparation.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 1/15/2010

[redacted]

***** 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.