

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-7032 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 ██████████, ██████████, chore provider, appeared as the Appellant's representative. ██████████ appeared and testified. ██████████, Appeals Review Officer, represented the Department (DHS). ██████████, Adult Services Worker, appeared 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.
2. The Appellant is a ██████ year-old woman who has been diagnosed with arthritis, coronary artery disease, hyperlipidemia, diabetes, and headaches. She also underwent a knee replacement in ██████████. (Exhibit 1, pages 11 and 13)
3. The Appellant lives in a house with her son, daughter in law and their minor children. (Exhibit 1, page 11)
4. On ██████████, a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant and her provider were present in the home. (Exhibit 1, page 11)

5. As a result of the information gathered from the Appellant at the assessment, the worker decreased the HHS hours authorized for housework, shopping, laundry, and meal preparation due to the household composition of 3 adults. The worker also removed toileting as an authorized task and reduced the HHS hours authorized for bathing, transferring, and mobility. (Exhibit 1, pages 7-8).
6. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated by the number of people living in the home.
7. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be reduced to ██████████ per month, effective to ██████████ (Exhibit 1, pages 5-8).
8. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's 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 (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).

Adult Services Manual (ASM) 9-1-2008, Pages 2-5 of 24

On ██████████, the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1 pages 11-12) The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, the HHS hours authorized for housework, shopping, laundry and meal preparation were

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decreased. The worker testified proration was applied to the authorized HHS hours in accordance with Department policy requiring that these activities be prorated based upon the number of adults living in the home.

The Appellant's representative testified that she disagreed with the reductions for housework, shopping, laundry and meal preparation. The Appellant's representative, who is also her chore provider, stated that she does everything for the Appellant. However, the Appellant's representative did acknowledge that there are 3 adults living in the home.

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 by the number of adults residing in the home together, as the Appellant's son and daughter in law, 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.

In the present case, the Department reduced the housework, shopping, laundry and meal preparation hours. Department policy allows for a maximum of 6 hours for housework, 7 hours for laundry, 5 hours for shopping, and 25 hours for meal preparation each month. The worker ranked the Appellant as a level 5 for these activities, indicating she is dependant on others and does not participate in these tasks even with assistance. (Exhibit 1 page 10) After proration for a household of 3 persons, the Department authorized 3 hours and one minute for housework, 2 hours and 30 minutes for laundry, 1 hour and 30 minutes for shopping, and 8 hours and 32 minutes for meal preparation per month. (Exhibit 1 page 8) This is approximately one third or greater of the maximum allowed hours for each of these activities. The housework, laundry, shopping, and meal preparation reductions are sustained.

The removal of toileting and reduction of HHS hours for bathing, transferring, and mobility are also at issue in this case. The worker testified she made these determinations based on the information provided by the Appellant and the chore provider during the home visit as well as her observations. The worker explained that the chore provider stated the Appellant was able to perform toileting on her own and that bathing assistance is only provided 3 days per week. Accordingly, the worker removed the task of toileting and reduced the bathing HHS authorized hours to reflect that the Appellant bathes 3 days per week instead of the 7 days per week previously authorized. (Exhibit 1, page 11)

The worker testified that the reductions in transferring and mobility were made based upon her observations of the Appellant getting around on her own within the home, including going up and down a step and on and off of the couch. The worker explained she left HHS hours for these tasks one day per week because with a diagnosis of arthritis, the Appellant may have some bad days. (Exhibit 1, page 11)

The Appellant testified that her provider does everything for her and she is very sick. The Appellant's representative explained that the Appellant no longer has any good days and is worse now than she was in [REDACTED]. The Appellant's representative did acknowledge that in [REDACTED] the Appellant was able to do some things on her own and had some good days and that bathing is done 3 days per week.

Based upon the testimony of the Appellant and her representative, it appears there as been a recent significant change in the Appellant's health and need for assistance. The Appellant's representative testified that the Appellant got worse about a month ago. This ALJ must review the action taken by the Department given the circumstances and information available at that time. The reductions made by the worker were proper given the information available at the time of the [REDACTED] assessment. The Appellant may wish to provide the Department with updated medical documentation and information regarding her further limitations and need for additional assistance, which could be taken into consideration for future HHS services.

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 housework, laundry, shopping and meal preparation based on the household composition of 3 adults. The removal of toileting and reductions in HHS hours for bathing, transferring, and mobility are also sustained based on the information available at the time of the assessment.

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]

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Date Mailed: _____

***** 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.