

**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. 2010-7379 HHS
Case No. 16170647

██████████
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 ██████████. The Appellant's stepson/chore provider, ██████████, appeared on behalf of the Appellant. The Appellant was present.

██████████, represented the Department ██████████. ██████████ appeared as witnesses 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. Appellant is a ██████ year-old man. (Exhibit 2).
2. Appellant is a Medicaid beneficiary.
3. Appellant's chore provider is his stepson and representative at hearing, ██████████. (Exhibit 1, Page 7).
4. Appellant lives with at least four adults.

5. On ██████████ Appellant's doctor filled out a medical needs form, DHS-54A and indicated the Appellant had pulmonary fibrosis and severe COPD. (Exhibit 1, Page 10).
6. Appellant's doctor filled out the medical needs forms and indicated the Appellant did not have a medical need for bathing services but may need assistance with mobility and medications, and the Instrumental Activities of Daily Living (IADLs): Shopping, Housework, Laundry and Meal Preparation. (Exhibit 1, Page 10).
7. On ██████████, Appellant's Adult Services Worker (ASW) made a visit to Appellant's home to conduct a required Home Help Services reassessment. Appellant and his stepson/chore provider were present in Appellant's home. During the assessment the ASW asked questions and received answers from both the Appellant and his chore provider.
8. On ██████████, the Department sent a Services and Payment Approval Notice notifying Appellant that Home Help Services payments would be approved for bathing assistance, shopping, housework, laundry and meal preparation, in the amount of ██████████ per month for ██████████ hours per month. (Exhibit 1, Pages 4-6).
9. On ██████████, the Department received 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 agencies.

The ASW testified that a comprehensive assessment was completed on ██████████, at which the Appellant and Appellant's stepson/chore provider were asked questions and for which they provided answers. The Appellant and Appellant's stepson/chore provider requested a hearing to assert that the 25:26 hours of payment authorization was not enough time to cover Appellant's needs.

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

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/his 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 redetermination.
- 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 for food and other necessities of daily living
- 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 April only be authorized for needs assessed at the three (3) level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of three (3) or higher, based on interviews with the customer and provider, observation of the customer's abilities and use of the reastepsonable 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:

- Five (5) hours/month for shopping .
- Six (6) hours/month for light housework.
- Seven (7) hours/month for laundry.
- 25 hours/month for meal preparation

These are **maximums**; as always, if the customer needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements. (Underline added by ALJ).

Adult Services Manual (ASM 363 9-1-08), page 5 of 24 requires a DHS worker to address:

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. (Underline added by ALJ).

Bathing authorization –

The ASW testified that during the reassessment the Appellant told her he could wash himself once he was in the shower but he needed help getting into and out of the tub. The ASW testified she observed that the Appellant's medical needs forms signed by the Appellant's physician indicated he did not need assistance with bathing. Because the Appellant had no medical certification for bathing but he stated he needed help getting into and out of the tub the ASW ranked him at a functional level of three (3) which accorded him a payment authorization for bathing. For seven (7) days a week the Department computer program generated the payment amount of ██████████ (Exhibit 1, Page 7).

Mobility authorization –

The ASW testified that during the reassessment the Appellant told her he needed to use a walker. The ASW documentation noted she observed that the Appellant's used a walker because he felt weak. Because Appellant stated he used a walker for mobility the ASW ranked him at a functional level of three (3) which accorded him a payment authorization for mobility. For seven (7) days a week the Department computer program generated the payment amount of ██████████ (Exhibit 1, Page 7).

IADL of Shopping, Housework, Laundry and Meal Preparation and Proration -

As stated above in Department policy, the DHS **must** divide the number of authorized hours for IADLs by the number of people in the household. The ASW authorized the Appellant for the maximum IADL time authorization for shopping, housework and meal preparation. The ASW authorized the Appellant for laundry at three (3) times per week because laundry is not completed seven (7) days each week for one (1) person, in this case for Appellant. The ASW ranked the Appellant at a functional level of four (4) because his COPD did not prevent him from sitting in a chair and fold his own laundry. The evidence in this case establishes that both

the Appellant and at least four (4) adults were living in the home at the time the DHS worker performed the ██████████ assessment. The DHS worker was mandated to prorate the IADL time authorization and did so properly.

The Appellant's stepson/representative testified that none of the other people who live in the home help with Appellant and it was unfair that he was being paid a prorated amount for helping the Appellant with all his needs. The Appellant's stepson/representative further testified that Appellant had diabetes but diabetes was not mentioned in the HHS payment authorization. The Appellant's stepson/representative said he believed there should be more payment authorization to pay for the extra food shopping and food preparation related to his special diabetes diet. It is important to note that in the most recent medical needs form Appellant's doctor does not indicate he has diabetes and does not specify a special diet for diabetes. (Exhibit 1, Page 10). The evidence demonstrates that the Department's authorization for meal preparation was proper.

The evidence of record demonstrates the Adult Services Worker properly performed a HHS reassessment in accordance to Department policy. She went to the Appellant's home and asked review questions of the Appellant and his chore provider. Based on the information the ASW was provided by the Appellant and his chore provider at the time of the assessment the ASW authorized HHS services.

The Appellant bears the burden of proving by a preponderance of evidence that the Department's authorization was not proper. The Appellant did not provide a preponderance of evidence that the Department's authorization was not proper. The Department must implement the Home Help Services program in accordance to Department policy. The Department provided sufficient evidence that it properly reduced the Appellants' payment authorization in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced his Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

**Docket No. 2010-7379 HHS
Hearing Decision & Order**

CC:



Date Mailed: 03/01/2010

***** 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.