

**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. 2010-9750 HHS
Case ██████████

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 ██████████. ██████████, mother and ██████████, appeared as the Appellant's representative. ██████████ Appeals Review Officer, represented the Department (DHS). ██████████, Adult Services Worker, and ██████████, Adult Services Supervisor, 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. The Appellant is a Medicaid beneficiary.
2. The Appellant is a ██████████ who has been diagnosed with cri-du chat syndrome, diabetes, mental retardation, cerebral palsy, and scoliosis. (Exhibit 1, page 16)
3. The Appellant lives with her mother, who is also the partial guardian. (Exhibit 1, pages 4 and Testimony)
4. On ██████████, a DHS Adult Services Worker made two visits to the Appellant's home to conduct a Home Help Services assessment. The Appellant and her mother were present for the initial visit and the chore provider was also present for the second visit. (Exhibit 1, page 8)

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5. As a result of the information gathered at the assessment, the worker removed the HHS hours authorized for the tasks of transferring and eating; reduced the HHS hours authorized for the tasks of toileting and mobility; and increased the HHS hours authorized for housework, laundry and shopping. (Exhibit 1, pages 11-12)
6. On [REDACTED], the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be reduced to [REDACTED] per month, effective [REDACTED]. (Exhibit 1, pages 5-7)
7. On [REDACTED] 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 page 8) The worker testified that using the functional scale, based on his observations and the information he was provided at the time of the assessment, the HHS hours authorized for transferring and eating were removed; the authorized HHS hours were reduced for the tasks of toileting and mobility and increased in the areas of housework, laundry and shopping. (Exhibit 1, pages 11-12)

The worker testified the removal of transferring was based on his observations of the Appellant getting in and out of bed and chairs on her own without assistance. The

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worker also explained that when this case was transferred to him, HHS hours for eating had been authorized for PEG tube feeding for the Appellant. The worker testified that the removal of eating was based upon statements by the Appellant's mother that the Appellant has been off PEG tube feeding for about 3 years and she now eats on her own with utensils.

The worker testified that the reduction to mobility was based on a change in the Appellant's ranking for this activity from a level 4 to a level 3. The worker explained the ranking was reduced because he was informed that the Appellant only needs assistance with stairs. The worker testified that the reduction to toileting was based upon the reasonable times established by the Department for this program. The result was a reduction of 1 minute per day for this activity.


The Appellant's mother disagrees with the removals and reductions made by the worker. The Appellant's mother explained that the Appellant tries to do things on her own but she does need a lot of assistance. The Appellant's mother also stated that she did not initially understand some of the changes made by the worker. For example, the Appellant's mother stated she thought the HHS hours for laundry had been reduced but now understands that the HHS hours authorized for laundry actually increased.

The Appellant's mother acknowledged that the Appellant does not use PEG tube for feeding and stated she is not sure why this was ever included in the HHS authorized hours because the PEG tube was removed prior to the Appellant's initial approval for HHS years ago. The Appellant's mother also testified that the Appellant attends ██████████ and is absent from the home from 6:45 am to 3:10 pm five days per week.

The overall result of the adjustments made by the worker was a reduction in the monthly HHS payments to the Appellant from ██████████. (Exhibit 1, pages 11-12) The most significant change was the removal of 22 hours per month for eating; however, it is undisputed that the Appellant no longer uses a PEG tube. The Appellant's representative did not specifically state any disagreements with the removal transferring or the reduction to the HHS hours authorized for mobility. This ALJ does find the Appellant's representative's testimony regarding the Appellant's incontinence and need for assistance with toileting needs credible. However, the Appellant is also absent from the home for about eight hours, five days per week. The removal of HHS hours for eating and transferring and the reductions in the areas of mobility and toileting were appropriate based on the information provided at the time of the assessment and the Appellant's absence from the home to attend school five days per week.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly removed eating and transferring assistance and reduced the HHS hours for mobility and toileting based on the information available at the time of the assessment.


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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:



Date Mailed: 2/8/2010

***** 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.