

**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. 2010-15544 HHS
Case No. ██████████

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 February 25, 2010. ██████████ appeared on his own behalf. ██████████, chore provider, appeared as a witness for the Appellant. Ms. Mary Carrier, Appeals and Review Officer, represented the Department. Ms. Lillie Dorsey, ILS Supervisor, appeared as a witness for the Department.

ISSUE

Did the Department properly determine the effective date of Home Help Services payments for the task of eating in the Appellant's case?

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 51 year old Medicaid beneficiary who has been receiving Home Help Services (HHS) for various tasks, which did not include eating assistance. (Testimony)
2. Department policy requires HHS cases to be reviewed every six months, including a face-to-face contact with the client, in the home, and an interview with the caregiver if applicable. (*Adult Services Manual (ASM 363) 9-1-2008 page 6 of 24*)
3. The Appellant's HHS case was due for review in November 2009. (Testimony)

4. On September 17, 2009, the Appellant's physician completed a DHS 54-A Medical Needs form indicating that the Appellant has a medical need for assistance with all listed personal care activities, including eating. (Exhibit 1, page 10)
5. On December 21, 2009, the Appellant and his chore provider went to the Department of Human Services (DHS) office requesting 2 years back payment for the task of eating. The Department also agreed to re-schedule the home visit for the review of the Appellant's case. (Exhibit 1, page 4)
6. The Department added HHS hours for the task of eating to the Appellant's chore grant effective November 1, 2009. (Testimony)
7. The Appellant's request for a formal, administrative hearing was received by the State Office of Administrative Hearing and Rules for the Michigan Department of Community Health on January 13, 2010.

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 health professional and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM 363) 9-1-2008, page 9 of 24, also address when Home Help Services can be authorized:

Necessity For Service

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

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- Verification of the client's medical need by a Medicaid enrolled medical professional. The client 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.

Adult Services Manual (ASM 363) 9-1-2008

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

The Appellant has been receiving HHS payments for various tasks, which did not include eating, for approximately two years. Department policy, as cited above, requires HHS cases to be reviewed every six months. The Appellant's HHS case was due for such a review in November 2009. (Department Testimony) On December 21, 2009 the Appellant and his chore provider went to the Department of Human Services office and requested 2 years back payment for the task of eating and re-scheduled the required home visit for December 30, 2009. (Exhibit 1, page 4)

In completing the re-assessment of the Appellant's case, the Department reviewed a DHS 54A Medical Needs form completed by the Appellant's physician September 17, 2009. On this form, the physician certified that the Appellant had a medical need for assistance with all the listed personal care activities, including eating. (Exhibit 1, page 10) The Department witness testified that HHS hours for the task of eating were added to the Appellant's chore grant, effective November 1, 2009.

The Appellant disagrees with the November 1, 2009, effective date. The Appellant and his core provider testified that the core provider has been assisting the Appellant with this activity since day one, which was about two years ago. The Appellant requests two years back payment for the task of eating, or at least clarification on how far back the Department can pay for this task as the DHS 54-A Medical Needs form was signed in September 2009.

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Department policy in this area is clear. The Adult Services Worker (worker) is responsible for determining the necessity and level of need for HHS. The worker's decision is based upon the medical certification provided by the doctor as well as the comprehensive assessment. Accordingly, the doctor's certification alone does not determine eligibility. As the Department noted, the Appellant had the opportunity every 6 months since his case was opened to address the task of eating with his worker. The Appellant did not bring this issue to his worker's attention until December 21, 2009. The worker did authorize HHS hours for this activity back to the current review time period. Accordingly, the Department properly added HHS hours for the task of eating to the Appellant's chore grant effective November 1, 2009.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined November 1, 2009, as the effective date of Home Help Services payments for the task of eating in the Appellant's case.

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: 4/5/2010

***** 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.