

**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. 2010-22277 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 from Community Mental Health and owner of the supportive community living home, appeared on the Appellant's behalf. ██████████, Case Manager ██████████ ██████████ for ██████████, appeared as a witness for the Appellant. ██████████, 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 ██████████ woman who has been diagnosed with mild mental retardation and high blood pressure. (Exhibit 1, page 12)
3. The Appellant lives in a supportive community living home with three other women. (Testimony)
4. The Appellant's chore providers are staff from two agencies, ██████████ ██████████. (Testimony and Exhibit 1, page 9)

5. On ██████████, an Adult Services Worker (worker) conducted a home visit with the Appellant as part of the case re-assessment. Present in the home were the Appellant, the other home residents, and a staff member from ██████████. The Appellant reported that she needs assistance with washing her hair and with handling money when shopping. The Appellant also reported that she cleans the office at Community Mental Health. (Testimony and Exhibit 1, pages 5 and 10)
6. As a result of the statements made by the Appellant at the assessment, the worker determined that Appellant only needed assistance with washing her hair, which is done seven days a week. The worker noted that the Appellant has a representative payee to assist her with handling money. (Testimony and Exhibit 1, page 5)
7. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments would be reduced to ██████████ effective ██████████ (Exhibit 1, pages 4-6)
8. The Appellant requested a formal, administrative hearing ██████████ (Exhibit 1, page 3)
9. On ██████████, the worker met with the Appellant's representative and the case manager from ██████████ to discuss the functional assessment. (Exhibit 1, page 10)
10. As a result of the meeting, the worker re-assessed the Appellant's case and determined that Appellant was eligible for HHS hours for the tasks of bathing, grooming, medication, laundry and meal preparation. (Testimony and Exhibit 1, pages 8-9)
11. On ██████████, the Department issued a Services and Payment Approval Notice to the Appellant indicating that her Home Help Services payments would be increased to ██████████ effective ██████████. (Exhibit 1, page 7)

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.

Program requirements are set forth in Adult Services Manual item 362, below:

COMPREHENSIVE ASSESSMENT

If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the personal care needs. Complete the comprehensive assessment (DHS- 324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

CONTACTS

The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and redetermination.

Adult Services Manual (ASM 362) 12-1-2007, Page 3 of 5

Adult Services Manual item 363 addresses program procedures:

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.

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 same time period).

REVIEWS

ILS cases must be reviewed every six months. A face-to-face contact is required with the client, in the home. If applicable, the interview must also include the caregiver.

Six Month Review

Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.
- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- Follow-up collateral contacts with significant others to assess their role in the case plan.
- Review of client satisfaction with the delivery of planned services.

Annual Redetermination

Procedures and case documentation for the annual review are the same as the six month review, with the following additions:

Requirements

- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- A new medical needs (DHS-54A) certification, if home help services are being paid.

Note: The medical needs form for SSI recipients will **only** be required at the initial opening and is no longer required in the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and then annually thereafter.

- A face-to-face meeting with the care provider, if applicable. This meeting may take place in the office, if appropriate.

Adult Services Manual (ASM 363) 9-1-2008, Pages 2-7 of 24

On ██████████, the Adult Services Worker (worker) completed a home visit as part of the HHS comprehensive assessment for redetermination. (Exhibit 1 page 5) However, the worker testified she spoke primarily with the Appellant and did not include the chore provider agencies in the initial assessment. Accordingly, the worker explained that the reductions to the Appellant's home help case were based upon the Appellant's statements that she only needs assistance to wash her hair seven days per week and handling her money when shopping. The worker stated that the Appellant also reported working cleaning the office at ██████████.

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However, the worker subsequently met with representatives from the provider agencies for a supervisor conference in response to the hearing request on ██████████. (Exhibit 1, page 10) The worker also met with the Appellant's representative and the case manager from ██████████ on ██████████ and re-assessed the Appellant's case. (Exhibit 1, page 10) In doing so, the worker has complied with Department policy that the chore provider be interviewed as part of the comprehensive assessment and service plan development.

The worker's re-assessment following her meetings with the chore provider agencies resulted in an a time and task approval that was retroactive to ██████████, the same effective date as the negative action that the present hearing request was filed upon. (Exhibit 1, pages 4-7) In effect, the Department replaced the original reduction to ██████████, only authorizing assistance with washing the Appellant's hair seven times per week, with the new chore grant of ██████████, authorizing HHS hours for bathing, grooming, medication, laundry, and meal preparation. (Exhibit 1, page 9) Accordingly, this ALJ will review the newest time and task service plan.

The worker testified that the new authorized times were based upon the information provided by the Appellant's representative at the ██████████ meeting. (Exhibit 1, page 10) However, the worker explained that the Home Help program only covers hands on care, not reminding, guiding or supervision. The worker ranked the Appellant at level 3 for bathing, grooming, medication, laundry, and meal preparation. (Exhibit 1, page 8) A ranking of 3 would indicate the Appellant can perform each activity with some direct physical assistance. The worker explained that the HHS hours are therefore authorized to cover the part of the task the Appellant requires hands on assistance with.

The worker also testified that Department policy requires proration of the HHS hours by the number of persons in the home for the tasks of housework, shopping, laundry and meal preparation. Bringing the case into compliance with the proration policy did result in a reduction to the Appellant's chore grant because there are four adults in the home. The worker also did not authorize any HHS hours for house work or laundry in the Appellant's case. The worker explained that she did not authorize any HHS hours for housework because the Appellant's employment cleaning the ██████████ office. The worker stated she did not authorize HHS hours for shopping because the Appellant testified she only needs assistance with handling money and the Appellant does have a representative payee.

The Appellant's representative disagrees with the new service plan because no HHS hours for housework and shopping were authorized. The Appellant's representative explained that HHS hours for housework are needed or else it would never get done. The Appellant's representative stated that the Appellant will not clean at home. The Case Manger from ██████████ testified that the Appellant participates in a sheltered workshop, working as part of a janitorial crew and that she is supervised and assisted by the other staff. However, the Case Manager also testified that the Appellant misses many days from the job. The Appellant's representative explained that the Appellant has stamina problems.

The Appellant's representative also stated that she does not get paid to be the Appellant's representative payee. The Appellant's representative explained that the Appellant does need additional assistance with shopping to get appropriate groceries; otherwise the Appellant would only get candy. The ██████████ case note indicates that assistance with unloading and putting away groceries was also reported. (Exhibit 1, page 10)

Based upon the available information, the worker's rankings at level 3 and HHS hours authorized for bathing, grooming, medication, laundry, and meal preparation are consistent with the Appellant's representative's statements at the ██████████ meeting regarding the direct physical assistance the Appellant requires for these activities. (Exhibit 1, pages 8-10)

The proration of the HHS hours authorized for laundry and meal preparation was also appropriate as there are four 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 housemates would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. Accordingly, the authorized hours for these activities must be prorated under Department policy.

The worker's determination not to authorize HHS hours for housework and shopping was not appropriate based upon the available information. The testimony from the Case Manger regarding missed days indicates that the Appellant is not always capable of cleaning, even with supervision. The notes from the ██████████ meeting indicate that the Appellant's stamina issues were reported related to the office cleaning and housework. (Exhibit 1, page 10) The ranking of 2 was not appropriate for shopping as the assistance the Appellant needs with this task was also included assistance unloading and putting away the groceries. (Exhibit 1, page 10) The Appellant should have been ranked at level 3 for housework and shopping as she does require some direct physical assistance with these tasks. Prorated HHS hours for shopping and housework should be added to the Appellant's chore grant as appropriate for a ranking of 3 using the Department's reasonable time schedule.

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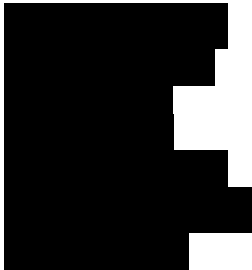
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department authorized the HHS hours for bathing, grooming, medication, laundry and meal preparation to the Appellant based on the available information. However, the Department did not properly assess the tasks of shopping and housework resulting in no HHS hours being authorized for these tasks.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The Department shall add prorated HHS hours for shopping and housework to the Appellant's chore grant as appropriate for a ranking of 3 using the Department's reasonable time schedule.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 5/24/2010

***** 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.