

**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. 2010-25071 HHS
Case [REDACTED]
Docket No. 2010-25073 HHS
Case [REDACTED]

[REDACTED]

Appellants

_____ /

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 [REDACTED]. [REDACTED], mother/guardian, appeared on behalf of the Appellants. [REDACTED] was also present.

[REDACTED], Appeals Review Officer, represented the Department. [REDACTED], [REDACTED] County Department of Human Services (DHS) Program Manager, and [REDACTED], Adult Services Worker, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce Appellants' Home Help Services (HHS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellants are a [REDACTED] and a [REDACTED] with Laurence Moon Biedl syndrome; resulting in developmental delay and retinitis pigmentosa/legal blindness. (Exhibits 1, p 10; 2, p 14).
2. Appellants are Medicaid beneficiaries.
3. Appellants' chore provider is their mother/guardian, [REDACTED]. (Exhibits 1, p 9; 2, p 9).

4. Appellants live with their mother/chore provider and step-father.
5. On [REDACTED], an Adult Services worker made a visit to Appellants' home to conduct a HHS assessment. Appellants were present in their home. Appellants' chore provider/mother and father were present. (Exhibits 1, p 9; 2, p 9).
6. As a result of the information learned and observations made at the [REDACTED] [REDACTED], assessment the worker reduced Appellant's [REDACTED] monthly HHS payment authorization for Appellant [REDACTED] to [REDACTED]. (Exhibit 1, pp 6-8).
7. As a result of the information learned and observations made at the [REDACTED] [REDACTED], assessment the worker reduced Appellant's [REDACTED] monthly HHS payment authorization for Appellant [REDACTED] [REDACTED] to [REDACTED]. (Exhibit 2, pp 6-8).
8. The reduction for both Appellants' was based on the Adult Services Worker (ASW) applying HHS proration policy and therefore time authorizations for shopping and meal preparation were prorated for a four-person household. The reduction was also based on a finding of less need for eating authorization. (Exhibit 1, pp 6-8; 2, pp 6-8).
9. On [REDACTED], the Department sent a Negative Action Notice notifying Appellants that their Home Help Services payments would be reduced. (Exhibits 1, pp 6-8; 2, pp 6-8).
10. On [REDACTED], the DHS received Appellants' Requests for Hearing and guardianship papers. (Exhibits 1, p 3; 2, p 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 outlines the Department's policy regarding assessment for HHS:

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 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 March 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 customer and provider, observation of the customer'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 for food and other necessities of daily living
- 6 hours/month for housework
- 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).

Proration for IADLs Shopping and Meal Preparation -

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. Shopping and meal preparation are IADLs and proration policy applies. The ASW testified that the Appellants' IADL time authorization had not been previously prorated, thus she was required by policy to prorate the Appellants' IADL time authorization. The evidence in this case establishes that both of the Appellants, their chore provider/mother and step-father live in the same home. The ASW was mandated to prorate the IADL time authorization for shopping and meal preparation and did so properly.

Appellants' chore provider/mother testified that she cannot possibly perform shopping for ██████████ people in the ██████████ minute HHS time authorization. The Department responded that it was obligated to apply the HHS policy as it is written.

Reduction of Appellants' Eating Authorization –

Appellants' representative/mother testified that neither of the Appellant's medical conditions will improve. Appellants' representative/mother said that she did not understand how Appellants' meal preparation time could be reduced if their conditions could not improve.

Appellant BH - Appellant BH's chore provider/mother testified that BH is legally blind requiring a provider to cut Appellant's food and move it around on the plate in order for Appellant BH to be able to get the food on a utensil and eat. The ASW stated that when she inquired about all that was involved in cutting and arranging Appellant BH's food, she determined that Appellant BH was not totally dependent and, therefore, her eating authorization was reduced from 44 minutes a day, seven (7) days per week, to 12 minutes per day, seven (7) days per week. (Ex 1, pp 12-13). The Department's reduction of Appellant BH's eating authorization to reflect actual time to cut food and move around on place was proper based on the credible evidence of record.

Appellant RH - Appellant RH's chore provider/mother testified that RH is also legally blind requiring a provider to cut Appellant's food and move it around on the plate in order for Appellant RH to be able to get the food on a utensil and eat. Appellant RH's chore provider/mother stated that she also needed to place and readjust straws in the Appellant's drink to enable him to drink.

The ASW stated that when she inquired about all that was involved in cutting and arranging Appellant RH's food, and placing his drink straw, she determined that Appellant RH was not totally dependent and, therefore, his eating authorization was reduced from 44 minutes a day, seven (7) days per week, to 12 minutes per day, seven (7) days per week. (Ex 2, pp 11-12). Applying the facts to the Department's policy demonstrates the Department's reduction of Appellant RH's eating authorization to reflect actual time to cut food and move around on plate, and place a drinking straw was proper.

The Appellants bear the burden of proving by a preponderance of evidence that the Department's reduction was not proper. The Appellants did not provide a preponderance of evidence that the Department's reduction was not proper. The Department must implement the Home Help Services program in accordance to Department policy. The Department provided sufficient evidence that its reduction of the Appellants' payment authorization was 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 Appellants' 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

cc [REDACTED]

Date Mailed: 06/10/2010


Docket No. 2010-25071 HHS and 2010-25073 HHS
Decision & Order

***** 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.