

**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. 2010-25682 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 ██████████, ██████████. The Appellant appeared without representation. He had no witnesses. ██████████, appeals review officer, represented the Department. Her witnesses were ██████████, ASW and ██████████, ASW supervisor. Also in attendance was ██████████.

ISSUE

Did the Department properly reduce the Appellant's 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. At the time of hearing the Appellant is a ██████████ male Medicaid beneficiary.
2. The Appellant is afflicted with ██████████, ██████████, ██████████ and ██████████. (Appellant's Exhibit #1 and Department's Exhibit A, pp. 11, 13)
3. On ██████████, the ASW conducted a face-to-face yearly reassessment that led to a reduction in services owing to elimination of the tasks of bathing, grooming, dressing, transferring, mobility, medication, toileting and eating. (See Testimony and Department's Exhibit A, pp. 11, 12)
4. On ██████████, an Advance Negative Action Notice [effective ██████████ ██████████] was sent to the Appellant informing him of the service reduction and his further appeal rights. (Department's Exhibit A, pp. 2, 5)

5. The notice specified that the new assessment set the Appellant's HHS payment at \$██████████ per month. (Department's Exhibit A, pp. 2, 5, 12)
6. The instant appeal was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████
██████████.

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.

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/her 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 re-determination.
- 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
- 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. When hours exceed the RTS rationale must be provided. (Emphasis supplied)

Adult Service Manual (ASM), §363, pp. 2, 3 of 24, 9-1-2008.

The Department witness testified that on in-home assessment she observed the Appellant ambulate, exiting the passenger side of a motor vehicle, using his keys and negotiating steps. She said he used a cane. She testified that that the Appellant got up from his sofa on two occasions to retrieve medications and demonstrated his considerable knowledge about those medications and their side effects.

The ASW testified that based on her observations, the Appellant's admissions and the Appellant DHS 54A [completed on ██████████] that she believed the task eliminations referenced above were appropriate.

The Appellant testified that the ASW visit was brief – about ████████ minutes - and that he was observed on a good day. There are other days when he is not capable of getting out of bed. The Appellant did express difficulty with toileting owing to frequent bouts of diarrhea – a side effect to his medication regiment. He said he needs “some assistance” with most ADLS.

On review of the evidence the ALJ finds that the comprehensive assessment was largely accurate and drawn according to policy. By definition the Appellant showed the ASW that he was in an improved condition. The ASW observations were consistent with the Appellant's demonstrated physical ability on [REDACTED].

The ALJ agreed with the following task and time adjustments prepared by the ASW following her in-person assessment:

- Bathing, grooming, dressing, transferring, mobility, medication, toileting and eating – were eliminated for the reasons stated above.
- IADL tasks of laundry, housework, shopping and meal preparation were retained.

At hearing the Appellant clearly explained that owing to medication side effects he suffers from frequent bouts of diarrhea. However he presented no evidence to preponderate his burden of proof that he required assistance beyond reminding or directing [rank 2].

On review of the evidence presented today the ALJ finds that the comprehensive assessment was accurate when made.

The Appellant did not preponderate that the Department erred in reducing his HHS services following in home assessment on [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly reduced the Appellant's HHS payment.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]
[REDACTED]

Docket No. 2010-25682
Hearing Decision & Order

Date Mailed: 06/14/2010

***** 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.