

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909  
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

████████████████████

Appellant

\_\_\_\_\_ /

Docket No. 2010-25684 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 ██████████. ██████████, daughter, appeared as the Appellant's representative. ██████████ appeared and testified. ██████████ Appeals Review Officer, represented the Department. ██████████ Adult Services Worker, and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

**ISSUE**

Did the Department properly assess Home Help Services payments for 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 arthritis in both knees, chronic headaches, diabetes, obesity, diabetic retinopathy in both eyes, arteriosclerotic heart disease, neuropathy and cardiomyopathy. (Exhibit 1, pages 12-14)
3. On ██████████, the Department gave the Appellant two DHS 54-A Medical Needs forms for her primary care doctor and her eye doctor to complete. (Exhibit 1, page 10)

4. On [REDACTED], the Department received the completed DHS 54-A Medical needs forms completed by the Appellant's doctors. (Exhibit 1, pages 13-14)
5. On [REDACTED], a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant and the chore provider were present. (Testimony and Exhibit 1, page 9)
6. As a result of the information gathered for the assessment, the worker determined that no changes should be made to the Appellant's Home Help Services case. (Testimony and Exhibit 1, page 9)
7. The Appellant believes her Home Help Services chore grant should have been increased. (Testimony and Exhibit 1, page 3)
8. 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 [REDACTED], the Appellant submitted two DHS 54-A Medical Needs forms to the Department to document additional medical conditions. (Exhibit 1, pages 13-14) On [REDACTED], the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1 page 9) The worker testified that using the functional scale, based on his observations and the information he was provided at the time of the assessment, there was not sufficient justification to increase the Appellant's HHS hours.

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The Appellant's representative disagrees with the workers determination that no changes to the Appellant's HHS case were justified. The Appellant's representative testified that the worker should have added HHS hours for the tasks of bathing, grooming, dressing, transferring, mobility, and medication to the Appellant's chore grant and described the assistance the Appellant needs with each activity.

The Appellant and her representative testified that the Appellant needs assistance due to arthritis in her knees, hands and feet. However, the Appellant's primary care physician did not include arthritis in listing the Appellant's impairments on the DHS 54-A Medical Needs form. (Exhibit 1, page 14) While the knee arthritis was included as a diagnosis for the Appellant prior to the ██████████ assessment, the diagnosis source is listed as the customer. (Exhibit 1, page 12) The Appellant's primary care doctor did not certify that the Appellant has a medical need for assistance with grooming, transferring, or mobility. (Exhibit 1, page 14) Without support for the arthritis diagnosis or certification of a medical need for assistance with these activities, the Department properly determined that no HHS hours should be authorized for these tasks.

However, it is noted that the worker did not update the Appellant's case information to include the new diagnoses provided by the Appellant's physicians on the DHS 54-A Medical Needs forms. (Exhibit 1, pages 12-14) Further, the worker's testimony indicates he based his determination on statements made during prior assessments, rather than gathering information for the current assessment by discussing each activity with the Appellant and chore provider at the home visit.

The Appellant and her representative testified that the Appellant needs assistance with her medications due to poor eyesight. The worker ranked the Appellant as a level 1 for this activity and testified that previously the Appellant had not raised an issue with her eye sight and reported that she can perform this task without assistance. (Exhibit 1, page 7) However, the Appellant's eye doctor did list a diagnosis of diabetic retinopathy in both eyes status post laser treatment and indicated the visual acuity was worse in the right eye. (Exhibit 1, page 13) While the eye doctor did not address the Appellant's medical need for assistance with personal care activities, the primary care physician did certify that the Appellant had a medical need for assistance with her medications. (Exhibit 1, pages 13-14) The Department should have ranked the Appellant as a level 3 for medications and authorized HHS hours for this task as there is current documentation of a visual impairment and a certification of a medical need for assistance with this activity.

The Appellant's primary care physician also certified a medical need for assistance with dressing and bathing. The worker has ranked the Appellant as a level 3 for bathing. (Exhibit 1, page 7) The worker testified that he did not authorize HHS hours for dressing based upon statements made during prior assessments that the Appellant can dress herself without assistance. The worker testified he did not authorize HHS hours for bathing based upon statements previously made by the Appellant that her daughter assists her with this task in an unpaid capacity, and not her male chore provider. However, the worker could not recall if bathing was specifically discussed at the ██████████ ██████████ home visit with the Appellant and her core provider. This is particularly troubling

as between the last assessment and the [REDACTED] home visit, the worker was present at a hearing where the Appellant's representative (daughter) testified that and the daughter can not assist the Appellant with bathing because she is a full time student. (Exhibit 1, page 20) If the worker needed additional verification that the chore provider was assisting with bathing instead of the daughter, he should have discussed this during the home visit with the Appellant and the chore provider. Similarly, there was no evidence presented that the worker discussed dressing with the Appellant and chore provider at the [REDACTED] home visit. Based upon the available evidence, the Department should have ranked the Appellant as a level 3 and authorized HHS hours for the activities of bathing and dressing since the primary care physician certified a medical need for assistance with these activities and list impairments, such as obesity and neuropathy, which would reasonably affect the Appellant's ability to bathe and dress herself.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly determined no changes to the Appellant's HHS hours were justified based on the information available at the time of the assessment.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is PARTIALLY REVERSED. The Department shall add HHS hours for the tasks of bathing, dressing and medication to the Appellant's chore grant in accordance with the Department's reasonable time schedule for a ranking of 3 for these activities.

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

cc:



Date Mailed: 6/10/2010

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The State Office of Administrative Hearings and Rules March 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 March 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.