

**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. 2010-26886 HHS

Case No. [REDACTED]

[REDACTED],

Appellant

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], Appellant's granddaughter and chore provider, appeared on behalf of the Appellant. Appellant was not present.

[REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce Appellant's 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. Appellant is an [REDACTED] woman and Medicaid beneficiary.
2. In [REDACTED], Appellant was enrolled in the Department's Home Help Services program. (Exhibit 1, page 12).
3. In [REDACTED], the Appellant's chore provider registered with DHS was [REDACTED], Appellant's granddaughter. (Exhibit 1, pages 7-12).
4. In [REDACTED], the HHS services program authorized and paid Appellant's chore provider/granddaughter to provide meal preparation [REDACTED] days a week, shopping [REDACTED] times per month, laundry [REDACTED] and [REDACTED] hours [REDACTED] times per week, and housework [REDACTED] times per week.

5. In ██████████, the chore provider logs submitted by Appellant and her chore provider/granddaughter indicated the chore provider/granddaughter was only coming to Appellant's home ██████████ to ██████████ times per week.
6. On ██████████, Appellant's HHS Adult Services Worker went to Appellant's home for an annual review and observed that she was cooking her own soup on the stove and that her house was cluttered. (Exhibit 1, page 4).
7. On ██████████, Appellant's HHS Adult Services Worker asked Appellant how often her chore provider/granddaughter came to her home and she responded ██████████ times per week. (Exhibit 1, page 4).
8. On ██████████, the Department sent a Negative Action Notice to Appellant informing her that because she could cook on her own and because her chore provider/granddaughter was only coming ██████████ to ██████████ times per week, her authorization would be reduced to ██████████ minutes per day ██████████ times weekly. (Exhibit 1, page 4).
9. On ██████████, the State Office of Administrative Hearings and Rules (SOAHR) received Appellant's Request for Hearing, written by her chore provider/granddaughter. (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.

The Department established that a HHS provider must complete provider logs before HHS payments can be authorized. The Department policy reflects that HHS payment can only be made for actual services provided and for a chore provider to be paid for services not actually provided is fraud committed by the chore provider and the HHS recipient.

Adult Services Manual (ASM 363 9-1-08), pages 15-18 of 24 states that it is the adult services worker who receives the provider logs and determines whether a payment can be issued to a chore provider, because payment cannot be paid if the services are not rendered or if the chore provider is not qualified:

HOME HELP SERVICE PROVIDERS

Provider Selection The client has the right to choose the home help provider(s). As the employer of the provider, the client has the right to hire and fire providers to meet individual personal care service needs. The client may receive DHS payment for home help services from **qualified** providers only.

The determination of provider qualification is the responsibility of the adult services worker.

Do not authorize HHS payments to a responsible relative or legal dependent of the client.

Provider Criteria Determine the provider's ability to meet the following minimum criteria in a face-to-face interview with the client **and** the provider:

Age

- Appropriate to complete the needed service.

Ability

- To follow instructions and HHS program procedures.
- To perform the services required.
- To handle emergencies.

Physical Health

- Adequate to perform the needed services.

Knowledge

- How and when to seek assistance from appropriate others in the event of an emergency.

Personal Qualities

- Dependable.
- Can meet job demands including overtime, if necessary.

Training

- Willing to participate in available training programs if necessary. HHS payment may be terminated if the provider fails to meet any of the provider criteria.

Provider Interview Explain the following points to the client and the provider during the initial interview:

- The provider is employed by the client **not** the State of Michigan.
- A provider who receives public assistance **must** report all income received as a home help provider to the FIS/ES.
- The client is the employer and has the right to hire and fire the provider.
- The client is responsible for notifying the worker of any change in providers or hours of care.
- The services the provider is responsible for and has agreed to deliver including the frequency, amount and type of service.
- The provider **must** keep a log of the services provided Personal Care Services Provider Log (DHS-721) and submit it on a quarterly basis. The client **must** sign the Authorization for Withholding of FICA Tax in Home Help Payments (DHS-4771).

PAYMENT AUTHORIZATION

Payment Authorization System

Enter home help provider enrollments and payment authorizations on the Model Payment System (MPS) using the **Payments** module of the **ASCAP** system.

No payment can be made unless the provider has been enrolled on the MPS provider database. See the ASCAP user guide on the adult services home page.

HHS payments to providers must be:

- Authorized for a specific type of service, period of time and payment amount.
- Authorized to the person actually providing the service.
- Made payable jointly to the client and the provider.

Any payment authorization that does **not** meet the above criteria must have the reason fully documented in the **Payments** module, exception rationale box, in **ASCAP**. The supervisor will document through the electronic approval process.

(Underline added by ALJ).

The Department must implement the Home Help Services in accordance to Department policy. The Department's witness testified that in [REDACTED], the HHS services program authorized and paid Appellant's chore provider/granddaughter to provide meal preparation [REDACTED] days a week, shopping [REDACTED] times per month, laundry [REDACTED] and [REDACTED] hours [REDACTED] times per week, and housework [REDACTED] minutes [REDACTED] times per week. The Department's witness explained that in [REDACTED], the chore provider logs submitted by Appellant and her chore provider/granddaughter indicated the chore provider/granddaughter was only coming to Appellant's home [REDACTED] to [REDACTED] times per week. The Department's witness testified that he explained the proper way to fill out the provider logs to both the Appellant and her chore provider/granddaughter at least [REDACTED] times in the past [REDACTED] years.

The Department's witness testified that on [REDACTED], he went to Appellant's home for an annual review and observed that she was cooking her own soup on the stove and that her house was cluttered. (Exhibit 1, page 4). The Department's witness asked Appellant how often her chore provider/granddaughter came to her home and she responded [REDACTED] times per week. (Exhibit 1, page 4). The Department's witness said he sent a Negative Action Notice to Appellant informing her that because she could cook on her own and because her chore provider/granddaughter was only coming [REDACTED] to [REDACTED] times per week, her authorization would be reduced to [REDACTED] minutes per day [REDACTED] times weekly. (Exhibit 1, page 4). The Department's witness explained that the program can only pay for services provided and could not pay the chore provider/granddaughter for preparing meals seven [REDACTED] days a week when she was not even there, and likewise as evidenced by the state of disarray he could not pay for housework and laundry that was no being done.

The Appellant's chore provider/granddaughter testified that the Appellant's health has declined and she did not believe Appellant's HHS should be reduced. The Appellant's chore provider/granddaughter said that she preps all the Appellant's meals and the Appellant prepares her own meals from what was prepped. The Appellant's chore provider/granddaughter testified that she marked the boxes on the provider logs and was not sure how to fill out the forms.

The Appellant's chore provider/granddaughter's statements about what tasks Appellant can perform and what tasks she performs were at times inconsistent. The Appellant bears the burden of proving by a preponderance of credible evidence that the HHS reduction was not proper. The Appellant did not meet that burden. For the above reasons, it is decided that the Department acted properly and in accordance with policy when it reduced Appellant's HHS services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced Appellant's Home Help Services.

[REDACTED]
Docket No. 2010-26886 HHS
Hearing Decision & Order

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: 6/11/2010

***** 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.