

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████

Appellant,

Docket No. 2010-2725 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 ██████████. ██████████, mother and legal guardian, appeared on behalf of the Appellant. ██████████, Social Worker ██████████ Mental Health, appeared as a witness for the Appellant. ██████████ Appeals Review Officer, represented the Department (DHS). ██████████, Independent Living Specialist, 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 ██████████ with severe cerebral palsy and high cholesterol. (Exhibit 1, page 11)
2. The Appellant is a Medicaid beneficiary.
3. The Appellant's mother is his legal guardian and Home Help Services chore provider.
4. On ██████████, a DHS Adult Services Worker made a visit to the workshop the Appellant attends to conduct a Home Help Services assessment. The Appellant's mother was not present. (Exhibit 1, page 4)

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5. As a result of the information gathered from the assessment and the information from the Appellant's physician, the worker added authorization for assistance with medication and decreased the HHS hours authorized for eating. (Exhibit 1, pages 9-10)
6. On [REDACTED], the Department sent an Advance Negative Action Notice notifying the Appellant that his Home Help Services payments would be reduced to [REDACTED] per month, effective to [REDACTED]. (Exhibit 1, pages 6-7).
7. On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. A signed Request for Hearing was received on [REDACTED]. (Exhibit 1, pages 3-5).

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.

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 ██████████, the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, she added HHS hours for medication and decreased the HHS hours authorized for eating. The worker testified she decreased the Appellants ranking for eating from level 5 to level 4 because the Appellant needs food cut for him but is able to feed himself some finger foods and needs some help with holding a cup or glass. (see also Exhibit 1, page 8) The worker also explained that the authorized HHS hours for eating were also reduced because the Appellant has lunch at a workshop he attends instead of with the provider. The worker testified that the time authorized for eating was reduced from 44 minutes per day to 18 minutes per day. (see also Exhibit 1, pages 9-10)

The Appellant's representative disagrees with the reduction of authorized hours for eating. The Appellant's representative testified that the Appellant requires all of his food to be cut up, that there is only use one cup that he can use but he can not hold it for any length of time, and that he needs constant supervision/assistance with eating. The Appellant's representative agreed that the Appellant can feed himself some cut up finger foods and that he has lunch at the workshop 5 days a week.

Based on the testimony, the reduction in the Appellant's rank was appropriate. A rank of 5 would be appropriate if the Appellant was totally dependant on others for all areas of eating. Adult Services Manual (ASM) 365 10-1-1999, Page 1 of 2. (Exhibit 1, page 17) The Appellant is able to participate in eating to a limited extent. The ranking of 4 reflects that the Appellant performs the activity with a great deal of human assistance and/or assistive technology but can feed himself some foods and requires the constant presence of another person. Adult Services Manual (ASM) 365 10-1-1999, Page 1 of 2. (Exhibit 1, page 17).

The reduction in the authorized HHS time for eating from 44 minutes per day to 18 minutes per day was reflective of the Appellant's circumstances. A reduction in HHS authorized hours is appropriate when the ranking is decreased and when the provider does not assist with eating lunch the five days a week the Appellant attends the workshop program.

However, the reduced HHS payment amount indicated on the Advance Negative Action Notice, ██████████, appears to be a typographical error. (Exhibit 1, page 6) The worker testified that the HHS hours were authorized at the times as listed on the payments screen. (Exhibit 1, page 10) The payments screen shows a different amount listed as the HHS monthly payment. Accordingly, the HHS monthly payment was authorized for a total of ██████████, as listed on the payments screen. (Exhibit 1, page 10)

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced the HHS hours for eating resulting in a reduced HHS monthly payment of ██████████

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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

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CC:



Date Mailed: 1/13/2010

***** 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.