

**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. 2010-27527 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]. Appellant's son, [REDACTED] appeared on behalf of the Appellant. Appellant [REDACTED] was present and provided testimony.

[REDACTED], Appeals Review Officer, represented the Department. Ms. [REDACTED], Oakland County Department of Human Services (DHS) 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 a [REDACTED] woman with a history of high blood pressure, knee replacement surgery and hand surgery. (Exhibit 1, p 11, 14).
2. Appellant is a Medicaid beneficiary.
3. Appellant first applied for Home Help Services in preparation for a knee replacement surgery in [REDACTED], but did not return home from surgery until approximately [REDACTED]. (Exhibit 1, p 10).
4. Appellant's chore provider is her son [REDACTED]. (Exhibit 1, p 10, 14).

5. Appellant's chore provider/son [REDACTED] enrolled as a provider on [REDACTED], using his mother's address as his permanent address. (Exhibit 1, p 10, 14).
6. Appellant has at least [REDACTED] children who visit her regularly and who help her. (Testimony of [REDACTED]).
7. Appellant's daughter, sister of Appellant's chore provider, helps Appellant at her home every afternoon. (Testimony of [REDACTED]).
8. Appellant has numerous grandchildren who help her regularly. (Testimony of [REDACTED]).
9. Appellant is rarely without a child or grandchild in her home helping her. (Testimony of [REDACTED]).
10. On [REDACTED], a DHS Adult Services worker made a visit to Appellant's home to conduct a Home Help Services (HHS) assessment. Appellant was present in her home. During the assessment it was learned that Appellant's chore provider/son lived in Appellant's home and he signed the provider enrollment agreement swearing his address was the same as Appellant's. (Exhibit 1, p 10, 14).
11. Based on the assessment the Appellant was authorized for mobility, transferring, housework, shopping, laundry and meal preparation and medication set up. (Exhibit 1, p 10, 14).
12. In [REDACTED], Appellant's son/chore provider applied for cash assistance at DHS using a [REDACTED] address, different than he reported a month earlier. (Exhibit 1, p 10).
13. As a result of learning that the Appellant's son/chore provider was not living with her and helping her with all meals and all mobility and all transferring, the worker reduced the monthly HHS payment authorization for Appellant to an amount of \$ [REDACTED]. (Exhibit 1, p 4).
14. On [REDACTED], the Department sent a Negative Action Notice notifying Appellant that her Home Help Services payments would be reduced to \$ [REDACTED]. (Exhibit 1, p 4, 5).
15. On [REDACTED], the DHS received Appellant's Request for Hearing filled out by Appellant's chore provider-son [REDACTED]. (Exhibit 1, p 4).

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.

Reduction of Appellant's Mobility, Transferring, Shopping, Laundry, Meal Preparation, Housework and Medication Authorization –

The Department submitted credible evidence that Appellant's chore provider/son ██████████ does not live at Appellant's home as he swore when he signed his provider enrollment form on ██████████. The HHS worker testified that because Appellant's chore provider/son ██████████ did not live at Appellant's address it was impossible for him to perform every single task around-the-clock as either he or Appellant led the Department to believe at the ██████████, assessment. The HHS worker and Department representative stated when it learned that Appellant was alone in the mornings, it called and confirmed with her that she was able to transfer out of bed and walk around her house in the morning and make her own breakfast. Because Appellant could perform all or some of the tasks, the Department was required to reduce the HHS authorization accordingly.

The Appellant's chore provider/son ██████████ testified that his mother could not do anything for himself. The Appellant's chore provider/son ██████████ contradicted himself by also testifying that neither he, nor his sister, got to Appellant's home until the afternoon each day, therefore, establishing that Appellant was able to perform some tasks on her own in the morning.

When questioned further, Appellant's chore provider/son ██████████ testified Appellant has at least ██████████ children who visit her regularly and who help her. Appellant's chore provider/son ██████████ explained under oath that Appellant's daughter, his sister, helps

Appellant at her home every day. Appellant's chore provider/son [REDACTED] elaborated under oath that Appellant has numerous grandchildren who help her regularly, and therefore, Appellant is rarely without a child or grandchild in her home helping her. Appellant's chore provider/son [REDACTED] testimony is paramount to this case because if Appellant has daily help throughout her day free of charge, Medicaid IS PROHIBITED from paying for HHS.

Adult Services Manual (ASM 363 9-1-08), page 5 of 24 requires a DHS worker to address:

- The availability of services currently provided free of charge.

Applying the facts to the Department policy demonstrates the Department properly reduced Appellant's HHS authorization. A further review may demonstrate that the Department is entitled to recoup the Medicaid HHS money paid to Appellant and her son/chore provider because based on his testimony there was a family member in the home providing HHS services to Appellant free of charge every day that HHS was charged.

The Appellant bears the burden of proving by a preponderance of evidence that the Department's reduction was not proper. The Appellant 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 it properly reduced the Appellant's payment authorization 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 Appellant's 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: _____

***** 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.