

**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. 2010-30756 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 ██████████. ██████████, Appellant's aunt, appeared on behalf of the Appellant. ██████████, Appellant's aunt, was also present. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker (ASW), appeared as witnesses 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 ██████ year-old woman with mental retardation. (Exhibit 1).
2. Appellant is a Medicaid beneficiary.
3. Appellant's HHS chore provider is her ██████████. (Exhibit 1, Pages 3-5).
4. Appellant lives with her Aunt ██████████.
5. On ██████████, an ASW conducted a reassessment of Appellant's need for HHS in Appellant's home with Appellant present. During the reassessment the ASW asked questions and received answers from the Appellant's Aunt ██████████. (Exhibit 1, Pages 10-12).

Docket No. 2010-30756 HHS
Decision and Order

6. During the [REDACTED], reassessment the Appellant told the ASW, or the ASW observed, that the Appellant did not need assistance with dressing, toileting, transferring/mobility, or eating, but needed help cutting her food. (Exhibit 1, Pages 8, 10-14).
7. During the reassessment or from the medical needs form the ASW observed or assessed that the Appellant needed help with bathing, grooming, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, Pages 8, 10-12; Exhibit 2).
8. Because the ASW determined the Appellant did not have a need for some HHS services the time and tasks for dressing, toileting, transferring/mobility, and part of the time for eating, were removed from Appellant's HHS payment authorization. (Exhibit 1, Pages 8, 10-14).
9. On [REDACTED], the Department sent an Advance Negative Action Notice notifying Appellant that Home Help Services payments would be reduced to an amount of \$ [REDACTED] (minus FICA and union dues = \$ [REDACTED]). The reduction was due to dressing, toileting, transferring/mobility, and part of the time for eating, being removed from authorization because they were no longer needed. (Exhibit 1, Pages 5-6).
10. On [REDACTED], the Department received Appellant's Request for Hearing. (Exhibit 1, Pages 3-4).
11. On [REDACTED], Appellant's updated DHS-54A was received by the Department. Appellant's doctor filled out a medical needs form but the information provided did not change the [REDACTED], advance action notice determination. (Exhibit 2).

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 agencies.

The ASW testified that a comprehensive assessment was completed on March 30, 2010, at which the Appellant was asked questions and for which he provided answers. Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

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 her/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 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 April only be reduced for needs assessed at the three (3) level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of three (3) or higher, based on interviews with the customer and provider, observation of the customer's abilities and use of the reastepsonable 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:

- Five (5) hours/month for shopping .

Docket No. 2010-30756 HHS
Decision and Order

- Six (6) hours/month for light housework.
- Seven (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 reduced. Hours should continue to be prorated in shared living arrangements. (Underline added by ALJ).

The ASW testified that during the reassessment the Appellant's aunt-Representative told the ASW, or the ASW observed, that the Appellant did not need assistance with dressing, toileting, transferring/mobility, and part of the time for eating, with the exception of the cutting of food for which the ASW allotted time. After the reassessment the ASW contacted the Appellant's doctor to get an updated medical needs form. The ASW testified that the medical needs form supported his decision to approve bathing, grooming, eating, medication, housework, laundry, shopping, and meal preparation. The ASW testified that the medical needs form also supported his determination that Appellant did not have a medical need for all of the previously authorized time for eating, or for dressing, toileting, and transferring/mobility.

The ASW testified that because the Appellant did not have a need for all of the previously authorized time for eating, or for dressing, toileting, and transferring/mobility, the time and tasks for those HHS services were removed from Appellant's HHS payment authorization. (Exhibit 1, Pages 5-8, 10).

The Appellant's aunt-Representative testified that she has been Appellant's caretaker for several years. The Appellant's aunt-Representative further testified that the Appellant is with her 24 hours a day seven days a week. The Appellant's aunt-Representative stated that she did not understand why the Home Help Services payment was reduced because none of the Appellant's activities of daily living needs had changed.

The Appellant's Aunt Wilhelmina described the Appellant's aunt-Representative constantly "getting after [Appellant]." It was discussed during the hearing that prompting and reminding, is not a HHS-covered service. The Department explained that HHS paid for hands-on care and that Appellant's mental retardation did not prevent her from dressing, walking or eating, and the "getting after her" to do those tasks is not a HHS covered service.

The Department responded that the determination for Home Help Services must abide by policy and must be supported by evidence including medical need certified by a doctor. The credible evidence demonstrated that Appellant is able to perform for herself eating, dressing, toileting, and transferring/mobility. The credible evidence supports the Department's removal of services.

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 provided



**Docket No. 2010-30756 HHS
Decision and Order**

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 her 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:



Date Mailed: 8/13/2010

***** 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.