

**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. 2010-3231 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 telephone hearing was held on ██████████. ██████████
██████████, appeared on behalf of the Appellant. The Appellant was present.

██████████, represented the Department. ██████████
██████████, and ██████████
██████████, 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. Appellant is a ██████████ woman with coronary artery disease, congestive heart failure and atrial fibrillation. (Exhibit 1, Page 3).
2. Appellant is a Medicaid beneficiary.
3. Appellant's chore providers in ██████████ were ██████████ and ██████████. (Exhibit 1, Pages 22, 28-30).
4. Appellant's representative at hearing is her son, ██████████. (Exhibit 1, Pages 4-6).
5. On ██████████, Appellant's Adult Services Worker (ASW) made a visit to

Appellant's home to conduct a required Home Help Services reassessment. Appellant and her chore provider ██████████ were present in Appellant's home. During the assessment the ASW asked questions and received answers from both the Appellant and her chore providers.

6. During the reassessment Appellant and her chore provider informed the ASW that Appellant had a knee replacement surgery and therefore had moved a hospital bed into the living room and was not climbing stairs to her bedroom, Appellant was no longer receiving range of motion exercises, and the only help she needed with eating was cutting up food. (Exhibit 1, Page 20).
7. On ██████████, the Department sent a Negative Action Notice notifying Appellant that her Home Help Services payments would be reduced to ██████████ (from the previous ██████████) effective ██████████. The reason given was that the Appellant was no longer receiving range of motion, no longer using stairs thus no need for mobility assistance with stairs, and only needed help with cutting up food so eating authorization was reduced. (Exhibit 1, Pages 6-10).
8. After the reduction was disputed by Appellant's son/representative, the ASW contacted the Appellant's physician to confirm medical necessity for tasks indicated by the physician, in particular for the several complex care tasks indicated despite having no corresponding diagnosis. (Exhibit 1, Page 14).
9. On ██████████, the ASW spoke with Appellant's physician and inquired why several complex care tasks were indicated despite having no corresponding diagnosis. (Exhibit 1, Page 14). Appellant's physician confirmed that Appellant did not need range of motion, bed sore prevention, bowel program, specialized feeding or any other complex care task. Appellant's physician also indicated that Appellant did not have mental illness or dementia. (Exhibit 1, Page 14).
10. On ██████████, the Appellant's physician signed and submitted a medical needs form 54-A confirming that Appellant did not need range of motion, bed sore prevention, bowel program, specialized feeding or any other complex care task, and that she did not have mental illness or dementia. (Exhibit 1, Page 35).
11. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 1, Pages 4-6).

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

██████████
Docket No. 2010-3231 HHS
Decision and Order

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 witness testified that she completed a comprehensive assessment on ██████████, at which she asked Appellant and Appellant's chore provider questions.

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 his/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 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.

Removal of mobility authorization for assistance with stair climbing –

The ASW testified during the reassessment that Appellant and her chore provider informed the ASW that Appellant had a knee replacement surgery and was not climbing the stairs to her upstairs bedroom. The ASW testified she observed a hospital bed on the main floor. Because the Appellant no longer needed mobility authorized for helping her up the stairs to her bedroom, the time authorization was removed. The ASW explained that she informed Appellant that the task may be reauthorized if the Appellant contacted her to let her know she was using the stairs again and needed assistance.

The Appellant's son/representative testified that now that Appellant had recovered from her knee replacement surgery she was climbing stairs again. The Appellant's son/representative tried to negotiate during hearing that the mobility authorization be immediately reinstated. Neither the authorization nor the administrative hearings process works by negotiating authorization during hearing.

First, the Administrative Law Judge's authority is limited to reviewing the information the Department had at the time it rendered its HHS authorization reduction, to determine if the reduction was in compliance with HHS policy. Considering the evidence, that Appellant had a recent knee replacement surgery and had a hospital bed on the ground floor, the Department properly eliminated the task of mobility for climbing stairs.

Second, the ASW informed Appellant she needed to contact the ASW when she was regularly climbing the stairs again if she needed assistance. The Appellant did not call and inform the ASW she was regularly climbing the stairs again. The Appellant's son/representative requesting the service at hearing does not suffice. It has not even been determined if the knee replacement surgery took away the need for mobility assistance with stair climbing and the ASW may need to return to Appellant's home to assess if there is medical necessity for mobility in stair climbing. The evidence establishes that the Department properly removed mobility from Appellant's HHS authorization.

Reduction in authorization for eating -

The ASW testified that based on Appellant's statements that she only needed help cutting her food, Appellant's statements that she ate soft foods for breakfast and lunch, two of her three meals, and therefore did not need food cut up for at least two of three meals, and her conversation with Appellant's physician who indicated she did not need assistance with

██████████
Docket No. 2010-3231 HHS
Decision and Order

eating, the ASW reduced the authorization from 44 minutes per day to 25 minutes per day. (Exhibit 1, Pages 20, 25).

The tasks included in assistance with eating involve actions taken after food is served at the table and include putting food on a fork, cleaning the person's face after eating and cutting food that has already been put on a person's plate. (ASM 365; Exhibit 1, Page 44). Neither Appellant nor her physician provided information to establish how her coronary artery disease caused a medical necessity to spend 44 minutes per day cutting food that was already placed on her plate at the table. The Appellant's son/representative provided no credible medical documentation that Appellant needed more than 25 minutes per day to cut up the food that had already been put on Appellant's plate. The Administrative Law Judge spoke with the Appellant during the hearing and found her to be a very pleasant and competent woman capable of knowing to cut her food. The evidence demonstrates that the Department's reduction in authorization for eating was proper.

Removal of range of motion authorization -

Range of motion assistance is considered an extraordinary HHS task authorized only with additional and specific authorization from an individual's health professional. The ASW testified that during the reassessment the Appellant informed her she was no longer receiving range of motion exercises and Appellant's chore provider informed her he was not providing range of motion exercises. A review of the detailed listing of tasks the Appellant's chore provider ██████████ submitted to the Department corroborates the testimony of the ASW, and the statements of the Appellant and chore provider that range of motion exercises were not being provided.

The Appellant's son/representative argued that Appellant had range of motion indicated by her physician in the past and so the prior physician indications should remain in place. The Administrative Law Judge granted the Appellant's son/representative an opportunity to submit prior medical needs forms where range of motion was indicated. (Exhibit 2).

Appellant's ██████████ and ██████████ medical needs forms were reviewed prior to writing this Decision and Order, however both the Department and this Administrative Law Judge are bound to follow the most recent medical needs form. The most recent medical needs form, from ██████████, clearly indicates the Appellant does not have medical necessity for range of motion provided by her HHS chore provider.

Furthermore, on ██████████, the ASW spoke with Appellant's physician and inquired why several complex care tasks were indicated despite having no corresponding diagnosis. (Exhibit 1, Page 14). Appellant's physician confirmed that Appellant did not need range of motion, bed sore prevention, bowel program, specialized feeding or any other complex care task. Appellant's physician also indicated that Appellant did not have mental illness or dementia that would prevent her from performing regular or complex tasks of living. (Exhibit 1, Page 14).

The evidence of record demonstrates the Adult Services Worker properly performed a HHS reassessment in accordance to Department policy. She went to the Appellant's home and

Docket No. 2010-3231 HHS
Decision and Order

asked review questions of the Appellant and her chore provider. Based on the information the ASW was provided by the Appellant and her chore provider at the time of the assessment the ASW reduced HHS authorization.

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 Appellants' 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: 1/28/2010

***** 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.