

**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. 2010-41142 HHS
[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] appeared on his own behalf. [REDACTED], chore provider, appeared as a witness for the Appellant. [REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker, and [REDACTED], Adult Service Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce Home Help Services (HHS) 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 Medicaid beneficiary.
2. The Appellant is a [REDACTED] with diagnoses including blind in left eye, cataract in right eye, hypertension, osteoarthritis generalized and specifically affecting the right hand and both knees with gait impairment and chronic pain. (Exhibit 1, pages 11 and 22)
3. The Appellant lives in a home with his chore provider. (Exhibit 1, pages 3 and 9)
4. On [REDACTED], a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 8)

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5. On [REDACTED], the Appellant's physician completed a DHS 54-A Medical Needs form indicating that the Appellant had a medical need for assistance with taking medications, meal preparation, shopping, laundry, and housework. (Exhibit 1, page 22)
6. As a result of the information gathered for the assessment, the worker decreased the HHS hours authorized for housework, shopping, and meal preparation due to the household composition. The worker also eliminated the HHS hours authorized for bathing, grooming, dressing, transferring, and mobility. (Exhibit 1, pages 23-24)
7. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated in a shared household. (Adult Services Manual (ASM) 363, 9-1-2008, pages 4-5 of 24)
8. On [REDACTED], the Department sent an Advance Negative Action Notice to the Appellant indicating that his Home Help Services payments would be reduced to [REDACTED] per month effective [REDACTED] (Exhibit 1, pages 4-7)
9. On July 6, 2010, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (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.

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).

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

*Adult Services Manual (ASM) 9-1-2008,
Pages 2-15 of 24*

On [REDACTED], the Adult Services Worker (ASW) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. The ASW's case notes indicate the Appellant reported he was able to perform all of his activities of daily living without hands on assistance. (Exhibit 1, page 8) A current DHS 54-A Medical Needs form was also obtained from the Appellant's physician, which only indicated a need for assistance with taking medications, meal preparation, shopping, laundry, and housework. (Exhibit 1, page 22) The worker testified that using the functional scale, based on his observations, and the information provided at the time of the assessment, the HHS hours authorized for bathing, grooming, dressing, transferring, and mobility were eliminated. Additionally, the HHS hours for housework, shopping, and meal preparation were decreased due household composition. The worker testified proration was applied to the authorized HHS hours in accordance with Department policy requiring that these activities be prorated based upon a shared household. He explained that laundry was not prorated because the Appellant's is done separately. (ASW Testimony)

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The Appellant disagrees with the reductions and testified he has good days and bad days. He stated that he has had mostly bad days the last few months and that his provider does provide assistance with bathing, grooming, dressing, transferring, mobility, meal preparation, cleaning, and shopping. The Appellant's provider testified that she cooks, helps the Appellant in/out of the tub and with dressing on bad days due to arthritis in his knees and hands.

However, the Appellant could not recall if he told the ASW about having good and bad days, when he would need more assistance. The ASW testified that the Appellant did not mention having bad days at the Assessment. (ASW Testimony) The Appellant did not establish that he informed the ASW that he has bad days, so that additional needs on these days could be considered for the assessment. Further, the Appellant's physician did not certify a medical need for assistance with the eliminated activities. The elimination of HHS hours for bathing, grooming, dressing, transferring, and mobility is sustained.

The Appellant's physician only certified a medical need for assistance with taking medications, housework, shopping, laundry, and meal preparation. The Appellant acknowledged that he can take his medications on his own. In regards to meal preparation, the Appellant stated that he can warm up prepared foods. (Appellant Testimony) The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks based upon the number of persons residing in the home together, as the Appellant's chore provider would have to clean her own home, make meals, shop and do laundry for herself if she did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy.

Department policy allows for a maximum of 6 hours for housework, 7 hours for laundry, 5 hours for shopping, and 25 hours for meal preparation each month. The worker ranked the Appellant as a level 4 for these activities, indicating he requires much human assistance, but is not totally dependant on others for these tasks. (Exhibit 1 page 12) The ASW testified he did not apply proration to laundry because the Appellant's is performed separately. Therefore the HHS hours for this task actually increased from 5 hours and one minute per month to 7 hours and 1 minute per month. (Exhibit 1, pages 23-24) After proration, the Department authorized 3 hours and 1 minute for housework, 2 hours and 30 minutes for shopping, and 11 hours and 2 minutes for meal preparation per month. (Exhibit 1 page 24) The reductions in the areas of housework, shopping, and meal preparation are sustained as they are reflective of the Appellant's rankings and household composition.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS payments based upon the information available at the time of the assessment.

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

cc:



Date Mailed: 9/24/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 March 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.