

**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. 2010-41990 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]. [REDACTED], [REDACTED], appeared on the Appellant's behalf. [REDACTED], appeared as a witness for the Appellant. [REDACTED] represented the Department (DHS). [REDACTED] and [REDACTED], [REDACTED], 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] man with diagnoses of cerebral palsy, hypotonic seizure disorder, low blood sugar, spinal fusion-rods down shoulders to hips, and obesity. (Exhibit 1, page 18)
3. 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 17)
4. The Appellant as ranked as a level 5 for all activities of daily living and instrumental activities of daily living except respiration, indicating he is dependant on other and does not perform the activities even with human assistance or assistive technology. (Exhibit 1, pages 14 and 19)

5. As a result of the information gathered from the assessment, the worker decreased the HHS hours authorized for housework, shopping, laundry, and meal preparation due to the household composition. The worker also reduced the HHS hours authorized for eating. (Exhibit 1, pages 16-16A)
6. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that his Home Help Services payments would be reduced to ██████████ per month effective ██████████. (Exhibit 1, pages 11-13)
7. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3-10).

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;

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- 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 stated proration was applied to the authorized HHS hours in accordance with Department policy requiring that the HHS hours for these activities be reduced based upon a shared household. He considered the household composition to be three persons, the Appellant and the Appellant's mother and father. The ASW explained there is a maximum number of hours per month that can be authorized for these activities under Department Policy, He stated that the minutes per day that the Department's computer system indicated for each activity was divided by half for proration. Then, the HHS hours for housework, shopping, and laundry were further reduced as these activities are only performed five days per week. (ASW Testimony) The end result was an increase in the HHS hours authorized for housework and shopping and a decrease in the HHS hours for laundry and meal preparation. (Exhibit 1, pages 16 and 16A)

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 family members would have to clean their own home, make meals, shop and do laundry for themselves if they 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. However, exceptions are appropriate when there is justification for performing a task completely separately for the Appellant. Further, Department policy does not indicate that just because shopping, laundry, or housework is done fewer days per week, less time should be allowed.

In the present case, the Appellant's mother credibly testified that specialty foods must be purchased and prepared solely for the Appellant. She explained that he eats every 3-4 hours, separately from the rest of the family's meals, due to low blood sugar.

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However, she explained that low calorie foods must be prepared because the Appellant is non-mobile due to hypotonic cerebral palsy. He must also be given lots of fluids to prevent kidney stones. In regards to laundry, the Appellant's mother credibly testified that the Appellant is diapered due to incontinence and that there is excessive drooling due to the seizure medications. Additionally, his sheets are stripped daily due to allergy issues. (Mother Testimony)

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 5 for these activities, indicating he is not totally dependant on others for these tasks. (Exhibit 1 pages 14 and 25) The ASW authorized 2 hours and 9 minutes for housework, 2 hours and 30 minutes for laundry, 3 hours and 35 minutes for shopping, and 12 hours and 32 minutes for meal preparation per month. (Exhibit 1 page 16)

Despite the errors in how the ASW calculated the HHS hours, the adjustments to the HHS hours for housework and shopping are sustained. Housework benefits all three household members and the authorized time is a bit over one third of the maximum allowed under Department policy. The HHS hours for shopping are more than half the maximum. This was also appropriate as the Appellant has some specialized needs with this shopping. The reductions in the areas of laundry and meal preparation are reversed. There is sufficient justification for performing these activities separately for the Appellant's benefit. Therefore, they should not have been subject to proration. The HHS hours shall be returned to 7 hours and 1 minute per month for laundry and 25 hours and 5 minutes per month for meal preparation.

The reduction to the HHS hours for the eating is at issue in this case. The worker testified that he reduced the HHS hours for this task because the previously authorized time of 1 hour and 20 minutes per day (40 hours and 8 minutes per month) exceeded the Department's Reasonable Time Schedule (RTS) allowance for this task. No evidence of the RTS was presented at the hearing. Further, the ASW indicated he did not base this decision on the Appellant's needs for this task, nor could he recall what he was told about the Appellant's abilities and assistance needs with eating at the [REDACTED] home visit.

As cited above, Department policy states that 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. When hours exceed the RTS, the work is to provide a rationale. *Adult Services Manual (ASM) 9-1-2008, Page 3 of 24.*

The ASW stated that even a justified HHS time allowance in excess of the RTS for an activity must be approved by the central office. This is not correct. The local office can approve an expanded Home Help Services case when the payment will be between \$550 - \$1299.99 a month plus the client /employer's FICA allowance. A case does not have to go to the central office for approval unless the payment is \$1300 and over a

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month plus the client /employer's FICA allowance. *Adult Services Manual (ASM) 9-1-2008, Page 21 of 24.*

In the present case, the Appellant's mother provided credible testimony to justify HHS hours in excess of the Department's RTS for eating assistance. She explained that the Appellant has no teeth and must slowly swallow. She described feeding ground foods while holding the Appellant's head up enough to allow him to eat. She stated that it can take 55 minutes to 1 hour to feed the Appellant a meal, even without him having seizures. The HHS hours for eating assistance shall be returned to 40 hours and 8 minutes per month.

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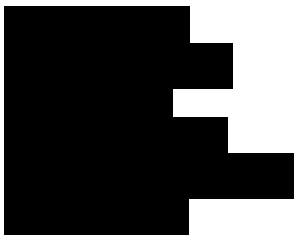
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly reduced the Appellant's HHS payments based upon the information available at the time of the assessment.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The HHS hours shall be returned to 7 hours and 1 minute per month for laundry, 25 hours and 5 minutes per month for meal preparation and 40 hours and 8 minutes per month for eating.

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

cc:



Date Mailed: 9/24/2010

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***** 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.