

**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. 2010-43196 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], mother and Guardian, appeared on the Appellant's behalf. [REDACTED] father, appeared as a witness for the Appellant. [REDACTED] Appeals Review Officer, represented the Department. [REDACTED] Adult Services Worker, and [REDACTED], Adult Services 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] woman with multiple medical conditions including partial trisomy chromosome #3, nearly blind-glaucoma, deaf, scoliosis-body brace, seizure disorder, mentally delayed, and swallowing disorder. (Exhibit 1, page 26)
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 25)

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4. The Appellant is ranked as a level 5 for all activities of daily living and instrumental activities of daily living except respiration, indicating she is dependant on others and does not perform the activities even with human assistance or assistive technology. (Exhibit 1, pages 30 and 33)
5. As a result of the information gathered from the assessment, the worker adjusted 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 bathing, grooming, dressing, toileting, transferring, eating and medications. (Exhibit 1, page 29 and Exhibit 3)
6. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be reduced to ██████████ per month effective ██████████. (Exhibit 1, pages 11-15)
7. On ██████████ the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be suspended effective ██████████ because the worker was having trouble reaching a collateral contact. (Exhibit 1, pages 17-19)
8. On ██████████ the Department sent a Services and Payment Approval Notice notifying the Appellant that her Home Help Services payments would be ██████████ per month effective ██████████ indicating the needed information was received from the collateral contact. (Exhibit 1, pages 20-21)
9. On ██████████ the Department sent a Services and Payment Approval Notice notifying the Appellant that her Home Help Services payments would be ██████████ per month effective ██████████ indicating that HHS hours for lunch were reinstated and the Appellant was at the maximum hours presently allowed for a shared household. (Exhibit 1, pages 22-24)
10. On ██████████ the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. The hearing request was resubmitted on ██████████ with documentation of guardianship. (Exhibit 1, pages 4-10).

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.

Program requirements are set forth in Adult Services Manual item 362, below:

COMPREHENSIVE ASSESSMENT

If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the personal care needs. Complete the comprehensive assessment (DHS- 324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

CONTACTS

The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and redetermination.

Adult Services Manual (ASM 362) 12-1-2007, Page 3 of 5

Adult Services Manual item 363 addresses program procedures:

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.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. **Unable** means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- 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).

REVIEWS

ILS cases must be reviewed every six months. A face-to-face contact is required with the client, in the home. If applicable, the interview must also include the caregiver.

Six Month Review

Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.
- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- Follow-up collateral contacts with significant others to assess their role in the case plan.
- Review of client satisfaction with the delivery of planned services.

Annual Redetermination

Procedures and case documentation for the annual review are the same as the six month review, with the following additions:

Requirements

- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- A new medical needs (DHS-54A) certification, if home help services are being paid.

Note: The medical needs form for SSI recipients will **only** be required at the initial opening and is no longer required in the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and then annually thereafter.

- A face-to-face meeting with the care provider, if applicable. This meeting may take place in the office, if appropriate.

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On ██████████ 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. The ASW explained there is a maximum number of hours per month that can be authorized for these activities under Department policy, which is prorated by half for a shared household. The Appellant's HHS hours did not change for housework or laundry, were decreased by 31 minutes per month for shopping, and were increased by 2 hours and 30 minutes per month for meal preparation. (Exhibit 1, page 25 and Exhibit 3)

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. Exceptions can be considered when there is justification for performing a task completely separately. However, there was no evidence was presented indicating a need to perform these activities separately for the Appellant.

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 ASW ranked the Appellant as a level 5 for these activities, indicating she is totally dependant on others for these tasks. (Exhibit 1 pages 30 and 33) The ASW authorized 3 hours and 1 minute for housework, 7 hours and 1 minute for laundry, 2 hours and 30 minutes for shopping, and 12 hours and 32 minutes for meal preparation per month. (Exhibit 1 page 25) The adjustments to the HHS hours for housework, laundry, and shopping and meal preparation are sustained as they are reflective of the Appellant's rankings and household composition.

The reductions to the HHS hours for bathing, grooming, dressing, toileting, transferring, eating, and medication are also at issue in this case. The ASW stated that she was new to the Appellant's case and that the Appellant had been receiving more than the Department's Reasonable Time Schedule (RTS) allowance for these activities. The ASW testified that she has been told she can never exceed the RTS. The ASW's testimony indicated she did not base these reductions on determinations of the Appellant's actual needs for assistance with each task, but instead considered the RTS allowances as a maximum for each task.

As cited above, Department policy states that the ASW is to 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 worker is to provide a rationale.** *Adult Services Manual (ASM) 9-1-2008, Page 3 of 24 (emphasis added by ALJ).*

The reductions to the HHS hours for bathing, grooming, dressing, toileting, transferring, eating, and medication can not be upheld as the Appellant's needs for assistance with these activities was not the basis for the reduction. The ASW incorrectly used the RTS as a maximum time limit per activity, rather than as a guide for determining appropriate HHS hours for the Appellant. Department policy clearly allows for HHS hours to be authorized in excess of the RTS when justified, the ASW just has to document the rationale for doing so.


The ASW also noted a concern for duplication of services with the Appellant's Community Living Supports services. However, the only reduction made on this basis, removal of lunch from the HHS hours for eating, was rescinded by the Department in the July 13, 2010 Services and Payment Approval Notice. (Exhibit 1, pages 22-24)

In the present case, the Appellant's parents provided detailed and credible testimony to justify HHS hours in excess of the Department's RTS based on the Appellant's needs for assistance with the various activities of daily living. The HHS hours for bathing, grooming, dressing, toileting, transferring, eating, and medication shall be returned to the previously authorized times as listed in Exhibit 3.

DECISION AND ORDER

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 PARTIALLY REVERSED. The adjustments to the HHS hours for shopping and meal preparation are sustained. The reductions to the HHS hours for bathing, grooming, dressing, toileting, transferring, eating, and medication are REVERSED. The HHS hours for these activities shall be returned to the previously authorized times effective 

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

cc:



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Date Mailed: 10/26/2010

***** 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.