

**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. 2010-43197 HHS

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, was present. The Appellant's daughter, ██████████, represented the Appellant. ██████████, the Appellant's chore provider, was present as the Appellant's witness. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker (worker), was present as the Department's witness.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services (HHS) payments?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████████ Medicaid beneficiary who was receiving Adult HHS. (Exhibit 1, page 9; Exhibit 3, page 4; Testimony of ██████████)
2. The Appellant has been diagnosed with anxiety, uncontrollable hypertension, diabetes, degenerative joint disease, and OBS. (Exhibit 1, page 16; Exhibit 3, page 3)

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3. On [REDACTED], the worker conducted an in-home assessment with the Appellant to determine her continuing eligibility for HHS. (Exhibit 1, pages 11-12)
4. As a result of the information gathered from the Appellant and her chore provider at the assessment, the worker determined that the Appellant was only eligible for 11 hours and 10 minutes per month of continuing HHS. More specifically, he eliminated the tasks of eating, grooming, bathing, dressing, and meal preparation from the Appellant's chore grant. (Exhibit 1, page 15; Exhibit 2, page 2)
5. On [REDACTED], the Appellant was notified that her HHS payments would be reduced, effective [REDACTED]. (Exhibit 2, pages 1-2)
6. The Appellant's son-in-law, [REDACTED], was her chore provider at the time of the assessment. However, in [REDACTED] [REDACTED] became the Appellant's new chore provider. (Testimony of [REDACTED] Testimony of [REDACTED])
7. On [REDACTED], the worker conducted a face-to-face meeting with the Appellant, her daughter, and her new chore provider at the Department office. (Exhibit 1, page 11)
8. On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing, contesting the reduction of her HHS payment. (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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The purpose of HHS is 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) 9-1-2008, 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.

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).

Adult Services Manual (ASM 363) 9-1-2008, Pages 2-5 of 24

Finally the Code of Federal Regulation Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

§ 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

- (a) The agency has factual information confirming the death of a recipient;
- (b) The agency receives a clear written statement signed by a recipient that—
 - (1) He no longer wishes services; or
 - (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
- (c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
- (d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
- (e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
- (f) A change in the level of medical care is prescribed by the recipient's physician;
- (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or (h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

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On ██████████, the Adult Services Worker (worker) completed a home visit as part of an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that he removed the tasks of bathing and grooming from the Appellant's chore grant because, at the assessment, the Appellant's chore provider told the worker that he did not assist the Appellant with either task. The worker further testified that the tasks of dressing, eating, and meal preparation were removed because, at the assessment, the Appellant was able to walk around the house without any restrictions, and she was able to move her hands and legs freely. In fact, the worker stated that he witnessed the Appellant at the stove, stirring food during the assessment, which he believed evidenced that the Appellant no longer needed assistance with the tasks that were removed. However, the worker admitted that there had been no change in the Appellant's medical condition and that he did not ask the Appellant any specific questions about the tasks that were eliminated.

The Appellant disagrees with the reduction of the HHS payments from ██████████ to ██████████. The Appellant was receiving 8 hours and 2 minutes per month for bathing, 4 hours and 1 minute per month for grooming, 7 hours and 1 minute per month for dressing, 12 hours and 32 minutes per month for eating, and 25 hours and 5 minutes per month for meal preparation.

The Appellant testified that, at the assessment, she told the worker that she was having trouble with her back and legs. She stated that she could not recall the worker asking any specific questions about the tasks that were eliminated. The Appellant stated that she only briefly talked with the worker.

The Appellant further testified that the worker did talk to her chore provider about bathing. The Appellant and the Appellant's representative testified that there was some miscommunication between the chore provider and the worker. They stated that the chore provider most likely did tell the worker that he was not assisting the Appellant with bathing because, shortly before the assessment, the Appellant began urinating on herself, and the Appellant's representative had been assisting the Appellant with bathing. The Appellant did also admit that while the worker was there, she stirred grits that were already made on the stove, and she put them on a plate to eat them. But she did not cook them. The Appellant stated that she is able to eat by herself.

The Appellant's chore provider testified that she assists the Appellant daily with bathing, grooming, dressing, and meal preparation.

Here, the worker did not complete the assessment in accordance with Department policy. During the HHS assessment, the worker should have determined the Appellant's abilities and the level of assistance she needs. The worker could not recall any specific questions that he asked the Appellant regarding the eliminated tasks or her specific needs. The worker also admitted that he was only at the Appellant's home for 20 minutes. In addition, the Appellant's rankings are not consistent with the elimination of the tasks. Indeed, the Appellant is still ranked at a level 3 for the tasks of bathing,

grooming, eating, and dressing, indicating that the Appellant's has at least some need for assistance with those tasks, and she is ranked at a level 5—the highest possible level of need—for the task of meal preparation.

The worker also failed to provide advance notice of the drastic reduction in payments he was implementing. The Appellant was previously receiving ██████████ per month in HHS payments. And while the Advance Negative Action Notice that was sent to the Appellant on ██████████, did have an effective date of ██████████, the reduction was actually implemented on ██████████. This is not proper advance notice of a negative action. The reduction should not have been implemented before the ██████████ effective date given in the notice. It was Department error to enact the cuts without conducting a proper comprehensive assessment and without proper notice of the reduction.

A new comprehensive assessment is needed in this case, given the Appellant's and her chore provider's testimony that her provider does assist with the majority of tasks that were eliminated from her chore grant. This assessment should determine the Appellant's abilities and the level of services she needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department's reduction of the Appellant's HHS payments was improper.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is hereby ordered to reinstate the Appellant's HHS payments to the amount authorized before the ██████████ Advance Negative Action Notice.

The Department is further ordered to conduct a new comprehensive assessment of the Appellant's abilities and assistance needs.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

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CC:



Date Mailed: 11/4/2010

***** 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.