

**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. 2010-44974 HHS
Case No. [REDACTED]

[REDACTED],

Appellant

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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held [REDACTED]. The Appellant was present and represented herself at hearing. The Appellant's mother and chore provider, [REDACTED], was present and provided testimony in support of the Appellant. The Appellant's father was present. He did not present any testimony.

[REDACTED], represented the Department of Community Health. [REDACTED] appeared as a witness on behalf of the Department. [REDACTED] for the Department of Human Services (DHS), was present on behalf of 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 [REDACTED] Medicaid beneficiary who is a participant in the HHS program.
2. The Appellant is diagnosed with diabetes, depression, foot pain and high blood pressure. She is developing a vision impairment as a complication from her diabetes.

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3. The Appellant receives payment assistance for Activities of Daily Living and Instrumental Activities of Daily Living, through the Department's Home Help Services Program.
4. The Appellant receives payment assistance for the tasks of grooming, medication, housework, laundry, shopping and meal preparation. She has a functional rank of 3 for each of these activities.
5. The Appellant's Home Help Services case was scheduled for an annual review in [REDACTED].
6. The Department of Human Services Adult Services Worker went to the Appellant's home [REDACTED], for the purpose of completing a comprehensive assessment and case review.
7. At the comprehensive assessment she spoke with the Appellant and her mother (chore provider). She was informed of additional tasks being performed on the Appellant's behalf. She was further informed the number of days certain tasks were being performed were less than 7 per week.
8. The worker directly observed the Appellant is ambulatory without an assistive device. She is able to bend and lift. She determined, based upon reports from the Appellant and her mother, the Appellant does not always feel well and is sometimes unable to provide for herself completely independently.
9. The Department's worker determined the appropriate functional rank for the Appellant is a 3 for the tasks of grooming, laundry, shopping, meal preparation, housework and medication assistance. This determination is based upon the following reports: the Appellant is able to do much for herself but requires assistance at times due to her medical condition.
10. The Appellant's provider returned chore logs to the Department that reflect she is performing most of the tasks on an occasional basis. She is doing grooming, medication set up, laundry and shopping 3 times per month. She is performing housework, and meal preparation 3 days per week.
11. The Appellant's mother informed the worker she is performing the services at the same frequency as is reflected on the log sheets she turned in to the Department.
12. The Department sent a Notice of reductions to the Appellant's payment assistance after making case adjustments to reflect adding medication set up and grooming but reducing the number of days from 7 to 3 per week or

3 per month, consistent with the logs and statements of the Appellant's chore provider. The Notice was sent [REDACTED].

13. The Appellant requested a hearing [REDACTED].

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.

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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

*Adult Services Manual,
7-1-2009.*

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.

- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician
 - Nurse Practitioner
 - Occupational Therapist
 - Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

The Adult Services Manual (ASM 363 7-1-09), 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 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 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 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.

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 for food and other necessities of daily living
- 6 hours/month for housework
- 7 hours/month for laundry
- 25 hours/month for meal preparation

These are maximums; as always, if the customer 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 customer 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 customer's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer 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 customer.
- 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 customer 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 customer.
- HHS may be authorized when the customer is receiving other home care services if the services are not duplicative (same service for same time period).

Adult Services Manual (ASM)
7-1-2009.

Department policy addresses the need for supervision, monitoring or guiding below:

Services Not Covered By Home Help Services

Do **not** authorize HHS 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 - Medical transportation policy and procedures are in Services Manual Item 211.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care

Adult Services Manual (ASM)
9-1-2008

In this case the Appellant contested the reductions implemented by the newly assigned worker that followed the annual assessment. She testified that everything was fine with the other worker and the new worker came along and changed everything without reason. She said it had been the same for at least 2 or 3 years and her mother does a lot for her that is not even compensated. She testified she is diabetic and shakes as a result. She characterized herself as having shaking fits. When asked she stated it is usually every day for about ½ to 1 hour in length. She indicated she requires assistance in performing some tasks because, for example, she is not one to stand at the stove a lot. She stated it takes too much out of her to perform laundry on her own behalf. She further stated she is diabetic, therefore cannot cut her own toenails. She is losing her eyesight but did testify she read the notice mailed her by the Department. She is not without vision. When asked why she cannot shop for herself, she said her mother takes her and helps her. She stated it was too hard to walk around the store for a long time. When asked, the Appellant indicated her building has washing machines and dryers on the 10th floor and there is an elevator. The Appellant stated she can go downstairs but cannot come back up. She does walk unassisted but was considering asking the doctor for a cane. She was asked if she had fallen and stated no, not recently. She then changed her testimony to state she fell a month ago, walking down the stairs and she sprained her ankle. She then added she had done that a few times

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this summer. At the close of the hearing the Appellant stated that according to the Policy manual, she is entitled to about 40 hours per month of paid assistance or more and she should get at least all the maximums for shopping, housework, laundry and meal preparation.

The Appellant's mother said she had already spent 20 hours preparing meals for her daughter this month. She is [REDACTED] and on oxygen herself. She said although she may indicate she performs a task 3 days per week she is spending hours doing it, not minutes. She said she does all her laundry for her daughter and has been all along. She said she takes it home with her and brings it back. She added that she changes the linens on her daughter's bed 2-4 times per week, thus creating a lot of laundry.

The Department's witness stated that she spoke with both the Appellant and her mother at the annual review. She said she was informed the Appellant does not always feel well enough to perform everything for herself all of the time, thus she determined the functional rank should be 3. She indicated she is confident in the ranks she determined for the Appellant's functional status and agreed it was an attempt to address the fact that although the Appellant is ambulatory, can lift and bend, she does not feel well all the time and needs assistance occasionally, even regularly. The Department's worker stated she was informed at the review the Appellant cannot cut her own nails and her mother is doing the laundry, so she added those tasks to the payment. She adjusted the number of days down from 7 to those indicated both by the Appellant's mother and the log sheet.

This ALJ concurs with the determination of the Department's Adult Services Worker regarding the Appellant's need for Home Help Services assistance. The worker testified in a credible manner and provided specific reasons for her actions and determinations that are supported by the policy included above. She specifically addressed the fact that the Appellant is capable of doing much for herself but still required some physical assistance at times. This is reflected in the number of days she authorized payment assistance. This is an implementation of policy that requires the worker to address the specific needs and circumstances of each client individually. The assertion from the Appellant that she should get the maximum allowable assistance for laundry, shopping, housework and meal preparation fails to recognize the worker's role in making a determination about the level of assistance that is appropriate and necessary for her to remain living in the community. The worker's role is not to simply authorize the maximum level of payment available under the policy. When this ALJ provided opportunity for the Appellant to describe why she is unable to do the tasks for herself, all she could really say is that she does not feel well enough to do it. This is an insufficient basis to authorize payment assistance at a higher rate than is being authorized. While the testimony from the Appellant that her mother spends a great deal of time caring for her and is not compensated for all her time is found credible, this is not evidence the Appellant has an actual need for the level of care her mother is electing to provide her. Her mother stated she has already spent 20 hours preparing meals for the Appellant this month alone. There is no evidence in the record to support a finding the Appellant

requires this level of service. She is ambulatory, able to lift and bend. Her testimony that she is "not one to stand at the stove a lot" is not a basis to find her need exceeds that authorized by the Department. Similarly, the testimony that the Appellant's mother takes her laundry home and brings it back to her is credible, however, it was not shown to be necessary. There are laundry machines located in the Appellant's building. There is an elevator in the building. There is no evidence in the record establishing why the Appellant is unable to do laundry for herself, except her claim generally that "it takes too much out of her." She is not expected to do it when she does not feel well. She can wait and do it later, or a little at a time. In short, the Appellant did not provide material evidence establishing her physical inability to do anything for herself. The Department did find her statements that she requires some physical assistance credible, thus authorized a limited amount of assistance to provide help as indicated on the log sheet, in apparent recognition of a need for some minimal level of help. This is consistent with case planning and service development policy. The Appellant is not in need of the maximum number of hours available the same as if she were bed ridden or fully dependent with a functional rank of 5. She did not meet her burden of proof in establishing the Department's actions are not supported by policy. The worker developed a service plan that reflects the Appellant's specific circumstances, as required by policy.

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 payment.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[Redacted]

Date Mailed: 8/31/2010

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***** 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.