

**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. 2010-47755 HHS
Case No. 81318373**

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 ██████████. ██████████, appeared on behalf of the Appellant. ██████████, Appellant's ██████████ and ██████████; and ██████████, the ██████████; appeared as witnesses on behalf of Appellant.

Ms. ██████████, ██████████, represented the Department. ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce Home Help Services 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. Appellant is ██████████.
2. Appellant is a Medicaid beneficiary.
3. Appellant's chore provider is ██████████. (Exhibit 1, Pages 10, 11).
4. Appellant lives with ██████████; including Appellant there are at least five adults in the home. (Exhibit 1, p 10).

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5. Appellant also receives community mental health services.
6. The Appellant has Down's syndrome. (Exhibit 1, Page 11).
7. On ██████████, Appellant's Adult Services Worker (ASW) made a visit to Appellant's home to conduct a required Home Help Services reassessment for Appellant. During the assessment the ASW asked questions, and received answers from the Appellant ██████████. (Exhibit 1, Page 11).
8. During the reassessment the ASW observed the Appellant. The ASW noted that based on observations and Appellant's ██████████ answers, Appellant's need for assistance with toileting was reduced. (Exhibit 1, Page 11).
9. The ASW also noted that the Appellant's housework, laundry, shopping, and meal preparation had not been prorated by the number of adults living in the home. (Exhibit 1, Pages 11).
10. On ██████████, the Department sent a Negative Action Notice notifying Appellant that his Home Help Services payments would be reduced effective ██████████. (Exhibit 1, Pages 6-8).
11. On ██████████, the Department received Appellant's Request for Hearing, with guardianship papers attached. (Exhibit 1, Pages 3-5).

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 agencies.

The ASW testified that a comprehensive assessment was completed on ██████████, at which the Appellant and ██████████ were asked questions and provided answers.

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-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/his 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

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- 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 April 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:

- Five (5) hours/month for shopping.
- Six (6) hours/month for light housework.
- Seven (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. (Underline added by ALJ).

Adult Services Manual (ASM 363 9-1-08), page 5 of 24 requires a DHS worker to address:

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. (Underline added by ALJ).

Reduction of authorization for assistance with toileting–

The ASW testified that during the reassessment the Appellant's ██████████ informed the ASW of tasks he could perform and what level of assistance, if any, was necessary. The ASW testified that she was informed that the Appellant was independent in toileting but needed some assistance with cleaning after a bowel movement. The ASW noted that the Appellant was ranked a level three for toileting, meaning he needed some assistance only, but had been assigned 24 minutes each day for cleaning after a bowel movement. The ASW took into consideration that the Appellant is gone from the home part of the day and that he did not have any complex toileting care, such as a colostomy bag, which would require 24 minutes each day to clean after one bowel movement. Because the Appellant had no documentation of complex toileting needs, and because he was independent in toileting except for cleaning after a bowel movement, the ASW testified that according to policy she ranked the Appellant's rank at a level three but reduced the cleaning after bowel movement to 15 minutes per day.

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The Appellant's representative testified that it took the full 24 minutes to clean the Appellant after bowel movement. By detailed questioning during the hearing, this administrative law judge asked the Appellant's representative to explain how, if the Appellant was seated on the toilet for the bowel movement and was successful in having a normal bowel movement, what part of cleaning the Appellant would require a full 24 minutes. The Appellant's representative was not able to credibly explain how a full 24 minutes each day was medically necessary to clean the Appellant after he had a bowel movement seated on the toilet.

The weight of credible evidence of record demonstrates the Department properly reduced the Appellant's toileting time from 24 minutes to 15 minutes.

IADL of Housework, Laundry, Shopping and Meal Preparation prorated -

As stated above in Department policy, the DHS **must** divide the number of authorized hours for IADLs by the number of people in the household. After the [REDACTED] assessment the ASW discovered that the Appellant's IADL time authorization for housework, laundry, shopping, and meal preparation had not been prorated for the fact there were five adults living in the home. The DHS worker testified that according to policy she was required to prorate the IADL time authorization to reflect five adults lived in the home.

The evidence in this case establishes that the Appellant, his parents, and at least two adult brothers were living in the home at the time the DHS worker performed the [REDACTED] assessment. The DHS worker was mandated to prorate the IADL time authorization and did so properly.

The Appellant's [REDACTED] testified that the Appellant's [REDACTED] were gone from the home most of the day. The Appellant's [REDACTED] asserted it was not true that the IADLs were performed for the brothers' benefit. The Appellant's [REDACTED] testified that she didn't think it was right that housework, laundry, shopping, and meal preparation were reduced solely because Appellant's [REDACTED] live with him.

The Department's representative noted that proration is required by policy and not subject to ASW discretion. Both the ASW and this administrative law judge are bound by the Department's policy. The evidence demonstrates that the Department's reduction was based on proration policy and therefore the reduction in authorization was proper.

Summary -

The Appellant bears the burden of proving by a preponderance of evidence that the Department's reduction was not proper. The Appellant did not provide a preponderance of evidence that the Department's reduction was not proper. The Department must implement the Home Help Services program in accordance with Department policy.


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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced his Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 11/8/2010

***** 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.