

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-4854 HHS

██████████

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 ██████████. ██████████ was not present. ██████████, daughter in law and Home Help Services provider, appeared as the Appellant's Representative. ██████████, Appeals Review Officer, represented the Department (DHS). ██████████, Adult Services Worker, 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. The Appellant is an ██████████ who has been diagnosed with right hemiplegia from a stroke. (Exhibit 1, page 10).
2. The Appellant is a Medicaid beneficiary and her daughter in law is her chore provider.
3. Appellant lives in a house with two other adults, her son and daughter in law.
4. On ██████████, a DHS Adult Services Worker made a visit to Appellant's home to conduct a Home Help Services assessment. Appellant and her provider were present in the home. (Exhibit 1, page 7).

Docket No. 2010-4854 HHS
Decision and Order

5. As a result of the information gathered from the Appellant at the assessment, the worker decreased the HHS hours authorized for housework, shopping, laundry, and meal preparation due to the household composition of 3 adults. (Exhibit 1, page 7).
6. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated by the number of people living in the home.
7. On [REDACTED], the Department sent an Advance Negative Action Notice notifying Appellant that her Home Help Services payments would be reduced to [REDACTED] per month, effective to [REDACTED] (Exhibit 1, pages 4-6).
8. On [REDACTED], the State Office of Administrative Hearings and Rules received Appellant's Request for Hearing. A signed request for hearing was received on [REDACTED]. (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 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).

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

On [REDACTED], the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1 page 7) The worker testified that using the functional scale, based on his observations and the information he was provided at the time of the assessment, the HHS hours authorized for housework, shopping, laundry and meal preparation were decreased. The worker testified proration was applied to the authorized HHS hours in accordance with Department policy requiring that these activities be prorated based upon the number of adults living in the home.

Docket No. 2010-4854 HHS
Decision and Order

The Appellant's representative testified that she disagreed with the reduction. Appellant's representative stated that the Appellant is disabled and totally dependant for all activities including bathing and getting into and out of her wheel chair. Therefore, the Appellant's representative explained that she does all the housekeeping, laundry, shopping and meal preparation for the Appellant.

The Appellant's representative also stated that three people are not always residing in the home. The Appellant's representative testified that her husband is in and out with work and there for he frequently does not stay at the home. The Appellant's representative testified that when her husband is not working, he does stay in the home and she was not aware of another address her husband uses. Accordingly, the Department properly included him as part of the household composition.

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 by the number of adults residing in the home together, as the Appellant's son and daughter in law, 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.

In the present case, the Department reduced the housework, shopping, laundry and meal preparation hours. Department policy allows for a maximum of 6 hours for housework each month. The worker ranked Appellant as a level 5 for this activity, indicating she is dependant on others and does not participate in meal preparation even with assistance. (Exhibit 1 page 10) After proration for a household of 3 persons, the Department authorized 2 hours for housework per month. (Exhibit 1 page 8) This is approximately on third of the maximum allowed hours. The housework reduction is sustained.

Department policy allows for a maximum of 7 hours for laundry each month. The worker ranked Appellant as a level 5 for this activity, indicating she is dependant on others and does not participate in meal preparation even with assistance. (Exhibit 1 page 10) After proration for a household of 3 persons, the Department authorized 2 hours and 30 minutes for laundry per month. (Exhibit 1 page 8) This is approximately one third of the maximum allowed hours. The laundry reduction is sustained.

Department policy allows for a maximum of 25 hours for meal preparation each month. The worker ranked Appellant as a level 5 for this activity, indicating she is dependant on others and does not participate in meal preparation even with assistance. (Exhibit 1 page 10) After proration for a household of 3 persons, the Department authorized 8 hours and 32 minutes for meal preparation per month. (Exhibit 1 page 8) This is approximately on third of the maximum allowed hours. The meal preparation reduction is sustained.

Department policy allows for a maximum of 5 hours for shopping each month. The worker ranked Appellant as a level 5 for this activity, indicating she is dependant on others and does not participate in shopping even with assistance. (Exhibit 1 page 10) The maximum of 5 hours per month totals 300 minutes. The number of adults living in the home is 3. After proration, this should result in authorization for about 100 minutes per month for shopping, or 1 hour and 40 minutes. However, the authorized time for shopping after proration was only 1 hour, about one fifth of the maximum allowed by department policy. (Exhibit 1 pg. 8).

The worker did not provide a sufficient explanation as to why shopping was approved for such a significantly reduced time. The authorized hours must be adjusted to reflect the shared household, but the evidence does not support reducing the payment this much. The approved time of 1 hour per month, is not consistent with the ranking of 5, indicating Appellant is totally dependant on others for this activity. Policy does not support a payment of only 1 hour per month given the circumstances. Authorization should be for 1 hour and 40 minutes of shopping per month given the worker's assessment and rank of 5 for this task and a household of three persons.


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 payments in the areas of housework, laundry and meal preparation based on the household composition of 3 adults. The reduction for shopping is not supported by the credible evidence of record of the Appellant's circumstances.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED** in part and **REVERSED** in part. The payment for shopping is to be adjusted consistent with pro-rating policy and assigned rank, thus should be 1 hour and 40 minutes per month.

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


Docket No. 2010-4854 HHS
Decision and Order

cc:



Date Mailed: 1/13/2010

***** 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.