

**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. 2010-51271 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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, was present for the hearing. She was represented by her mother and chore provider, ██████████. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████ Department of Human Services (DHS) Adult Services Worker (worker), appeared as a witness for the Department. ██████████, Adult Services Supervisor, was also present.

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 has been diagnosed with fetal alcohol syndrome and mental retardation. (Exhibit 1, page 10)
2. The Appellant is employed as a dishwasher and is able to drive herself short distances. (Testimony of ██████████)
3. The Appellant rents a unit within her parents' home. Her brother and grandmother also live on the premises. (Testimony of ██████████)

4. The Appellant has her own bedroom, bathroom, and living room in her unit. However, she shares a kitchen with her family and must enter her unit by walking through her parents' living room. (Testimony of ██████████)
5. On ██████████, the worker made a visit to the Appellant's home to conduct an HHS assessment. (Exhibit 1, page 7)
6. As a result of the information gathered at the assessment, that the Appellant lives in a shared household and only needs limited help with meal preparation, the worker decreased the HHS hours authorized for shopping and meal preparation for the Appellant. (Exhibit 1, pages 4-6).
7. 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 4-6).
8. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (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).

Docket No. 2010-51271 HHS
Decision and Order

On [REDACTED] the worker completed an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that, at that time, she discovered that the Appellant was living in a shared household. In addition, she was advised that the Appellant only needs assistance with one meal per day because she is able to get her own breakfast and uses the microwave. Based on this information, the HHS hours authorized for shopping and meal preparation were decreased. The worker testified that meal preparation was reduced from three to one meal per day and proration was applied to the HHS hours for shopping and meal preparation in accordance with Department policy.

The Appellant's representative testified that she does not believe that the Appellant's HHS payments should be reduced. She does not believe that the Appellant's living arrangement should be considered a shared household because the Appellant has her own unit that she rents from her parents. She explained that the Appellant has her own bedroom, bathroom, and living room. However, she admitted that the Appellant shares a kitchen with her parents and must walk through her parents' living room to get to her unit. Further, the property is considered an unlicensed foster home and taxes are only paid on one property.

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. Therefore, it is appropriate to prorate the payment for those tasks by the number of adults residing in the home together, as the other adults in the household 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.

Department policy allows for a maximum of 5 hours per month for shopping and 25 hours per month for meal preparation. Here, the Department authorized 2 hours and 30 minutes per month for shopping and 4 hours and 1 minute per month for meal preparation. (Exhibit 1, page 8) The authorized hours for shopping are one-half of the maximum allowed. The authorized hours for meal preparation are one-half of the maximum allowed for a beneficiary who only needs assistance with one meal per day. They are both consistent with the Appellant's household composition and rankings for these activities. Therefore, the Department's reductions are affirmed.

In addition, the Appellant's representative testified that the Appellant needs for supervision and guidance with the above tasks. However, Department policy does not allow for payment for supervision, monitoring, or guiding:

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 363 9-1-2008), pages 14-15 of 24

Finally, the Department's notice of the reduction was not proper. Pursuant to the [REDACTED] Advance Negative Action Notice, the Department implemented the reduction on [REDACTED]. The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action as follows:

§ 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)

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

- (a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
- (b) The facts have been verified, if possible, through secondary sources.

The ██████████ Advance Negative Action Notice issued by the Department did not provide the Appellant with the required advance notice of at least 10 days that her HHS payments would be reduced, as the effective date of the reduction was ██████████ (Exhibit 1, pages 4-6) None of the exceptions to the advance-notice requirement were present in this case. Therefore, the Department should not have reduced the Appellant's HHS payments any earlier than 10 days from the date of the Advance Negative Action Notice.

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 shopping and meal preparation. However, its notice of the reduction was improper.

IT IS THEREFORE ORDERED that:

The Department's decision is **PARTIALLY AFFIRMED** and **PARTIALLY REVERSED**. The reductions are affirmed, but they cannot be made effective any earlier than 10 days from [REDACTED], the date of the Advance Negative Action Notice.

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

cc:

[REDACTED]

Date Mailed: 12/7/2010

***** 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.