

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. 2010-52382 HHS
[REDACTED]

[REDACTED]
Appellant
_____ /

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 [REDACTED], Supports Coordinator [REDACTED], appeared on the Appellant's behalf. [REDACTED], legal Guardian, appeared as a witness for the Appellant. [REDACTED] Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker, appeared as a witness for 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 Medicaid beneficiary.
2. The Appellant is a [REDACTED] woman with diagnoses including mental retardation and recurrent left leg deep venous thrombosis on chronic Coumadin therapy. (Exhibit 1, page 14)
3. The Appellant applied for Home help Services (HHS) in [REDACTED]. (Exhibit 1, page 5)
4. On [REDACTED], a DHS Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant was living with her parents. (Exhibit 1, page 13)
5. HHS hours were approved for assistance with grooming, dressing, medication, laundry, shopping, and meal preparation. (Exhibit 1, page 9)

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6. On ██████████ the Appellant moved into a home with her chore provider and another HHS recipient. (Testimony)
7. On ██████████, notice of the Appellant's ██████████ move was faxed to the Department. (Exhibit 2)
8. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated in a shared household. (Adult Services Manual (ASM) 363, 9-1-2008, pages 4-5 of 24)
9. A new ASW was assigned to the Appellant's case, who determined the Appellant's HHS hours should be reduced for the tasks of laundry, shopping, and meal preparation. (Exhibit 1, pages 9-10)
10. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services case would be reduced with a new payment of ██████████ per month effective ██████████ based on her new living arrangement and reasonable time schedule. (Exhibit 1, pages 5-7)
11. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3-4)

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).

Services not Covered by Home Help Services

Do not authorize HHS payment 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 - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- 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 2-15 of 24*

On March 11, 2010, an Adult Services Worker (ASW) completed an initial home visit as part of a comprehensive assessment to HHS determine eligibility. At the time, the Appellant was living with her parents, but a potential move was discussed. (Exhibit 1, page 13) HHS hours were approved for assistance with grooming, dressing, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 9)

On ██████████, the Appellant moved in with her chore provider and another HHS client. (Testimony) On ██████████, notice of the Appellant's move was faxed to the Department. (Exhibit 2) However, a ██████████, case note indicates that the Appellant HHS case was transferred to a new ASW in ██████████ because the Appellant was going to be sharing housing with a HHS client assigned to that ASW. (Exhibit 1, page 12)

On ██████████, the new ASW issued an Advance Negative Action Notice stating that the Appellant's HHS hours would be reduced and payments would be ██████████ per month effective ██████████, based on her new living arrangement and reasonable time schedule. (Exhibit 1, pages 5-7) The Appellant's HHS hours had been reduced in the areas of laundry, shopping and meal preparation. (Exhibit 1, page 9) The ASW explained that proration was applied to the authorized HHS hours in accordance with

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Department policy requiring that the HHS hours for these activities be reduced based upon a shared household.

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 based upon the number of persons residing in the home together, as the Appellant's chore provider and roommate 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.

Exceptions to the proration policy can be considered when there is justification for performing a task completely separately. The Appellant's representative testified it was her understanding that when the Appellant moved in ██████████, her meals were prepared separately from her roommates due to food allergies. However, the evidence indicates that the chore provider eventually worked out this issue and is able to prepare one meal for the whole household. (Exhibit 1, page 12)

Department policy allows for a maximum of 6 hours for housework, 7 hours for laundry, 5 hours for shopping, and 25 hours for meal preparation each month. The Appellant is ranked as a level 5 for these activities, indicating she is totally dependant on others for these tasks. (Exhibit 1 pages 8 and 15) The new ASW authorized 3 hours and 1 minute for housework, 3 hours and 31 minutes for laundry, 2 hours and 30 minutes for shopping, and 12 hours and 32 minutes for meal preparation per month. (Exhibit 1 page 9) There was no change to the HHS hours for housework. (Exhibit 1, page 10) The reductions to the HHS hours for laundry, and shopping and meal preparation are sustained as they are reflective of the Appellant's rankings and household composition.

Advance Notice

Pursuant to the ██████████, Advance Negative Action Notice, it appears that the Department intended to make the reductions to the Appellant's case retroactive to ██████████. The Code of Federal Regulations, 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)

§ 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 clearly failed to 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, page 5) None of the exceptions to the advance notice requirement were present in this case. Therefore, the Department must not make the reductions to the Appellant's Home Help Services case effective 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 did not properly reduced the Appellant's HHS payments based upon the information available at the time of the assessment.

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IT IS THEREFORE ORDERED THAT:

The Department's decision is **PARTIALLY REVERSED**. The reductions are sustained but can not be made effective earlier than 10 days from [REDACTED] the date of the Advance Negative Action Notice.

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

cc:

[REDACTED]

Date Mailed: 11/19/2010

***** 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.