

**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. 2010-52392 HHS  
Case No. [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]. [REDACTED] appeared on the Appellant's behalf. [REDACTED] was present. [REDACTED], and [REDACTED], appeared as witnesses for the Appellant. [REDACTED], represented the Department. [REDACTED], and [REDACTED], appeared as witnesses 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] man with diagnoses including mental impairment, cerebral palsy, and learning disability. (Exhibit 1, page 10)
3. The Appellant lives in a home with his chore provider and another uncle. (Exhibit 1, page 7)
4. On [REDACTED], a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 7)

5. As a result of the information gathered for the assessment, the worker decreased the HHS hours authorized for housework, shopping, and meal preparation due to the household composition. (Exhibit 1, page 9)
6. 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)
7. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating that his 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).

### **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);

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- 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) 9-1-2008,  
Pages 2-15 of 24*

On [REDACTED], the Adult Services Worker (ASW) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. The ASW's case notes indicate the Appellant lives with his chore provider and another uncle, who also receives services. (Exhibit 1, page 7) The ASW testified that proration was applied to the authorized HHS hours for assisting the Appellant's with housework, shopping, and meal preparation based on the household composition, in accordance with Department policy. He explained that the HHS hours for these activities were previously prorated by 1/2, but were adjusted to 1/3 because there are three persons in the household.

The Appellant's representative disagrees with the reductions. He testified that he is the chore provider for the both the Appellant and the Appellant's other uncle. The Appellant's representative explained that they do not do anything but watch television and eat. The Appellant's neighbor testified that the Appellant's chore provider must do all the work. The Appellant's family friend testified that the Appellant is slow and does not do any chores in the home.

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 uncles 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 6 hours for housework, 7 hours for laundry, 5 hours for shopping, and 25 hours for meal preparation each month. The worker ranked the Appellant as a level 4 for housework, shopping, and laundry and as a 5 for meal preparation. (Exhibit 1 page 11) However, his justification notes indicate that the Appellant's mental capacity leaves him unable to initiate and or complete the tasks and that he requires daily chore service care. (Exhibit 1, page 11) This is not consistent with the level 4 rankings as there is no indication that the Appellant is able to participate in housework, shopping or laundry even with a great deal of assistance.

The reduction in the area of meal preparation is sustained as it is reflective of the Appellant's ranking and household composition. The Appellant's rankings shall be adjusted to a level 5 for housework, laundry and shopping and HHS hours shall be adjusted to 1/3 the maximums allowed under Department policy for these activities.

**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.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is PARTIALLY REVERSED. The Department is ORDERED to adjust the Appellant's rankings to a level 5 for housework, laundry and shopping and to adjust the Appellant's HHS hours shall be adjusted to 1/3 the maximums allowed under Department policy for these activities.

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

cc:



Date Mailed: 11/19/2010

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**\*\*\* 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.