

**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. 2010-6624 HHS

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████, nephew, appeared on the Appellant's behalf. ██████████, sister-in-law and chore provider, and ██████████, brother, appeared as witnesses for the Appellant. ██████████, Appeals and Review Officer, represented the Department. ██████████, Adult Services Worker, and ██████████, Adult Services Supervisor, were present as Department witnesses.

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 a ██████ year old Medicaid beneficiary who has been receiving Adult Home Help Services.
2. The Appellant has been diagnosed with mental impairment and high cholesterol. (Exhibit 1, page 5)
3. The Appellant lives in a home by himself. (Exhibit 1, page 5)
4. The Appellant's sister-in-law is his chore provider. (Exhibit 1, page 5)

Docket No. 2010-6624 HHS
Decision and Order

5. On [REDACTED], an Adult Services Worker conducted an in home assessment with the Appellant and his chore provider for continuing eligibility for Home Help Services. (Exhibit 1, page 9)
6. As a result of the information gathered from the Appellant at the assessment the worker removed the HHS hours authorized for the tasks of housework, laundry, and meal preparation based on a determination that the Appellant did not receive hands on assistance from other for these activities. (Exhibit 1, page 4)
7. On [REDACTED], the Department issued an Advance Negative Action Notice to the Appellant that his Home Help Services payments would be reduced to [REDACTED] per month, effective to [REDACTED]. (Exhibit 1, page 4)
8. A formal request for an administrative hearing, signed by the Appellant, 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 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) 9-1-2008, 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. 2010-6624 HHS
Decision and Order

On [REDACTED], the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that during this visit, she met with both the Appellant and his chore provider. The worker testified that the Appellant stated he could perform housework, laundry and meal preparation by himself and even showed the worker things in the home he uses to perform these activities. The worker stated she confirmed with the Appellant's chore provider that the Appellant can perform these tasks himself. Shopping was the only activity that the Appellant and his chore provider indicated the Appellant could not perform by himself. (Exhibit 1, page 8)

The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, she decreased the Appellant's functional assessment rankings to level 1 for all activities except shopping, which she ranked at level 3. (Exhibit 1, page 6) Department policy specifies that Home Help Services can only be authorized for needs assessed at the 3 level or greater. Adult Services Manual (ASM 363) 9-1-2008, Pages 3 of 24. Accordingly, the worker determined that the Appellant only qualified for ongoing Home Help Services payments in the area of shopping.

The Appellant's representative disagrees with the determination and testified that the Appellant requires frequent verbal reminders to complete all activities of daily living. The Appellant's representative and the Appellant's brother stated that the Appellant is very afraid of being committed and therefore he may not have accurately stated his abilities and needs for assistance to the worker during the home visit. The Appellant's representative stated that the Appellant was very upset after the worker's visit and argued that the worker should not have talked with the Appellant himself for the assessment because some of the questions involved the Appellant's mental impairments and other sensitive topics.

While this ALJ understands that the questions the worker asked in completing the Assessment may be difficult for the Appellant, Department policy in this area is clear. The worker must perform a face to face interview with the Appellant at his residence and discuss his diagnoses, abilities, and needs for assistance with all ADL's and IADL's. Adult Services Manual (ASM 363) 9-1-2008, Pages 2-5 of 24. Further, the Appellant's chore provider was present for all but 10 minutes of the Assessment and she also confirmed that the Appellant does not require hands on assistance for housework, laundry, and meal preparation.

The Appellant's chore provider testified that she provides many verbal reminders but did not describe any ongoing hands on assistance she provides in the areas of housework, laundry, and meal preparation. The Appellant's representative explained that the family has worked hard to mark things in the Appellant's home and re-train him when there are changes to allow the Appellant to be as independent as possible. For example, when the washer was replaced, they had to work with the Appellant on how to use the new machine. The Appellant's representative testified that they still get many calls for

assistance from the Appellant despite these efforts. For example, even though the microwave is marked, the Appellant may get confused and call his family for help.

Based on the testimony from the Appellant's family members, a ranking at level 2 for all activities except shopping may have been more appropriate due to the numerous verbal reminders. However, even with the ranking increased to level 2, the Appellant still would not qualify for ongoing HHS payments for these activities. Department policy in this area is also clear; HHS can only be authorized for needs assessed at the 3 level or greater. Adult Services Manual (ASM 363) 9-1-2008, Pages 3 of 24. The information available to the Department at the time of the re-determination indicated the Appellant only needed verbal reminders. Accordingly, the Department properly removed the HHS hours authorized in the areas of housekeeping, laundry, and meal preparation.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department has properly reduced home help assistance payments for the Appellant based on the information available at the time of the re-determination.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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

cc:

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Date Mailed: 2/8/2010

Docket No. 2010-6624 HHS
Decision and Order

***** 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.