

**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. 2010-7027 HHS
Case No. ██████████

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 ██████████. ██████████ appeared on her own behalf. ██████████, Appeals Review Officer, represented the Department (DHS). ██████████, Adult Services Worker, and ██████████ Adult Services Supervisor, appeared as witnesses 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 a ██████████ woman with severe carpal tunnel syndrome affecting her right hand. (Exhibit 1, page 9 and Testimony).
2. The Appellant is a Medicaid beneficiary.
3. The Appellant lives in a house with three of her children, ██████████. The Appellant's ██████████ also resided in the home until some time in ██████████ (Exhibit 1, page 7 and Testimony)
4. The Appellant is married and has not filed for legal separation from her husband. (Testimony)

5. On ██████████, a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant and her chore provider were present in the home. (Exhibit 1, page 7).
6. As a result of the information gathered from the assessment, the worker decreased the HHS hours authorized for housework, meal preparation and grooming for the Appellant. (Exhibit 1, pages 7-8).
7. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated based upon the number of people living in the home. (Exhibit 1, page 14)
8. The Department's worker determined fewer hours should be authorized for grooming because the chore provider does not perform this entire task himself. The chore provider's girlfriend or sister helps the Appellant with her hair. (Exhibit 1, page 7)
9. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be reduced to ██████████. (Exhibit 1, pages 4-6).
10. 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 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 363) 9-1-2008, Pages 2-5 of 24

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On [REDACTED], the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. 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 HHS hours authorized for housework and meal preparation based on the shared household composition. The worker noted that the Appellant stated she moved into this house on [REDACTED] and lives with four children ranging in age from [REDACTED] years old. (Exhibit 1, page 7) The worker testified she applied proration to housework and meal preparation in accordance with policy.

The Appellant disagrees with the reductions to these activities and testified that her [REDACTED] no longer lives in the home because she left to participate in job corps in [REDACTED]. However, the Appellant did not recall what date her daughter moved out nor if it was before or after the worker's [REDACTED] home visit. The Appellant also stated she did not report this change in household composition to the Department.

The Appellant further argued against the reductions stating that her [REDACTED] is not able to assist with any household chores. However, the Appellant testified that her other children living with her are ages [REDACTED]. The Appellant stated that she keeps a very clean house and while the teenagers are able to perform some household tasks, they do not clean to the standards the Appellant prefers.

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. 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.

The Department reduced the authorized HHS hours for housework and meal preparation to half of the maximum allowed by policy. (Exhibit 1, page 8) The information provided to the worker at the home visit, as documented in her notes, indicated that two adults and three children lived in the home. The Appellant did not notify the Department when her [REDACTED] daughter moved out. However, the Department's proration policy is not limited to only including adults in a shared household composition. Even with the [REDACTED] moving out, the Appellant still lives in a shared household including the two teenagers who are able to perform household tasks. The reductions to housework and meal preparation based upon the shared household are sustained.

Also at issue in this case is a reduction to the HHS hours authorized for grooming. The worker testified that she reduced the authorized hours for grooming based on statements that the chore provider does not do the Appellant's hair himself, rather his girlfriend or sister perform this task. (Exhibit 1, page 7) Accordingly, the worker reduced the authorized time from 8 minutes per day to 4 minutes per day. (Exhibit 1, page 5)

The Appellant testified that her chore provider assists her with the main grooming activities, but does not do her hair himself. The Appellant explained that her son is her chore provider and stated she would get a female chore provider if she needed to.

Grooming is described in Department policy as maintaining personal hygiene and neat appearance, including hair combing and brushing, oral hygiene, shaving, fingernail and toenail care (unless toenail care is medically contraindicated). Adult Services Manual (ASM 365) 9-1-2008, Page1 of 2. The Department can not pay a provider for a task that he does not perform. Further, the Department can not authorize HHS payments for a service that is currently provided free of charge. Adult Services Manual (ASM 363) 9-1-2008, Page 5 of 24. The Department properly reduced the HHS authorized hours for grooming based upon the statements that the chore provider does not perform this entire task himself as his girlfriend or sister do the Appellant's hair. The reduction in grooming hours is sustained.

This ALJ also notes that a new assessment of the Appellant's case would be appropriate in light of additional testimony provided by the parties. It appears there was some misunderstanding regarding the Appellant's marital status and that verification of a legal separation between the Appellant and her husband has not been obtained. A spouse is considered a responsible relative and the service plan should address his availability and ability to perform tasks the Appellant does not perform. Adult Services Manual (ASM 363) 9-1-2008, Pages 13-14 of 24.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced the HHS hours for housekeeping, and meal preparation based on the household composition. The Department also properly reduced the HHS hours for grooming because part of this task was not performed by the chore provider.

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: [REDACTED]

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Date Mailed: 1/26/2010

***** 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.