

**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. 2010-7389 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 ██████████. ██████████, daughter, appeared as the Appellant's representative. ██████████ appeared and testified. ██████████, 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 Medicaid beneficiary.
2. The Appellant is a ██████████ woman who has been diagnosed with arthritis in both knees, chronic headaches, diabetes, and obesity. (Exhibit 1, page 9)
3. The Appellant lives in a house by herself. (Testimony)
4. On ██████████, a DHS Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. The chore provider was not present. (Exhibit 1, page 7)

5. As a result of the information gathered from the Appellant at the assessment, the worker removed the HHS hours authorized for the tasks of bathing, grooming, dressing, transferring, mobility, and medication. The worker also reduced the HHS hours authorized for the tasks of housework and meal preparation and increased the HHS hours authorized for laundry and shopping. (Exhibit 1, pages 8 and 18)
6. On [REDACTED], the Department sent an Advance Negative Action Notice notifying the Appellant that her Home Help Services payments would be reduced to [REDACTED], effective [REDACTED]. (Exhibit 1, pages 4-6).
7. On [REDACTED], 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).

Adult Services Manual (ASM) 9-1-2008, Pages 2-5 of 24

On ██████████, the Adult Services Worker (worker) completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1 pages 11-12) The worker testified that using the functional scale, based on his observations and the information he was provided at the time of the assessment, the HHS hours authorized for bathing, grooming, dressing, transferring, mobility, and medication were removed. The worker also reduced the HHS hours authorized for the tasks of housework and meal preparation and increased the HHS hours authorized for laundry and shopping. (Exhibit 1, pages 8 and 18) The Appellant's daughter disagrees with the removals and reductions made by the worker.

The worker testified the removal of bathing was based on the Appellant's statement that her daughter assists with her with bathing in an unpaid capacity, not the chore provider. (See also Exhibit 1, page 10) The Appellant's daughter disagrees with the removal of bathing and testified that she was in the Appellant's home during the worker's assessment and does not recall her mother stating that her daughter assists with bathing instead of the chore provider. While she was not in the same room as her mother and the worker, the Appellant's daughter explained that the home is small and therefore, she could still hear what was going on from the other room. The Appellant's daughter further stated that she is full time student and can not assist her mother with bathing.

The worker testified that the removal of grooming and dressing was based upon the Appellant's statements that she can groom and dress herself. The Appellant's daughter testified that the Appellant needs help with her socks and shoes and to comb her hair. The Appellant's daughter explained that within the past month, the Appellant was diagnosed with arthritis in her hands and feet. The Appellant's daughter also stated that the Appellant has had diabetic retinopathy for about two years. However, no documentation of diabetic retinopathy was provided to the Department.

The worker testified that the removal of transferring and mobility was based upon the Appellant's statements and the workers observations during the assessment. The worker testified that the Appellant stated that she can get in and out of bed as well as chairs by herself. The worker testified she observed the Appellant getting in and out of a chair during the home visit. The worker also testified she observed the Appellant using her cane and moving by herself within the home. The Appellant's daughter testified that her mother has good and bad days, uses a cane around the home and can only sit in chairs that are not too low. The Appellant's daughter further stated that the Appellant needs a little pull to get out of bed and has some trouble moving from room to room due to arthritis in her feet.

The worker testified that the removal of medication was based upon the Appellant's statement that she performs this activity herself. The Appellant's daughter testified that the Appellant may know what medications she takes, but her chore provider must assist her because she can not see to get the correct pills or draw the correct dosage for her insulin shots.

The worker testified that the reduction of the HHS hours for housework and meal preparation were based on the Appellant's statements that she can help a little bit with housework and can make her own breakfast. (See also Exhibit 1, page 10) The Appellant's daughter testified that the Appellant does not cook her own breakfast every morning but did acknowledge that the Appellant could get herself a bowl of cereal.

This ALJ must review the action taken by the Department with the circumstances and information available at that time. The worker made her determination based upon the statements and information provided by the Appellant during the assessment. The Appellant's daughter may have been in the home during the home visit; however, she did not participate in the assessment and was not in the room when her mother

discussed her abilities and needs for assistance with the worker. Additionally, no information was available to the Department at the time of the Assessment regarding diabetic retinopathy or the recent diagnosis of arthritis in the Appellant's hands and feet. The Appellant may wish to provide the Department with updated medical documentation and information regarding these diagnoses and resulting limitations and need for additional assistance that could be taken into consideration for continuing HHS services.

The removal of bathing, grooming, dressing, transferring, mobility, and medication from the HHS authorized activities and the reductions to the HHS hours for housework and meal preparation are sustained based on the information available at the time of the assessment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly removed bathing, grooming, dressing, transferring, mobility and medication assistance and reduced the HHS hours for housework and meal preparation based on the information available at the time of the assessment.

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:



Date Mailed: 2/2/2010

***** 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.