

**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. 2011-11705 HHS
Case No. 1026424898

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant's ██████████ represented the Appellant. ██████████ represented the Department of Community Health (Department). ██████████ (worker), testified as a witness for the Department. ██████████ was also present for the hearing.

ISSUE

Did the Department properly determine the Appellant's monthly Home Help Services (HHS) payment?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid recipient, who was determined eligible for HHS.
2. The Appellant has been diagnosed with schizoaffective disorder, bi-polar disorder and back injuries. (Exhibit A, page 13)
3. During an initial HHS assessment on ██████████ the worker determined that the Appellant needs assistance with dressing, medication, housework, laundry, shopping, and meal preparation. (Exhibit A, page 12)
4. The worker ranked the Appellant at a level 3 for dressing and meal preparation. She is ranked a level 4 for medication, housework and

shopping. She is ranked a level 5 for laundry. (Exhibit A, page 14)

5. The Appellant's household consists of ██████████. (Written statement from her ██████████).
6. On ██████████, the Department sent the Appellant a Services and Payment Approval Notice, approving a monthly HHS payment of \$ ██████████, effective ██████████. (Exhibit A, page 9)
7. On ██████████, the State Office of Administrative Hearings and Rules received a hearing request from the Appellant, protesting the Department's determination of the amount of the Appellant's monthly HHS payment. (Exhibit A, pages 3-8)

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.

The purpose of HHS is to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a health professional and may be provided by individuals or by private or public agencies.

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.
- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider.

* * *

Do **not** authorize HHS prior to the date of the medical professional signature on the FIA-54A.

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.

Adult Services Manual (ASM 363 9-1-2008), pages 14-15 of 24

The Adult Services Manual also explains the initial comprehensive assessment process as follows:

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.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. **Unable** means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- 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

After the initial assessment on ██████████, the worker determined that the Appellant needs assistance with the following tasks: dressing, medication, housework, laundry, shopping, and meal preparation. Using the functional scale, her observations, and the information the Appellant's ██████████ provided at the time of the assessment, the worker ranked the Appellant at a level 3 for dressing and meal preparation. She was ranked a level 4 for shopping, medication and housework. She was ranked a level 5 for laundry.

The Appellant was approved for 21.03 hours of HHS services per month, which is broken down by time and task as follows: 7 hours and 1 minute per month for dressing, 2 hours per month for medications, 2 hours and 30 minutes per month for housework, 3 hours and 31 minutes per month for laundry, 2 hours per month for shopping, and 4 hours and 1 minute per month for meal preparation. (Exhibit A, page 12) The worker is required by policy to prorate payment assistance for tasks normally shared between adults residing in the same home, specifically, meal preparation, housework, laundry and shopping.

The Appellant's ██████████ is challenging the amount of her ██████████ monthly HHS payments. She stated that she is unhappy with the amount of the payment for the services that she provides. Her letter and testimony establishes she spends a great deal of time supervising her ██████████ and provides 24 hour per day supervision. Her concerns and written statement are largely directed to the lack of value placed on the care taking she is providing rather than establishing that any of the functional ranks are inaccurate or that she is performing tasks for her ██████████ that are compensable by the program but were overlooked by the worker. While this ALJ does not lack compassion for the overall plight of the Appellant and the responsibilities being carried by her ██████████ at this time, the program has limitations. The program is not designed to provide payment services for care and supervision of mentally fragile people. Rather, it is designed to enable functionally limited people to remain in a less restrictive setting by providing payment assistance for tasks that are essential and instrumental to daily living. The tasks are specifically set forth in policy and were considered one by one when the worker conducted her comprehensive assessment during the home call. The worker's testimony establishes she considered each task individually and addressed it at the home call. This is adequate assessment for this program's purposes.

The record evidence establishes that the worker followed policy and used the reasonable time schedule as a guide in determining the time that would be allocated for each task. The HHS program only pays for hands-on assistance with tasks, not prompting and supervising. Accordingly, the hours authorized for dressing and medication assistance are appropriate because they are reflective of the Appellant's need for actual hands-on assistance with those tasks.

Likewise, the worker properly prorated the IADLs in this case. 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. Therefore, it is appropriate to prorate the payment for those tasks by the number of persons residing in the home together, as the HHS program will not compensate for tasks that benefit other members of a shared household. The services are for the benefit of the Appellant only. Here, the hours authorized for housework, laundry, shopping, and meal preparation are both reflective of the Appellant's household composition and her need for services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined the Appellant's HHS payment amount.

IT IS THEREFORE ORDERED that:

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

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

**Docket No. 2011-11705 HHS
Decision and Order**

cc:



Date Mailed: 3/16/2011

***** 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.