

**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. 2011-13639 HHS
Case No. 2846503

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 was present at the hearing. The Appellant's ██████████, represented him. ██████████, represented the Department. ██████████, (worker), appeared as a witness for the Department. ██████████, was also present.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services (HHS) payments?

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 beneficiary.
2. The Appellant is ██████████, who has been diagnosed with the following conditions: history of gastric resection, mental retardation, arthritis, GERD, CAD, hypertension, and hyperlipidemia. (Exhibit 3, page 1)
3. The Appellant lives with his ██████████ ██████████, and one other person. (Exhibit 1, page 15; Testimony of ██████████)
4. On ██████████, the worker met with the Appellant and Zerka. At

¹ The Appellant has a second chore provider, ██████████, who bathes the Appellant three days per week. (Exhibit 1, page 15) There was no change in ██████████'s HHS payment. (Testimony of ██████████)

the assessment, the worker determined that the amount of services the Appellant was receiving was excessive. (Exhibit 1, page 15)

5. Based on her observations and the information from ██████████, the worker removed the HHS hours authorized for bathing, mobility, eating, grooming, dressing, toileting, and range of motion. She also reduced the hours authorized for housework, laundry, shopping, and meal preparation, based on the number of persons living in the home. (Exhibit 1, pages 4-7)
6. On ██████████, the worker sent an Advance Negative Action Notice, notifying the Appellant that his Home Help Services payments for the services provided by ██████████ would be reduced to \$██████████ per month, effective ██████████. (Exhibit 1, page 4)
7. On ██████████, the worker spoke with ██████████ by telephone. During that conversation, ██████████ stated she could no longer care for the Appellant at the reduced rate and that the Appellant needed more assistance than what she told the worker at the assessment. ██████████ asked for a new assessment. (Exhibit 1, page 14; Testimony of ██████████)
8. On ██████████, the worker contacted ██████████ by telephone to schedule a home visit to investigate an Adult Protective Services (APS) referral regarding ██████████ management of the Appellant's funds. (Exhibit 1, page 12)
9. On ██████████, the worker met with the Appellant and staff at the Commission on Aging (COA). The Appellant stated that ██████████ takes good care of him. The staff advised that the Appellant is able to eat and toilet independently. (Exhibit 1, page 11)
10. On ██████████, the worker met with ██████████ regarding the APS referral. In addition, she discussed with ██████████ the HHS rankings. ██████████ reiterated that she could not care for the Appellant at the reduced HHS rate. (Exhibit 1, page 10)
11. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's signed Request for Hearing. (Exhibit 1, page 2)

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.

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 physician and may be provided by individuals or by private or public agencies.

The Adult Services Manual addresses the issue of assessment 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.
- 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

It further addresses the need for supervision, monitoring, or guiding below:

Services Not Covered By Home Help Services

Do **not** authorize HHS 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 - Medical transportation policy and procedures are in Services Manual Item 211.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care

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

The worker testified that she removed bathing, mobility, eating, grooming, dressing, toileting, and range of motion based on her observations and conversation with ██████████ at the assessment. The worker explained that she reduced housework, laundry, shopping, and meal preparation to bring the case into compliance with policy requiring that IADLs be prorated based on the household composition.

Bathing

The Appellant was receiving 22 minutes a day, 7 days per week, or 11 hours and 2 minutes per month for the task of bathing. The worker testified that she eliminated the task of bathing from ██████████ chore grant because the Appellant is bathed by another

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chore provider, ██████████, three days per week. Further, ██████████ advised the worker at the assessment that she does not bathe the Appellant.

At the hearing, ██████████ testified that she gets everything ready for the Appellant to “wash up” on the days he is not bathed by the other chore provider. But she does not provide any hands-on assistance with bathing.

Because there is no dispute that ██████████ does not provide any hands-on assistance with bathing, the removal of HHS for bathing from ██████████ chore grant was proper.

Mobility

The Appellant was receiving 14 minutes a day, 7 days per week, or 7 hours and 1 minute per month for assistance with mobility.

The policy defines mobility as follows:

Walking or moving around inside the living area, changing locations in a room, moving from room to room, does respond adequately if he/she stumbles or trips. Does step over or maneuver around pets or obstacles, including uneven floor surfaces. Does climb or descend stairs. Does not refer to transfers, or to abilities or needs once destination is reached.

1. Independent: Requires no physical assistance though client may experience some difficulty or discomfort. Completion of the task poses no risk to his/her safety.
2. Moves independently with only reminding or encouragement. For example, needs reminding to lock a brace, unlock a wheelchair, or use cane or walker.
3. Requires physical assistance from another person for specific maneuvers; e.g., pushing a wheelchair around sharp corner, negotiating stairs, or moving on certain surfaces.
4. Requires assistance from another person most of the time. At risk if unassisted.
5. Totally dependent upon others for movement. Must be carried, lifted, or pushed in a wheelchair or gurney at all times.

Adult Services Manual (ASM) 365, 10-1-1999,
ILS Appendix, Page 1.

The worker testified that she eliminated the task of mobility from ██████████ chore grant because she observed that the Appellant is able to walk around unassisted. She further confirmed that fact with the COA. And ██████████ denied assisting the Appellant with mobility. At the hearing, ██████████ testified that the Appellant does need assistance going

up and down the stairs. However, she does not recall if she provided this information to the worker at the assessment.

While it appears that the Appellant does require some assistance with mobility, this information was not provided to the worker at the time of the assessment. Therefore, the elimination of the task was proper based on the information the worker had at that time. However, it appears that a new assessment is needed to determine the Appellant's actual mobility needs.

Eating

The task of eating was eliminated from the Appellant's chore grant. The Appellant was previously receiving 50 minutes per day, 7 days per week, or 25 hours and 5 minutes per month for the task of eating.

The policy defines eating as follows:

Reaching for, picking up, grasping utensils and cup; getting food on utensil, bringing food, utensil, cup to mouth, chewing, swallowing food and liquids, manipulating food on plate, cutting food. Cleaning face and hands as necessary following a meal.

Adult Services Manual (ASM) 365, 10-1-1999,
ILS Appendix, Page 1.

The worker testified that, at the assessment, she witnessed the Appellant feed himself. The COA confirmed that the Appellant is able to feed himself. ██████████ did not dispute that the Appellant is capable of feeding himself without assistance. However, she asserted that the Appellant must have fresh fruits and vegetables at every meal. Finally, this Administrative Law Judge witnessed the Appellant feed himself at the hearing.

Because there is no dispute that the Appellant can feed himself, the removal of HHS for eating was proper.

Grooming

The Appellant was receiving 12 minutes a day, 7 days per week, or 6 hours and 1 minute per month for the task of grooming.

The policy defines grooming as follows:

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, 10-1-1999,
ILS Appendix, Page 1.

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The worker testified that she eliminated the task of grooming from ██████ chore grant because ██████ advised the worker at the assessment that the Appellant is able to shave himself and comb his own hair. At the hearing, ██████ conceded that the Appellant can wash his own face if she puts the washcloth out for him, and he does not need to comb his hair because his head is shaved. She further stated that he can also shave himself, but he has to be cleaned up after. However, he cannot clip his fingernails and toenails. But she only assists with his fingernails and toenails when the other provider cannot get to it. And she did not provide the worker with this information at the assessment.

While it appears that the Appellant does require some assistance with grooming, this information was not provided to the worker at the time of the assessment. Therefore, the elimination of the task was proper based on the information the worker had at that time. However, it appears that a new assessment is needed to determine the Appellant's actual grooming needs.

Dressing

The Appellant was receiving 28 minutes a day, 7 days per week, or 14 hours and 3 minutes per month for the task of dressing. The worker testified that she eliminated the task of dressing from ██████ chore grant because ██████ advised the worker at the assessment that the Appellant only requires reminders to change his clothing and assistance with choosing appropriate clothing. Unfortunately, policy does not provide for payment for supervising, monitoring, guiding, or encouraging the beneficiary. Rather, policy requires that there be hands-on assistance.

Because there is no dispute that ██████ does not provide any hands-on assistance with dressing, the removal of HHS for dressing from ██████ chore grant was proper.

Toileting

The Appellant was receiving 22 minutes a day, 7 days per week, or 11 hours and 2 minutes per month for toileting. The worker testified that she eliminated the task of toileting from ██████ chore grant because ██████ advised the worker at the assessment that the Appellant is independent with toileting. In addition, the ██████ advised the worker that the Appellant has no problems with toileting. However, in ██████ after receiving notice of the reductions, ██████ told the worker that the Appellant "poops his pants all the time." And at the hearing, ██████ advised this Administrative Law Judge that the Appellant does have frequent accidents, and the only reason she told the worker otherwise was because the Appellant was present, and she did not want to hurt his feelings.

Again, while it appears that the Appellant does require some assistance with toileting, this information was not provided to the worker at the time of the assessment. Therefore, the elimination of the task was proper based on the information the worker had at that time. However, it appears that a new assessment is needed to determine the Appellant's actual toileting needs.

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Range of Motion

The Appellant was receiving 55 minutes a day, 7 days per week, or 27 hours and 35 minutes per month for range of motion exercises. The worker testified that she eliminated range of motion from ██████████ chore grant because ██████████ advised the worker at the assessment that she does not perform any range of motion exercises on the Appellant.

Because there is no dispute that ██████████ does not assist with range of motion exercises, the removal of HHS for range of motion from ██████████ chore grant was proper.

IADLs

The worker testified that the IADLs—housework, laundry, shopping, and meal preparation—were reduced in this case because the Appellant lives with ██████████ and one other person. Based on this information, the HHS hours authorized for housework, laundry, shopping, and meal preparation were decreased. The worker testified that proration was applied to the HHS hours for these activities in accordance with Department policy requiring that these IADL's be prorated based on the number of adults living in the home.

██████████ testified that she does not believe that the Appellant's HHS payments should be reduced. However, she did not dispute that she resides in the home with the Appellant and one other person. Instead, she testified that she spends more time than is provided for the tasks. Specifically, ██████████ testified that the Appellant must eat several meals per day, and they must all contain fresh fruits and vegetables. She testified that the Appellant cannot eat the same foods as she eats. And because of this, she spends a lot of time preparing the Appellant's meals and shopping for the Appellant. In addition, she is required to do a lot of laundry and extra cleaning, especially in the bathroom, because of the Appellant's toileting issues. However, she did not provide this information to the worker at the time of the assessment.

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 adults residing in the home together, as the other adults in the household 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 per month for housework, 5 hours per month for shopping, 7 hours per month for laundry, and 25 hours per month for meal preparation. Here, the Department authorized 3 hours and 1 minute per month for housework, 2 hours and 30 minutes per month for shopping, 3 hours and 31 minutes per month for laundry, and 18 hours and 4 minutes per month for meal preparation. (Exhibit 2, page 3) The authorized hours are approximately one-half of the maximum allowed for housework, laundry, and shopping, and a little more than one-half for meal

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preparation. They are reflective of the Appellant's household composition and rankings for these activities. However, based on [REDACTED] testimony it appears that additional IADL hours may be warranted. Therefore, a new assessment of the IADLs should be performed to determine if the hours provided are sufficient to meet the Appellant's—and only the Appellant's—needs.

Finally, [REDACTED] advised that she will no longer be able to care for the Appellant if the Department's reductions are upheld. Additionally, she stated that the amount of the new chore grant is not even sufficient to pay her portion of the utility bills. However, the amount of [REDACTED] bills is not a proper consideration when determining the Appellant's HHS payments. Rather, the proper consideration is the Appellant's actual need for hands-on assistance with the various tasks.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS payment. However, based on the information provided at the hearing, the Department should reassess the Appellant to determine his actual toileting and grooming needs.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**. However, it should conduct a new comprehensive assessment to determine the Appellant's actual toileting, mobility, grooming, and IADL needs.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 4/12/2011

***** 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 must 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.