

**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. 2011-3065 HHS
Case No. 28836060

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

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 ██████████ Medicaid beneficiary who was receiving Adult HHS. (Testimony of ██████████)
2. The Appellant has been diagnosed with several medical conditions, including coronary artery disease, hypertension, diabetes, low back pain, celiac disease, asthma, hiatal hernia, renal insufficiency, pulmonary fibrosis, and depression. (Exhibit 1, page 32; Exhibit 2, pages 1-3; Exhibit 3, pages 19, 24-28, 38)

3. On ██████████, the worker conducted an in-home assessment with the Appellant to determine her continuing eligibility for HHS. (Exhibit 1, page 29; Testimony of ██████████)
4. As a result of the information gathered from the Appellant at the assessment, the worker determined that the Appellant was only eligible for 14 hours and 3 minutes per month of continuing HHS. More specifically, she eliminated the tasks of bathing, grooming, mobility, and meal preparation from the Appellant's chore grant. (Exhibit 1, page 31)
5. On ██████████, the Appellant was notified that her HHS payments would be reduced, effective ██████████. (Exhibit 1, page 4; Testimony of ██████████)
6. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing, contesting the reduction of her HHS payment. (Exhibit 1, pages 3-25)

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 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.

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

On ██████████, the worker completed a home visit as part of an HHS comprehensive assessment for redetermination of the Appellant's needs. The worker testified that she removed the tasks of bathing, grooming, mobility, and meal preparation from the Appellant's chore grant because, at the assessment, the Appellant told the worker that she was able to perform these tasks for herself.

The Appellant was receiving 2 hours and 18 minutes per month for bathing, 2 hours and 52 minutes per month for grooming, 2 hours per month for mobility, and 16 hours and 7 minutes per month for meal preparation. The Appellant disagrees with the reduction of the HHS payments from \$██████████ to \$██████████. However, she is only contesting the time provided for the following tasks: housework, laundry, shopping, and meal preparation.

The Appellant testified that she does her own cooking because she has a restricted diet that she must follow. She stated that she has ranked herself at a level 3 for meal preparation because she needs assistance with prep work for her cooking. She explained that she does not have the hand strength to cut, chop, or prepare her meats. In addition, she has trouble standing for more than 5 to 10 minutes, so she also needs assistance with washing her dishes after she cooks her meals. She stated that the worker did not give her much of an opportunity to explain this and it did not seem like the worker even wanted to listen her.


The Appellant further requested that she be provided with the maximum hours available for the tasks of housework, laundry, and shopping because she is ranked at a level 5 for those tasks.

The worker conceded that because the Appellant is ranked at a level 5 for the tasks of housework and laundry, she should have been provided with the maximum number of hours for those tasks. The worker explained that she simply continued the prior worker's time and task. However, the worker further conceded that it was her job to assess the Appellant's needs and abilities and not to solely rely on the previous worker's time and tasks and ranks. In addition, the worker failed to explain why she reduced the Appellant's rank for shopping from a 5 to a 3. Finally, the worker admitted that she did not consider the Appellant's need for assistance with dish washing under the task of meal preparation. She, instead, mistakenly believed that assistance with dishes would fall under housework and admitted the Appellant should have been ranked at a level 3 for meal preparation based on that need alone.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's reduction of the Appellant's HHS payments was partially improper.

IT IS THEREFORE ORDERED that:

The Department's decision is partially AFFIRMED and partially REVERSED. The Department's elimination of the tasks of bathing, grooming, and mobility is affirmed. However, the Department's elimination of the hours for meal preparation is reversed. The Department is ordered to reinstate the Appellant's meal preparation hours at a rank of 3, retroactive to , the effective date of the action. In addition, the Department is ordered to provide the Appellant with the maximum hours for the tasks of housework, shopping, and laundry because she is ranked at a level 5 for those tasks.

The Department is further ordered to conduct a new comprehensive assessment to determine the Appellant's actual abilities and assistance needs.

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

cc:



Date Mailed: 1/21/2011

***** 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.