

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2011-31227 HHS
Case No. [REDACTED]

[REDACTED],

Appellant.

_____ /

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 [REDACTED]. [REDACTED], Appellant [REDACTED] son and chore provider, appeared on her behalf. Appellant also testified on her own behalf. [REDACTED] represented the Department of Community Health. [REDACTED], Appellant's Adult Services Worker (ASW) at the [REDACTED] DHS Office, and [REDACTED], Adult Services Supervisor at the [REDACTED] DHS Office, appeared as witnesses for the Department.

ISSUE

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

FINDINGS OF FACT

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

1. Appellant is a [REDACTED] year-old Medicaid beneficiary. (Exhibit 1, page 11).
2. Appellant has been diagnosed by a physician with rheumatoid arthritis, "fibrothromboses", a herniated disc in her neck/back, chronic obstructive pulmonary disease (COPD), high blood pressure, gout, and morbid obesity. (Exhibit 1, page 12).
3. Appellant had been receiving 24 hours and 35 minutes of Home Help Services, with a care cost of [REDACTED] per month. (Exhibit 2, page 2).
4. On [REDACTED], ASW [REDACTED] conducted a home visit with Appellant as part of an annual review. (Exhibit 1, page 11).
5. Based on her assessment and observations made during the home visit,

ASW ██████████ deleted HHS hours for meal preparation/cleanup while keeping the hours the same for housework, laundry, and shopping. The reduction resulted in a total of 12 hours and 3 minutes of Home Help Services per month, with a monthly care cost of ██████████. (Exhibit 1, page 9).

6. On ██████████, ASW ██████████ issued an Advance Negative Action Notice to Appellant indicating that her Home Help Services payments would be reduced effective ██████████. (Exhibit 1, pages 5-8).
7. On ██████████, the Department received a Request for Hearing signed by Appellant. The Department had previously received a Request for Hearing on Appellant's behalf signed by her ██████████, her son and chore provider. (Exhibit 1, page 4).

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.

In this case, Appellant had been receiving HHS for tasks such as housework, laundry, shopping, and meal preparation/cleanup. However, as discussed above, the Department recently eliminated HHS for meal preparation/cleanup in the Advance Negative Action Notice dated February 18, 2011. That Advance Negative Action Notice also alluded to the fact that the time for certain tasks was being prorated because of other adults living in the home. Appellant appears to challenge both the termination of HHS for meal preparation/cleanup and the proration of time for other tasks. Each of those arguments will be addressed in turn and, for the reasons discussed below, rejected.

Meal Preparation and Cleanup

Adult Services Manuals 361 (6-1-07) (hereinafter "ASM 361") and Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

Home help services (HHS, or personal care services) are non-specialized

personal care service activities provided under ILS to persons who meet eligibility requirements.

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

(ASM 361, page 2 of 5)

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-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.

(ASM 363, pages 2-4 of 24)

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;
- Home delivered meals;
- Adult day care.

(ASM 363, pages 14-15 of 24)

Here, Appellant's HHS hours with respect to meal preparation and cleanup were terminated during her most recent assessment. Previously, Appellant had been receiving 25 minutes per day, 7 days a week. (Exhibit 1, page 9; Exhibit 2, page 2).

ASW ██████████ testified and wrote in her notes that she removed HHS for meal preparation/clean up based on her observations and assessment. According to ██████████, Appellant's health is stable and she is ambulatory with a cane. ██████████ also testified and wrote in her notes that Appellant is now able to plan, prepare and cleanup meals without assistance. Therefore, ██████████ deleted HHS for meal preparation/clean up and limited HHS to those tasks that require lifting, bending, stooping or reaching, such as laundry, shopping and housework. (Exhibit 1, page 11; Testimony of ASW ██████████).

Appellant disputes that termination on the basis that she cannot prepare her only meals and depends on her son and chore provider for assistance. As testified to by Appellant, her arthritis in her wrists and hips prevents her from preparing meals and her condition is actually worsening, as shown by the fact that she was in the process of getting fitted for a “boot” on her ankle at the time of the assessment. (Testimony of Appellant).¹ ██████████ also testified that he prepares all of Appellant’s meals. (Testimony of ██████████).

Appellant bears the burden of proving by a preponderance of evidence that the Department’s reduction was improper and Appellant failed to meet that burden in this case. While Appellant testified that she was in the process of getting a “boot” for her ankle, ASW ██████████ observed that Appellant was ambulatory when using a cane at the time of the assessment. Similarly, despite Appellant’s claims that she could not prepare meals because of wrist problems, ASW ██████████ observed no such problems during the assessment. ASW ██████████ has been working with Appellant for years and her testimony regarding the improvement and stability she observed at the assessment is credible. Accordingly, based on the information available at the time of the decision, the Department’s decision to reduce the time for HHS for meal preparation and cleanup is sustained. If, in the future, Appellant’s condition worsens, then her HHS hours can be reassessed.

Proration

As discussed above, the Advance Negative Action Notice in this case alluded to the fact that the time for certain tasks was being prorated because of other adults living in the home. It was clarified during the hearing that ASW ██████████ had not prorated any tasks during the most recent assessment and the statements in the notice regarding proration were just a reminder. Appellant disputes that proration in the Request for Hearing, but it is not clear that the Request for Hearing is timely given the fact that there were no changes based on proration in the most recent assessment. Nevertheless, given the contents of the Advance Negative Action Notice and the lack of evidence regarding when the proration occurred, the Administrative Law Judge will consider Appellant’s arguments.

ASM 363 addresses the issue of proration of IADL services:

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication.

The limits are as follows:

¹ In support of her testimony that her medical condition was changing, Appellant was suppose to submit her prescription for her ankle boot after the hearing. However, Appellant did not do so.

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation

These are **maximums**; as always, if the customer needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements.

(ASW 363, pages 3-4 of 24 (underline added by ALJ))

Service Plan Development


Address the following factors in the development of the service plan:

- 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.

(ASM 363, pages 4-5 of 24)

The evidence in this case establishes that the Appellant, at least one other adult, and at least one teenager were living in the home at the time of the assessment. Therefore, the Department was bound to follow the mandated policy and prorate the HHS time and payment for any IADLs, except medication, by at least 1/2. Here, the Department has prorated housework by half while also failing to prorate shopping or laundry at all.² To the extent the Department did not follow the proration policy, it was generous in favor of the Appellant. Appellant can point to no error that harmed her and the Department's earlier decision to prorate is also sustained.

² ASW ██████████ testified that she had, following an earlier assessment, reduced the HHS hours for laundry, but that the reduction was not based on proration. Appellant does not challenge that earlier reduction here.


Docket No. 2011-31227 HHS
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced Appellant's HHS payments for the task of meal preparation and cleanup.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 6/27/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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 March 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.