

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

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IN THE MATTER OF:

Docket No. 2011-37088 HHS
Case No. 4795753

██████████,

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 ██████████. Appellant appeared on her own behalf. ██████████, Appellant's friend and chore provider, also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Appellant's Adult Services Worker (ASW) at the ██████████ County DHS-HHS Office, appeared as a witness for the Department.

ISSUE

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

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 ██████ year-old Medicaid beneficiary. (Exhibit 1, pages 8-9).
2. Appellant has been diagnosed with drug abuse, alcoholism, and manic depression. (Exhibit 1, page 15).
3. Appellant had been receiving HHS since at least March of ██████. (Exhibit 1, page 12).
4. As of May of ██████, Appellant was receiving 43 hours and 8 minutes of HHS per month, with a total monthly care cost of \$ ██████. (Exhibit 1, page 10).
5. On ██████████, ASW ██████████ conducted a home visit with Appellant as part of the annual review of Appellant's case. (Exhibit 1, page 13).

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6. Based on that home visit and information relayed to him by other workers, ASW ██████████ terminated the HHS for assistance with shopping and meal preparation/cleanup. ASW ██████████ also reduced the HHS for assistance for housework and laundry. (Exhibit 1, pages 10-11, 13; Testimony of ASW ██████████).
7. After the changes, Appellant would receive 4 hours and 39 minutes of HHS per month, with a total monthly care cost of \$ ██████████. (Exhibit 1, page 11).
8. On ██████████, ASW ██████████ sent Appellant an Advance Negative Action Notice informing her that her HHS would be reduced. (Exhibit 1, pages 5-7).
9. The effective date of the reduction in payment was ██████████. (Exhibit 1, page 5).
10. On ██████████, the Department received Appellant's Request for Hearing. (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 agencies.

Reductions in HHS

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.

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- 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

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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:

- 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 client needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements.

(ASM 363, pages 2-4 of 24)

Necessity For Service

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

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- Verification of the client's medical need by a Medicaid enrolled medical professional. The client is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician.
 - Nurse practitioner.
 - Occupational therapist.
 - Physical therapist.

(ASM 363, page 9 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;

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- 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)

In this case, as described above, ASW ██████████ terminated the HHS assistance for shopping and meal preparation/cleanup and reduced the HHS assistance for housework and laundry. (Exhibit 1, pages 10-11, 13) As testified to by ASW ██████████, he based those terminations and reductions on the home visit, Appellant's medical needs forms and information relayed to him by other workers. (Testimony of ASW ██████████). Appellant disputes the reduction in her payments and asserts that she requires the same help as before. (Exhibit 1, page 4; Testimony of Appellant). Each of the disputed tasks will be addressed in turn and, for the reasons stated below, this Administrative Law Judge finds that the Department's reductions should be sustained.

Appellant has been receiving HHS since March of ██████████ and her most recent medical needs form is dated ██████████. In most cases, a new medical needs form must be submitted every year, but Appellant is not required to do so because she is receiving SSI. ASM 363, pages 6-7 of 24. However, Appellant could benefit from an updated medical needs form given that her most recent form appears outdated and does not reflect the conditions she claims she suffers from. If her case does get updated, Appellant may be entitled to more benefits. Nevertheless, based on the information available to the Department at the time, its decision to reduce Appellant's HHS payments is affirmed.

Meal Preparation/Cleanup

With respect to meal preparation/cleanup, Appellant disputes the termination of HHS on the basis that she has difficulties with mobility and she cannot stand up or move around to the extent necessary to complete that task on her own. (Testimony of Appellant).

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However, Appellant has never received assistance for the task of mobility itself (Exhibit 1, pages 10-11) and, besides a quick note of DJD of the lumbar spine, nothing would even indicate a potential problem with mobility (Exhibit 1, pages 8-9). Moreover, Appellant was not using a cane or walker at the times relevant to the Department's decision (Testimony of Appellant) and other DHS employees reported, on two occasions, that they observed Appellant moving around without difficulty (Exhibit 1, page 13; Testimony of ASW ██████████). Given those facts, Appellant cannot demonstrate that she has any difficulties with mobility and the elimination of HHS for assistance with meal preparation/cleanup is sustained as reflective of Appellant's need for physical assistance with that task.

Shopping

Appellant disputes the elimination of HHS for assistance with shopping on the basis that she needs transportation to go shopping and she cannot lift anything by herself. (Testimony of Appellant). However, transportation is not included in the services covered by HHS. ASM 363, pages 14-15 of 24. Additionally, there is no evidence supporting Appellant's claim that she cannot shop for herself. Appellant was initially diagnosed with drug abuse, alcoholism, and manic depression. (Exhibit 1, pages 9, 15). A later medical needs form notes that Appellant has DJD of the lumbar spine, but there is nothing specific about a problem with lifting or carrying. (Exhibit 1, pages 8-9). Moreover, ASW ██████████ testified that Appellant did not discuss any problems with lifting or carrying during the home visit (Testimony of ASW ██████████) and Appellant produced no evidence suggesting that she has any limitations in this area. Given the lack of evidence supporting Appellant's claims, she has failed to meet her burden of proving beyond a preponderance of the evidence that the Department erred in terminating HHS for assistance with shopping. Accordingly, the Department's decision is affirmed.

Laundry

ASW ██████████ reduced the HHS time for assistance with laundry from 1 hour and 38 minutes, 1 day a week, to 40 minutes, 1 day a week. (Exhibit 1, pages 9-10). According to ASW ██████████ he made that reduction based on a new assessment of Appellant's mobility. (Testimony of ASW ██████████). Appellant disputes the reduction on the basis that she needs transportation to the laundromat and that she cannot lift the laundry when it gets too heavy. (Testimony of Appellant). As discussed above, however, transportation is not included in the services covered by HHS and Appellant has failed to support her claims that she cannot lift anything. Moreover, Appellant has in no way shown that 40 minutes of assistance with laundry is insufficient to meet any needs she does have. Therefore, the Department's decision to reduced HHS with respect to laundry is sustained.

Housework

With respect to the task of housework, the HHS time was reduced from 1 hour and 24 minutes, 1 day a week, to 25 minutes, 1 day a week. (Exhibit 1, pages 9-10). As testified to by ASW ██████████, he made that reduction because of changes in the

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assessment of Appellant's mobility. (Testimony of ASW [REDACTED]). Appellant disputes the reduction on the basis that she cannot stand up long enough or move heavy furniture in order to do housework. (Testimony of Appellant).

As stated in the Functional Assessment Definitions and Ranks of Instrumental Activities of Daily Living, "Housework" is defined as "Sweeping, vacuuming, and washing floors; washing kitchen counters and sinks; cleaning the bathroom; changing bed linen; taking out garbage; dusting and picking up; cleaning oven and stove; cleaning and defrosting refrigerator; bringing in fuel for heating and cooking purposes if necessary." Adult Services Manual 365 (10-1-99), page 2 of 2. Given that definition, Appellant's claim that she cannot move heavy furniture may be irrelevant as that does not appear to be included in housework. To the extent it is relevant, Appellant's claims must still be rejected because, as discussed above, she has failed to support her claims regarding a lack of strength or difficulties in standing.

Appellant is receiving 25 minutes of assistance with housework once a week. Given the lack of evidence supporting her claims regarding her limitations, Appellant has failed to meet her burden of proving beyond a preponderance of the evidence that the Department erred in reducing her assistance with that task. Therefore, the Department's decision to reduce HHS with respect to housework is affirmed as it is reflective of Appellant's need for assistance with that task.

Notice

The [REDACTED] Advance Negative Action Notice in this case indicates that the Department intends to make the reductions to the Appellant's case retroactive to May 1, 2011. (Exhibit 1, pages 5-7). The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

§ 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

- (a) The agency has factual information confirming the death of a recipient;
- (b) The agency receives a clear written statement signed by a recipient that—

- (1) He no longer wishes services; or

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(2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;

(c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;

(d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);

(e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;

(f) A change in the level of medical care is prescribed by the recipient's physician;

(g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or

(h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

(a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and

(b) The facts have been verified, if possible, through secondary sources.

The ██████████ Advance Negative Action Notice issued by the Department clearly failed to provide Appellant with the required advance notice of at least 10 days that his HHS payments would be reduced as the effective date of the reduction was ██████████. None of the exceptions to the advance notice requirement were present in this case. Moreover, because it was impossible for Appellant to request a hearing before

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the effective date of the negative action, the Department implemented the reductions to the Appellant's HHS payments.¹

Given the clear regulations regarding notice, the Department cannot make the reductions to the Appellant's HHS case effective any earlier than 10 days after the Advance Negative Action Notice. Moreover, it is undisputed that the Department did in fact make the reductions retroactive despite the fact that there was improper notice. Accordingly, the Department must re-determine Appellant's eligibility for HHS during the period of [REDACTED] to [REDACTED], and reimburse for benefits Appellant is otherwise entitled to.

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 payments based on the available information. However, as the Department failed to provide the proper advance notice of the reduction and retroactively reduced payments, the Department must re-determine Appellant's eligibility for HHS during the period of [REDACTED] to [REDACTED] and reimburse for benefits Appellant is otherwise entitled to.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED IN PART** and **REVERSED IN PART**.

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

cc:

[REDACTED]

Date Mailed: 8/26/2011

¹ ASM 362 provides that where HHS are to be reduced or terminated and the client requests a hearing before the effective date of the negative action, the Department is to continue the payments at the old level until a hearing decision has been made. ASM 362, page 4 of 5.

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***** 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 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.