

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

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-42110 HHS
Case No. 13893735

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's father, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), from the ██████████ County HHS Office appeared as a witness for the Department. ASW ██████████ was also present as an observer.

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 ██████ year-old Medicaid beneficiary.
2. Appellant has been diagnosed by a physician as having hydrocephalic seizures and being mentally challenged, 14 year-old level. (Exhibit 1, page 13).
3. Appellant had been receiving 31 hours and 2 minutes of HHS per month, with a care cost of \$ ██████ per month. (Exhibit 1, page 10).
4. On ██████████, ASW ██████ conducted a home visit with Appellant and Appellant's mother/chore provider. (Exhibit 1, page 9).
5. Based on information provided by Appellant and Appellant's provider during that home visit, ASW ██████ decided to terminate the HHS hours authorized for assistance with bathing, grooming and housework. ASW

██████████ also decided to reduce the HHS hours authorized for assistance with meal preparation/cleanup. All other HHS would remain the same. (Exhibit 1, pages 10-11; Testimony of ASW ██████████).

6. After the reductions, Appellant would receive a total of 12 hours and 32 minutes of HHS per month, with a total monthly care cost of \$ ██████████. (Exhibit 1, page 11).
7. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced. The effective date of the reduction was identified as ██████████. (Exhibit 1, pages 5-7).
8. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant's representative asserts that Appellant requires assistance with grooming and all meal preparation. Appellant's representative also asserts that Appellant requires more time for assistance with shopping. (Exhibit 1, page 4).
9. The reduction in HHS payments was never implemented because of Appellant's timely Request for Hearing. (Exhibit 1, page 12; Testimony of ASW ██████████; Testimony of Eugene Allen).

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, on ██████████, ASW ██████████ completed a home visit and an HHS comprehensive assessment in accordance with Department policy. Following that assessment, the ASW terminated HHS assistance for the tasks of grooming and bathing, while also reducing the HHS hours for assistance with meal preparation/cleanup. Appellant, through her representative, now challenges those three actions as well as the HHS hours authorized for assistance with shopping. The specific disputed activities will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the Department's decisions must be affirmed. However, this Administrative Law Judge also finds that the Department's proposed start date for the reduction in payments failed to provide enough notice and, consequently, the Department cannot make the reductions to the Appellant's HHS case effective any earlier than 10 days after the ██████████ Advance Negative Action Notice.

Grooming and Bathing

Based on information provided by Appellant and Appellant's provider during the home visit, ASW ████████ decided to terminate the HHS hours authorized for assistance with bathing, grooming and housework. (Exhibit 1, pages 10-11; Testimony of ASW ████████). Appellant's representative disputes the termination of grooming assistance in the Request for Hearing. (Exhibit 1, page 4). Bathing assistance was not mentioned in Request for Hearing, but, during the hearing, Appellant's representative also challenged the termination of services for bathing. (Exhibit 1, page 4; Testimony of ██████████).

Adult Services Manual 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)

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:

- 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)

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;

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- 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, ASW ██████ testified and wrote in her notes that she terminated assistance for grooming and bathing because Appellant and Appellant's provider informed her that Appellant no longer required assistance with those tasks. (Exhibit 1, page 9; Testimony of ASW ██████). Appellant's representative testified that Appellant still requires assistance with the tasks, but he also acknowledged that he was not present during the home visit and he does not know what Appellant or Appellant's provider told ASW ██████. (Testimony of ██████). Appellant's representative also testified that he does not think Appellant or Appellant's provider understood what they were saying during the home visit. (Testimony of ██████).

This Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time of the decision. Here, ASW ██████ testified that she was expressly told that Appellant no longer required assistance with grooming or bathing. That testimony is uncontradicted and this Administrative Law Judge also finds it to be credible. Accordingly, the Department's decision to terminate HHS with respect to grooming and bathing is sustained given the information available at the time.

Shopping and Meal Preparation/Cleanup

Appellant's also challenges the HHS authorized for shopping and meal preparation/cleanup. With respect to meal preparation/cleanup, HHS were reduced by one-half after the most recent assessment. (Exhibit 1, pages 10-11). According to

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ASW ██████████, that reduction was due to the Department's proration policy. (Testimony of ASW ██████████). With respect to shopping, there was no reduction during the most recent assessment (Exhibit 1, pages 10-11), but ASW ██████████ did testify that the hours for shopping assistance had previously been prorated (Testimony of ASW ██████████).

ASM 363 addresses both the maximum hours allowed for assistance with Instrumental Activities of Daily Living (IADLs) and the proration of IADL services:

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

(ASM 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 undisputed evidence in this case establishes that Appellant lives with her parents and another adult relative in a shared living arrangement. (Exhibit 1, page 8; Testimony of ██████████). Given that at least one other person was living in the home, the Department was bound to follow the mandated policy and prorate the HHS time and payment for all IADLs, except taking medication, by at least one-half.

Here, the Department did prorate the assistance for meal preparation/cleanup and HHS for that task were reduced by one-half. (Exhibit 1, pages 10-11). Similarly, it had previously prorated HHS with respect to shopping and Appellant now receives half of the monthly maximum hour limits for that task. (Exhibit 1, page 11). Those decisions must be sustained as ASM 363 does not provide for any exceptions. To the extent the Department failed to follow the proration policy by not prorating HHS for meal preparation/cleanup earlier, it was generous in favor of the Appellant. Appellant can point to no error that harmed her and the Department's decision to prorate is sustained.

Notice

In this case, while the Department has never implemented the reduction in payments discussed above, it also identified the effective date of that reduction as ██████████, which is the same date the Advance Negative Action Notice was sent out. (Exhibit 1, pages 5-7). The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to advance 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

(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 the Appellant with the required advance notice of at least 10 days that her HHS payments would be reduced as the effective date of the reduction was identified as ██████████. (Exhibit 1, pages 5-7). The Department has not implemented the reductions to the Appellant's HHS payments because a timely request for hearing was filed. (Exhibit 1, page 12; Testimony of ASW ██████████; Testimony of ██████████). None of the exceptions to the advance notice requirement are present in this case and, 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 initial ██████████ Advance Negative Action Notice.


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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 based on the available information. However, the Department cannot make the reductions to the Appellant's HHS case effective any earlier than 10 days after the  Advance Negative Action Notice.

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:



Date Mailed: 9/13/2011

***** 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.