

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-46619 HHS

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. The Appellant was present and represented by her sister, ██████████.

██████████, Appeals and Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, appeared as a witness on behalf of the Department. ██████████, Adult Services Worker, was present and testified on behalf of the Department.

ISSUE

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

FINDINGS OF FACT

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

1. The Appellant is a ██████ year old Medicaid beneficiary who is a participant in the HHS program.
2. Department records indicate she has been diagnosed with fibromyalgia, arthritis, COPD, hypertension, CAD, DJD, anxiety and has a history of an aneurysm.
3. The Appellant receives payment assistance for some Activities of Daily Living and Instrumental Activities of Daily Living, through the Department's Home Help Services Program.

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4. The Appellant receives payment assistance for the tasks of bathing, grooming, dressing, medication assistance, housework, laundry, shopping and meal preparation. She has a functional rank of 5 for the instrumental activities of daily living and 3 for the activities of daily living for which she requires assistance.
5. The Appellant's Home Help Services case was scheduled for an annual redetermination in ██████████.
6. The Appellant's worker completed a home call and comprehensive assessment ██████████.
7. The Appellant's worker was informed by the Appellant at the comprehensive assessment in ██████████ that she could feed herself but that her son cooks for her.
8. When the worker completed the redetermination at the office she removed payment assistance for the task of eating and sent an advance negative action notice to the Appellant.
9. The worker did not change the functional rank assigned to the Appellant for feeding.
10. The functional rank assigned to the Appellant for transferring is a 3; however, no payment authorization for this type of assistance is reflected in the evidentiary record.
11. The functional rank assigned to the Appellant for cooking is 5/5, signifying complete dependence upon others for this task.
12. The narrative written by the Appellant's current worker indicates "...her need for continued services remains the same. ██████████ no longer requires assistance with eating and it will be removed as a paid tasks (sic)..."
13. The narrative also contains the following language "transferring: client is sometimes unable to get up from chairs and bed due to pain in limbs and back. Eating: client is unable to cut food due to arthritis." No payment assistance is authorized for transferring. There is no indication cutting of food was specifically addressed at the comprehensive assessment.
14. The Appellant maintains a valid driver's license and does drive. It was asserted on her behalf at hearing the doctor advised her against driving.
15. The Appellant reports wearing braces on each of her hands.

16. The Department's worker testified she did not observe anything during the comprehensive assessment inconsistent with the Appellant's report that she is able to feed herself.
17. At hearing, the Appellant was asked to describe the assistance she requires with eating and she replied, "meals needs to be prepared for me."
18. The Appellant's sister reports at hearing that the Appellant, "has limited use of her hands, sometime she needs help, sometimes she doesn't."
19. The Appellant requested a hearing following receipt of the Advance Negative Action Notice. The hearing request was received [REDACTED].

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.

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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

*Adult Services Manual,
7-1-2009.*

Necessity For Service

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

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.

- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer 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

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

The Adult Services Manual (ASM 363 7-1-09), 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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer'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 agency 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 customer'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 for food and other necessities of daily living
- Laundry
- 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 customer and provider, observation of the customer'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 for food and other necessities of daily living
- 6 hours/month for housework
- 7 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.

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 customer 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 customer's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer 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 customer.
- 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 customer 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 customer.

- HHS may be authorized when the customer is receiving other home care services if the services are not duplicative (same service for same time period).

Adult Services Manual (ASM)
7-1-2009.

Department policy 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 (ASM)
9-1-2008

In this case the Appellant contested the reduction implemented by the newly assigned worker following their first meeting. At hearing her representative asserted she sometimes requires assistance and sometimes does not, due to the limited use she has of her hands. It was admitted at hearing the Appellant maintains a valid driver's license and still drives; at least occasionally. She is ambulatory with use of a cane. The Appellant was directly asked by the Department representative whether the doctor had restricted her use of her hands. She replied that, "meals needs to be prepared for her." She did not describe an inability to cut her own food when initially asked about restrictions at hearing, nor at her assessment.

The Department witness testified at hearing she was informed by the Appellant that she feeds herself but her son cooks for her. She saw no evidence inconsistent with this

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report directly from the Appellant. She observed nothing inconsistent with a determination that the Appellant could cut her own food.

The documentation in the record contains a description of a client who requires assistance transferring and who requires help cutting her food. The evidence of functional ranks indicates she is completely dependent on others for all her meal preparation, ranking a 5 of 5. This is the same rank as a person who is paralyzed with no use of his/her extremities. Furthermore, the same rank signifying complete dependence is given for laundry, shopping and housework. However, the Appellant's functional rank for bathing is only a 3, as well as for dressing and grooming. She is independent with toileting, scoring a 1. There is testimony on behalf of the Appellant that she maintains a driver's license and drives.

In this case the issue of whether the Appellant requires hands on assistance with eating is a disputed issue. A person who actually requires their food to be cut up for them is to be ranked a 3 according to the functional assessment definitions and ranks contained in the ILS Appendix. There is scant evidence that the cutting of food was discussed during the comprehensive assessment. It was, however, directly addressed at hearing by the cross examination of the Department representative. The Appellant did not describe herself as needing assistance to cut her food. This is consistent with a functional rank of 3 for other tasks, which reflect use of her hands for tasks such as washing herself, dressing herself with very limited assistance and complete independence for toileting. This is also consistent with having the ability to drive an automobile, which requires sufficient strength and dexterity in her hands to maintain her own safety and that of others in public.

This ALJ finds the worker reached a sound conclusion about whether this Appellant is in need of physical assistance cutting her food, thus can support the removal of payment assistance for this task.

While this ALJ finds the inconsistency in the documentation (narrative and functional ranks) presented by the Department troubling in certain respects, this appears to be the result of failure to make changes in the assessment completed by the previous worker. This documentation is not found reliable, however, the testimony of the Appellant upon cross examination is supportive of the worker's determination, persuading this ALJ the worker made the sound judgment in this case. The evidence presented at hearing in support of the Appellant is not sufficiently persuasive of the Appellant's reportedly extreme limitations for this ALJ to find it reliable or to find the credibility of the worker lacking in this instance. This ALJ is more persuaded the accurate reflection of the Appellant's abilities is reflected in her initial testimony, which did not indicate she is unable to cut her own food. What is also persuasive is that the Appellant has the capacity to cut her own food adequately to feed herself without assistance is the minimal assistance she requires with other tasks that require some strength and dexterity. Furthermore, there was no medical evidence presented to refute the Department's determination that the Appellant does not require assistance with eating.

This ALJ concurs with the determination of the Department's Adult Services Worker regarding the Appellant's need for Home Help Services assistance. The worker testified in a credible manner and her determination is supported by the policy included above. In this case the Department's actions are supported by credible evidence and policy. The Appellant did not meet her burden of proof.

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.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Mailed: 10/21/2011

***** 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 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.