

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2011-4857 HHS
Case No. 23957287

██████████

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 ██████████, ██████████, ██████████, and ██████████. ██████████ appeared on the Appellant's behalf. ██████████ appeared and testified. ██████████ represented the Department. ██████████, ██████████, and ██████████ appeared as witnesses for 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 Medicaid beneficiary, who is receiving Home Help Services.
2. The Appellant is ██████████ man with diagnoses including cerebral palsy, arthritis in back and hips, and Chronic Obstructive Pulmonary Disease (COPD). (Exhibit 1, page 13)
3. The Department has authorized HHS hours for assistance with bathing, grooming, transferring, mobility, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 12)
4. On ██████████, a DHS Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 10)

5. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated in a shared household. (Adult Services Manual (ASM) 363, 9-1-2008, pages 4-5 of 24)
6. The Appellant lives with his ██████████. (Exhibit 1, page 3)
7. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that his Home Help Services case would be reduced with a new payment of ██████████ per month effective ██████████, reflecting proration of the HHS hours for housework, laundry, shopping, and meal preparation based on two persons living in the home.¹ (Exhibit 1, pages 5-7)
8. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3-4)

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.

Adult Services Manual (ASM 363, 9-1-08), 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.

¹ The Advance Negative Action notice incorrectly includes medication in the activities subject to the Department's proration policy. However, the Appellant's HHS hours for medication were not reduced. (Exhibit 1, page 5, Adult Services Manual (ASM) 363, 9-1-2008, pages 4-5 of 24, and Arnold Testimony)

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.
- 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).

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.

Exception: DCH will accept a DHS-54A completed by a VA physician or the VA medical form in lieu of the medical needs form.

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

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

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- 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.

*Adult Services Manual (ASM) 363,
9-1-2008, Pages 2-15 of 24*

On ██████████, an Adult Services Worker (ASW) completed a home visit as part of a comprehensive assessment to determine HHS ongoing eligibility. It is uncontested that the Appellant lives with his ██████████. The ASW noted that the HHS hours for the activities of housework, laundry, shopping, and meal preparation had not been prorated. In order to bring the case into compliance with Department policy, the ASW reduced the HHS hours authorized for these tasks based on a household composition of ██████████. The Appellant's rankings remained a 3 for each of these activities. (Exhibit 1, page 14)

The Appellant's ██████████ disagrees with the reduction and some of the Appellant's rankings and that HHS hours should be included for dressing. She testified that she reviewed the rankings with the Appellant's doctor, and they agree that bathing should be a 4, dressing should be a 3, meal preparation should be a 5, shopping should be a 4, laundry should be a 5 and housework should be a 5. (Exhibit 2, pages 28-29) However, a physician does not authorize or prescribe HHS services. Under the above cited Department policy, the doctor certifies a medical need for services and the Adult Service Worker is responsible for determining the necessity and level of need for HHS services. Further, the Appellant's ██████████ testified that issues regarding ranking and HHS hours for dressing relate to a ██████████ home visit and comprehensive assessment. There was no evidence presented indicating that the Appellant or his ██████████ contesting dressing hours not being part of the service plan at the ██████████

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assessment. Accordingly, this ALJ can not consider the omission of dressing from the Appellants time and task authorization.

The only adjustment made to the Appellant's case was the proration of housework, shopping, laundry and meal preparation HHS hours by half based on the household composition. The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks based upon the number of persons residing in the home together, as the Appellant's ██████████ would have to clean her own home, make meals, shop and do laundry for herself if she did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy. Exceptions to the proration policy can be considered when there is justification for performing a task completely separately.

The Appellant's ██████████ testified the Appellant never eats with her, is supposed to be on a special diet for his high cholesterol, and does not like the foods she eats. She explained that it takes longer to complete shopping/errands than the time authorized by the Department. The Appellant's ██████████ stated that she washes the Appellant's clothing separately because he works with the public as a cab driver and was infected with MERSA once. Additionally, she washes his sheets daily because he spends a lot of time in his bed, sometimes over 15 hours, and he may eat there. Lastly, she testified that the Appellant can not do any of the tasks within the definition of housework in Department policy. (Exhibit 2, page 29)

The Appellant's testimony indicated that he is capable of doing more than his representative described in her testimony. The Appellant testified that he would be able to do some tasks from a seated position, such as folding laundry if his back was not hurting or spasming. The Appellant testified that has a walker that he uses in the home. The Appellant had his walker with him at the ██████████ hearing and it has a padded seat.

The Appellant also testified that he works ██████████0 hours per week driving a cab at night, from about ██████████ to ██████████. He explained that he works in the evening to avoid transporting fares to the airport and having to lift luggage in and out of the car. Even so, this employment involves prolonged sitting, as well as use of hands and arms to operate the vehicle. Being self employed, the Appellant and his ██████████ explained that the Appellant can work when he feels up to it, and stay home when he is not. The Appellant further testified that he has been back to work since his recent wrist surgery.

Clearly, the Appellant would not be able to perform parts of some of the Instrumental Activities of Daily Living, such as carrying laundry up and down stairs to the laundry facilities. However, the Appellant's own testimony indicated he could

assist with other parts of these activities such as folding laundry while in a seated position. Similar to his self employment, the Appellant would be able to participate in the instrumental activities of daily living when he feels up to it.

The evidence does not support exempting the Appellant's HHS hours from the Department's proration policy. No evidence was presented indicating any housework tasks must be performed separately for the Appellant. The Appellant's ██████████ testified that foods are purchased for both of them during shopping trips. The testimony indicated the Appellant is not compliant with the special diet for his high cholesterol, and his food preferences are not sufficient justification to exempt the meal preparation hours from proration. There was also no evidence of an ongoing infection to support a need for laundry being washed separately for the Appellant.

Department policy allows for a maximum of 6 hours for housework, 7 hours for laundry, 5 hours for shopping, and 25 hours for meal preparation each month. The Appellant is ranked as a level 3 for these activities, indicating he is not totally dependant on others for these tasks. (Exhibit 1, pages 14) However, the HHS hours authorized by the worker were based on the Department maximums, regardless of the Appellant's rankings for these activities. Accordingly, there is no need for this ALJ to address the Appellant's rankings for the Instrumental Activities of Daily Living. The ASW simply prorated the maximum HHS hours for each activity by half based on a household composition of two persons. The ASW authorized 3 hours and 1 minute for housework, 3 hours and 31 minutes for laundry, 2 hours and 30 minutes for shopping, and 12 hours and 32 minutes for meal preparation per month. (Exhibit 1, page 12) The reductions to the HHS hours for housework, laundry, shopping and meal preparation are sustained as they are reflective of the Appellant's household composition.

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 upon the information available at the time of the assessment.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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cc:

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Date Mailed: 1/24/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 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.