STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2011-50177 HHS
Case No.

,

Appellant
_______________________/

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 convened . It was adjourned for good cause upon request of the Appellant. The hearing was held and completed The Appellant was present and represented herself at hearing. Her grandson and reported chore provider was present, .

, Appeals and Review Officer, represented the Department of Community Health. , Adult Services Worker appeared as a witness 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 Medicaid beneficiary who is a participant in the HHS program.

2. The Appellant's physician has diagnosed her with osteoarthritis of the spine, cervical myopathy, hypertension and a gait impairment.

3. The Appellant had a case redetermination in .

4. Following the redetermination, the Department reduced the payment authorized by removing payment assistance for the tasks of dressing, bathing, toileting and grooming. The Department intended to remove payment assistance for mobility but inadvertently neglected to remove payment assistance for that task.

5. The Department sent the Appellant a Notice of case action, informing her of the reductions.

6. The Appellant thereafter telephoned the worker to contest the reductions and requested a new medical form to submit supporting her assertion that she requires assistance with all the tasks she formerly received help with.

7. The Department adjusted the payment authorization from [redacted] to [redacted] and then up to [redacted] based upon a household of one.

8. The Department sent the Appellant an Advance Negative Action Notice indicating her payment was reduced and the reasons therefore.

9. The Appellant requested a hearing [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 reductions implemented following the re-assessment in [redacted]. She asserted she got a pinched nerve the same day as the assessment and that she told the worker that at the time of assessment. She claims

to need surgery now. She further asserted she could not tell her exactly what was wrong at the time of assessment because she did not know it was a pinched nerve. She said she had a sharp pain in her right hand and is now learning to use her left hand to cut her food. She said she can use her right hand to write. She said she is in pain from the waist down. She has a walker and leg brace. She was feeling okay the day the worker came out but has declined in her health since. She said her grandson is her provider and comes every day to take care of her. She admitted he sleeps over at her home a couple of nights at a time. She said she needs help dressing and was vague when asked directly about assistance with toileting. She disputed the worker's claim that she told her she is able to do things for herself. She said the worker told her what she was removing. It was not based on anything she told her at the review.

The Department's witness stated at the assessment she was there with the Appellant and the provider was not there. She determined that the Appellant was dressed when she arrived and the provider was not there and had not been there, that she was able to toilet and dress herself. She was able to eat without assistance as well, despite claims from the Appellant that she requires someone to cut her food. The Department's witness indicates she has trouble believing the Appellant's grandson is actually providing assistance to his grandmother because he lives in [redacted] and did not have a car at the time of assessment in [redacted]. She was informed in [redacted] he rode the bus to take care of his grandmother. The worker continued she did not observe significant limitations outside of difficulty walking. She saw nothing that would impair her ability to feed herself or cause her to need help wiping herself after toileting. The worker did present evidence she believed the Appellant's motivation was primarily financial.

This ALJ reviewed the documentation in the file. There are no narrative notes from the [redacted] assessment. Notes dated from after the assessment are included but not provided weight because they were made after the Notice of case determination was sent and the request for hearing was received. The disposition of this case must be made on the testimony provided about the assessment in [redacted].

The Department's worker testified she saw at the assessment that the Appellant was dressed, clean and alone at the time of assessment and had gotten ready without assistance on the day of assessment. From that information she determined the Appellant was able to eat, dress, toilet, bath and groom without physical assistance. She also honestly expressed and noted her reservations about the alleged arrangements for care providing. She does not believe it credible or realistic that the grandson who was reportedly living in [redacted] and without a car, was riding a bus on a daily basis to provide the personal care the Appellant had previously stated she needed. She is right to have a concern about how realistic or likely this arrangement is. Her direct observations on the day of the assessment are found credible and relied on to determine the material facts. The Appellant's evidence refuting the worker's testimony is inconsistent and lacks credibility in the opinion of this ALJ. She was vague when asked directly what assistance she requires with toileting. She claimed not to understand what assistance with toileting means. This is not found likely. There is no

evidence of cognitive impairment or any good reason to not know or understand this question. Furthermore, this ALJ agrees there is evidence of financial motivation by the Appellant that stood out more than apparent medical need for physical assistance with activities of daily living. The Appellant did not meet her burden of proof in establishing the reductions implemented by the Department are not based upon credible, material and a substantial evidence of record. Finally, the evidence presented by the Appellant about her medical condition was not limited to her condition at the time of assessment. She said she learned after the assessment she has a pinched nerve and is expecting to get surgery. This was unknown to the case at the time of assessment, thus it could not be used to find there was an error made when the reductions were based upon what was learned in the [redacted] assessment. While the Appellant did testify she told the worker she had a pain during the assessment, she explained she was unable to tell her exactly what it was because it had not been diagnosed yet. She also stated she was feeling good the day of assessment. This is but one example her inconsistent testimony that resulted in this ALJ not finding her credible.

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 provided specific reasons for her actions and determinations that are supported by the policy included above. She did not rescind authorization for payment in other areas, reflecting the belief that the Appellant still required some physical assistance at times. This is an implementation of policy that requires the worker to address the specific needs and circumstances of each client individually. 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:

Date Mailed: _11/29/2011_____

***** 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.