

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

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IN THE MATTER OF:

Docket No. 2011-52743 HHS
Case No. [REDACTED]

[REDACTED],
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 held on [REDACTED] [REDACTED] represented the Appellant. [REDACTED], R.N., Appeals Review Officer, represented the Department. Her witness was [REDACTED], ASW. Also in attendance were [REDACTED] care provider and [REDACTED] who did not testify.

ISSUE

Did the department properly establish the 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. At the time of hearing the Appellant is a [REDACTED]-year-old Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with "brain damage, muscle weakness, developmental delay and cerebral palsy." (Department's Exhibit A, pp. 11, 12)
3. On [REDACTED], the ASW [REDACTED] sent the Appellant a Services Approval Notice informing him that his HHS had been approved in the amount of [REDACTED] per month effective [REDACTED]. (Department's Exhibit A, pp. 2, 6)
4. The ASW testified that on face to face home visit [REDACTED] the Appellant lived in a shared household consisting of 2 minor children and 3 adults. Payments were prorated by 3 per ASM 363. (Department's Exhibit A, p. 7 and See Testimony of [REDACTED]).
5. The Appellant's representative said she and her son were being treated unfairly because they were both asking for help. See Testimony.

6. The instant appeal was received by the Michigan Administrative Hearing System (MAHS) for the Department of Community Health on [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 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.

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 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 re-determination.
- 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
- 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. When hours exceed the RTS rationale must be provided.

Adult Service Manual (ASM), §363,
pp. 2, 3 of 24, 9-1-2008.

Service Plan Development

Address the following factors in the development of the service plan:

- 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).

(Emphasis supplied) *Supra*, p. 5 of 24.

The Department witness testified that on in-home assessment the evidence showed that the Appellant was living in a shared household arrangement consisting of three adults and two minor children in the home. She added that she approved HHS for the Appellant based on her assessment and the DHS 54A. The ASW also testified that the Appellant needed hands-on help with bathing, grooming, housekeeping, laundry, shopping and meal preparation. She

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added in her evidence package that the Appellant's representative is attempting to secure additional services from Community Mental Health for her son. [See *also* Docket No. 2011-51865]

The Appellant's representative testified that she thought they were being treated unfairly - because two people were asking for help.

On review, application of the shared household policy was applied based on the credible and supported observations of the ASW in the home. It was supported by the evidence found in the DHS 54A – and by the testimony.

The Home Help Services program is not a static provider of payment. It is anticipated that benefit levels will wax and wane during the course of HHS enrollment. This is necessary to account for or adjust to changes in the client's condition for the better or the worse.

The Administrative Law Judge finds that the comprehensive assessment was accurate when made and drawn according to policy. The Appellant had not preponderated his burden of proof that the Department erred in either the establishment or the proration of his HHS benefit. There was no dispute in the record concerning the number people living in the home.

The Appellant properly, I think, seeks additional CMH services for her developmentally delayed son, but this is not an issue before this Administrative Law Judge.

Based on the information presented at hearing I found the proration policy to be correctly applied and the Appellant's benefits properly established for purposes of the Home Help Services program.

The Appellant has failed to preponderate his burden of proof.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly applied proration policy in the establishment of the Appellant's HHS payment.

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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cc:

[REDACTED]

Date Mailed: 12/8/2011

***** 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.