

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

Docket No. 2011-8815 HHS
Case No. 13071046

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, was present at the hearing. He was represented by his ██████████, ██████████, represented the Department of Community Health. ██████████ Department of Human Services (DHS) Adult Services Worker, appeared as a witness for the Department. ██████████ was also present at the hearing.

ISSUE

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

FINDINGS OF FACT

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

1. The Appellant is a Medicaid beneficiary, who has been diagnosed with cerebral palsy, polio, and a hernia. (Exhibit 1, page 10)
2. The Appellant currently resides with his ██████████ and her ██████████. (Testimony of ██████████)
3. The ██████████ also previously lived in the home. However, the chore provider notified the Department at the hearing that he had moved out. (Testimony of ██████████)
4. On ██████████, the DHS Adult Services Worker (worker) made a visit to the Appellant's home to conduct an annual HHS assessment. (Exhibit 1, page 4)

5. As a result of the information gathered at the assessment about the number of persons living in the household, the worker decreased the HHS hours authorized for housework and meal preparation for the Appellant. (Exhibit 1, page 7)
6. DHS policy requires that the tasks of housework, laundry, meal preparation, and shopping be prorated by the number of people living in the home.
7. On [REDACTED], the Department sent an Advance Negative Action Notice, notifying the Appellant that his HHS payments would be reduced to \$ [REDACTED] per month, effective [REDACTED]. (Exhibit 1, pages 4-6).
8. On [REDACTED], the State Office of Administrative Hearings and Rules received a Request for Hearing signed by Appellant. (Exhibit 1, page 3).

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.

The purpose of HHS is 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.

The Adult Services Manual provides as follows regarding how to conduct a comprehensive assessment, including the proper protocol for a shared household:

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 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.

██████████
Docket No. 2011-8815 HHS
Decision and Order

- 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).

*Adult Services Manual (ASM) 9-1-2008,
pages 2-5 of 24 (Emphasis Added)*

On ██████████ the worker completed an HHS comprehensive assessment for redetermination in accordance with Department policy. The worker testified that, at that time, she became aware that the Appellant was living with his ██████████ and her ██████████. Based on this information, the HHS hours authorized for housework and meal preparation were decreased. The worker testified that proration was applied to the HHS hours for these activities in accordance with Department policy requiring that IADL's be prorated based on the number of persons living in the home.

The Appellant's ██████████ testified that her ██████████ have always lived in the home with her and the Appellant, so she cannot understand why it is now an issue. She further testified that the Appellant likes to eat soul food, which takes her longer to prepare than other foods, and that she and her ██████████ do not eat the food that she prepares for the Appellant. However, she conceded that the Appellant does not have any special diet requiring him to eat these foods. Rather, it is just what he prefers. Finally, the Appellant's ██████████ testified that her ██████████ has moved out of the home. But she acknowledged that she had not previously notified the Department of this information.

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. Therefore, it is appropriate to prorate the payment for those tasks by the number of persons residing in the home together, as the other persons in the household would have to clean their own home, make meals, shop, and do laundry for themselves if they 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.

Department policy allows for a maximum of 6 hours per month for housework and 25 hours per month for meal preparation. Here, the Department authorized 1 hour and 30 minutes per month for housework and 5 hours and 1 minute per month for meal preparation. (Exhibit 1, page 8) The authorized hours are reflective of the Appellant's household composition and rankings for these activities. Accordingly, the Department's reduction of the Appellant's HHS payments, based on the information provided at the time of the assessment was proper. However, given the Appellant's chore provider's testimony regarding the change in household composition, the Department agreed to adjust the proration of hours for meal preparation from 5 to 4.

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 in the areas of housekeeping and meal preparation. However, the Department agreed to prorate meal preparation hours by 4 based on the change in household composition.

IT IS THEREFORE ORDERED THAT:

The Department's action is AFFIRMED. The reduction was correct based on the information the Department had at the time it took the action. However, the Department should adjust the proration of meal preparation hours to 4 based on the change in household composition.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 3/3/2011

***** 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.