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. 2011-953 HHS
Case No. 2582428

[redacted]

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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant, [redacted] represented herself at the hearing. [redacted] represented the Department. [redacted] (worker), and [redacted], appeared as witnesses for the Department.

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.

2. The Appellant has been diagnosed with the following conditions: hypertension, arthritis in the knee, hyperlipidemia, and carpal tunnel syndrome. (Exhibit 1, pages 17-18)

3. On [redacted], the worker made a visit to the Appellant's home to conduct an annual HHS assessment. The Appellant's chore provider was not present at the assessment. (Exhibit 1, page 9; Testimony of [redacted])

4. Because the worker was not present at the [redacted], and never contacted the worker to verify that he was still providing services to the Appellant, the worker did not authorize continued HHS payments. Therefore, the Appellant's payments stopped without notice as of [redacted]. (Exhibit 1, pages 13, 15; Testimony of [redacted])

5. On [redacted], the worker received an updated DHS-54A Medical Needs form from the Appellant's physician, certifying a need for assistance with the following tasks: housework, laundry, shopping, and meal preparation.

6. On [redacted], the Appellant and her [redacted] met with the worker to enroll the Appellant's [redacted] as her new provider. At that time, the worker became aware that the Appellant's [redacted] lives with the Appellant. (Exhibit 1, page 12; Testimony of [redacted])

7. As a result of the information gathered from her meeting with the Appellant and her [redacted] regarding the household composition, the worker decreased the HHS hours authorized for housework. (Exhibit 1, pages 7-9)

8. DHS policy requires that the tasks of housework, laundry, meal preparation and shopping be prorated by the number of people living in the home. (Adult Services Manual (ASM) 9-1-2008, pages 4-5 of 24)

9. On [redacted], the Department sent a Services and Payment Approval Notice, notifying the Appellant that her HHS payments would be approved in the amount of [redacted] per month, effective [redacted]. (Exhibit 1, pages 7-9)

10. On [redacted], the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3-6).

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 (ASM 363, 9-1-08), pages 2-5 of 24* addresses the issue of assessment as follows:

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.

- 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).

The following services are not covered by HHS:

Services not Covered by Home Help Services

Do **not** authorize HHS payment 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 - 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) 9-1-2008, pages 14-15 of 24

On [redacted], the worker completed an HHS comprehensive assessment for redetermination in accordance with Department policy. (Exhibit 1, page 14) The worker testified that using the functional scale, and based on her observations at the time of the assessment, the HHS hours authorized for housework, shopping, and laundry remained the same. However, the worker was unable to verify that the Appellant's chore provider was actually providing services because he was not at the assessment, so the HHS payment was not approved and payments stopped as of [redacted].

On [redacted], the Appellant and her [redacted] met with the worker to enroll the Appellant's [redacted] as her new provider. At that meeting, the worker was informed that the Appellant's [redacted] lives with her. The worker testified that proration was applied to the authorized HHS hours for housework in accordance with Department policy requiring that these activities be prorated based on the number of adults living in the home.

The Appellant testified that she does not dispute the proration of the HHS hours for housework. Rather, she requested the hearing because the worker did not provide her with any assistance with meal preparation. She testified that she has bi-lateral carpal tunnel syndrome and lupus. She stated that she needs assistance with meal preparation because she is in constant pain, she cannot hold onto pots and pans, and she cannot use a can opener. The Appellant further stated that her provider had been assisting for the last year with meal preparation, and the worker advised her that it would be addressed at the annual assessment. But the worker never discussed meal preparation with her at the assessment.

On redirect, the worker testified that the Appellant did not advise her of a need for assistance with meal preparation at the assessment. Rather, it was not until after her chore grant was reduced based on the proration of housework that the Appellant brought her meal preparation needs to the worker's attention.

The proration of the hours authorized for housework was proper. 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 prorate the payment for those tasks by the number of adults residing in the home together, as the Appellant's [redacted] 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 reduction in the hours for housework is affirmed.

However, it does not appear that the worker properly considered the Appellant's meal preparation needs at the assessment. Therefore, a new comprehensive assessment is needed to determine the Appellant's meal preparation needs.

In addition, the Department's suspension of payments without notice was not proper. The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

> **§ 431.211 Advance notice.**
> The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.
>
> **§ 431.213 Exceptions from advance notice.**
> The agency may mail a notice not later than the date of action if—
> (a) The agency has factual information confirming the death of a recipient;
> (b) The agency receives a clear written statement signed by a recipient that—

(1) He no longer wishes services; or
(2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
(c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
(d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
(e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
(f) A change in the level of medical care is prescribed by the recipient's physician;
(g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or
(h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

§ 431.214 Notice in cases of probable fraud.
The agency may shorten the period of advance notice to 5 days before the date of action if—
(a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
(b) The facts have been verified, if possible, through secondary sources.

The Department suspended the Appellant's HHS payments without notice from [redacted] and none of the exceptions to the advance-notice requirement were present in this case. Therefore, the Department's suspension of the Appellant's HHS payments was improper.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's reduction of the Appellant's HHS payments based on proration of the hours authorized for housework was proper. However, its suspension of the Appellant's HHS payment without notice from [redacted] until [redacted] was improper.

IT IS THEREFORE ORDERED that:

The Department's suspension without notice from [redacted] to [redacted] is REVERSED. The Department is hereby ordered to reinstate the Appellant's HHS payments to the amount authorized before the [redacted] reduction for that time period.

The Department's [redacted] reduction of the Appellant's HHS payment based on proration of housework is AFFIRMED. However, the Department is ordered to conduct a new comprehensive assessment of the Appellant's assistance needs.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 12/21/2010

***** 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.