

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

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IN THE MATTER OF:

████████████████████

Appellant

_____ /

Docket No. 2011-11540 HHS
Case No. 88990062

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. She was represented by ██████████. ██████████, represented the Department of Community Health. ██████████ (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 Angelman Syndrome and a seizure disorder. (Exhibit 1, pages 5 and 16)
2. The Appellant resides with her ██████████ and requires assistance with all Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). (Exhibit 1, page 17; Testimony of ██████████; Testimony of ██████████)
3. On ██████████, the worker visited the Appellant's home to conduct a six-month review of the case. This was the first time the worker met the Appellant and her ██████████ as she was recently assigned to the case after

the prior worker retired from the Department. (Exhibit 1, page 12)

4. At the review, the Appellant's ██████ informed the worker that there had been no changes in the Appellant's conditions or need for services. In addition, he stated that the Appellant is able to walk on a treadmill. (Testimony of ██████; Exhibit 1, page 12)
5. After the review, the worker discovered that some of the Appellant's IADLs had never been prorated. As a result of this discovery and the information obtained from the Appellant's ██████ regarding her treadmill use, she sent an Advance Negative Action Notice, decreasing the HHS hours authorized for shopping, laundry, and meal preparation and eliminating the task of mobility from the Appellant's chore grant. This resulted in a decrease in the Appellant's HHS payment from ██████ to \$█████, effective ██████. (Exhibit 1, pages 8-11, 25; Testimony of ██████).
6. On ██████, after speaking with the Appellant's ██████ regarding the Appellant's need for mobility assistance, the worker's supervisor sent an Approval Notice, restoring the hours for mobility and increasing the Appellant's HHS payments to \$█████ per month. (Exhibit 1, page 7).
7. On ██████, the State Office of Administrative Hearings and Rules received a Request for Hearing signed by Appellant. (Exhibit 1, page 2).
8. On ██████, the State Office of Administrative Hearings and Rules received a letter from the Appellant's parents requesting information and explaining the Appellant's needs. (Exhibit 1, page 2).

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 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).

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

On ██████████, the worker completed a six-month review in accordance with Department policy. The worker testified that after the review, she discovered that some of the IADLs—laundry, shopping, and meal preparation—had not been prorated based on the number of persons living in the household, as is required by policy. Because of this, the HHS hours authorized for laundry, shopping, and meal preparation were decreased.¹

The Appellant's ██████████ testified that they cannot understand why the Department would reduce the Appellant's HHS payment when her condition and needs had not changed. They explained that they could not understand what was happening and that it was difficult to navigate the Department's policy. They further stated that had the action been discussed with them before receiving the reduction notice, then they probably would not have requested a hearing in this matter. The Appellant's ██████████ believe that they probably spend more time specific to the Appellant on the IADLs than is currently being provided. However, they conceded that they have not logged their time to verify that assertion, nor was that information provided to the worker at the assessment.

It was explained to the Appellant's ██████████ that 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 responsible 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. It was further explained that 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 5 hours per month for shopping, 7 hours per month for laundry, and 25 hours per month for meal preparation. Here, the Department authorized 2 hours and 30 minutes per month for shopping, 3 hours and 31 minutes per month for laundry, and 12 hours and 32 minutes per month for meal preparation. (Exhibit 1, page 15) The authorized hours are approximately one-half of the maximum

¹ As previously noted, the worker originally eliminated the task of mobility from the Appellant's chore grant. However, the hours for that task were subsequently fully restored by the worker's supervisor back to ██████████.

allowed for each of these activities, which is generous given the Appellant's household composition of three. Accordingly, the Department's reduction of the Appellant's HHS payment was proper.

However, based on the Appellant's ██████████ testimony, the worker agreed to restore the hours for laundry to the maximum permitted, given the Appellant's incontinence, and she further agreed to conduct a new assessment following the hearing to determine the Appellant's actual needs.

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 shopping, laundry, and meal preparation. However, based on the worker's agreement, the hours for laundry should be restored to the maximum available.

IT IS THEREFORE ORDERED THAT:

The Department's action is AFFIRMED. The proration was correct; however, based on the worker's agreement, the hours for laundry should be restored to the maximum available and new assessment, if not already done, should be conducted.

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

[REDACTED]
Docket No. 2011-11540 HHS
Decision and Order

cc:

[REDACTED]

Date Mailed: 3/10/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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.