

**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:

██████████,

Appellant

Docket No. 2011-17181 HHS

Case No. ██████████

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 ██████████. The record was left open for submission and consideration of additional evidence. The record was closed ██████████. The Appellant was present and testified on her own behalf. She had a hearing representative present, ██████████.

██████████, represented the Department of Community Health. ██████████ appeared as a witness on behalf of the Department. ██████████, was present 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. In ██████████ the Appellant participated in a formal administrative hearing.
3. The Appellant had a witness present at the aforementioned hearing. The witness provided sworn testimony during the hearing.

Docket No. 2011-17181 HHS
Decision and Order

4. The Appellant did not contest the testimony presented by the witness at the [REDACTED] hearing.
5. The witness stated at hearing he had been residing in the Appellant's home for 8 months.
6. The Appellant receives payment assistance for some Activities of Daily Living and Instrumental Activities of Daily Living, through the Department's Home Help Services Program.
7. The Appellant receives payment assistance for the tasks of bathing, grooming, housework, laundry, shopping and meal preparation. She has a functional rank of 4 for each of these activities except for bathing and grooming, for which she is ranked 3.
8. Following testimony from the Appellant's witness at the [REDACTED] hearing, the Department of Human Services Adult Services Worker reduced the payment authorization in the Home Help Services grant by pro-rating the Instrumental Activities of Daily Living based upon the shared household.
9. The Department's worker reduced payment for laundry assistance by more than half, from 5 hours per month to 30 minutes per month.
10. The Department sent the Appellant an Advance Negative Action Notice indicating her payment was reduced and the reason therefore.
11. 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.

██████████
Docket No. 2011-17181 HHS
Decision and Order

- 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.*

In this case the Appellant contested the reductions implemented by the worker following the hearing in September by asserting the witness who had testified he lived in her home for 8 months did not actually live in her home. Her written statement is that he was there for 3 days. She presented no evidence she contradicted or otherwise contested his testimony at the time it was delivered under oath at hearing in ██████████. This ALJ read her entire hearing request. She asserts in this written statement that she has no usage of her legs and her laundry has to be done almost every day. She asserts she cannot make it the bathroom due to her physical inability to use her legs, thus she throws up her food in her bed and onto herself. She then asserts this necessitates a change and wash of bedding 2 or more times per day and a change of clothing as well.

This ALJ does not find the evidence presented by the Appellant credible in any respect. She provides no explanation for why she is unable to place a pail near her chair or bed since she knows that she is going to vomit in sufficient quantity and with such force at least 2 times per day that she requires a complete change and wash of bedding and clothing. She further states, "they says he lived here 8 months." She disregards that it was her own witness who presented this testimony at hearing. "They" is her own witness. Her claims of inability to ambulate to the bathroom are not found credible as they are not supported by direct observation of her at hearing, or medical/clinical evidence which support claims of extreme feebleness.

Docket No. 2011-17181 HHS
Decision and Order

This ALJ concurs with the determination of the Department's Adult Services Worker regarding the Appellant's need for Home Help Services assistance. At the time the action was taken there was evidence the Appellant had another adult living in the residence with her. Following the testimony about living with the Appellant, the Department produced Department benefit records demonstrating that the aforementioned witness provided the Appellant's address as his own residence to the Department. Given this corroborating evidence that 2 adults live at the Appellant's residence, it is appropriate to pro-rate the IADL's. However, the Department's worker did fail to implement the reductions properly, resulting in the need to correct the payment authorization for laundry. The Appellant has a functional rank of 4 assigned to her by her current worker. She is entitled to receive payment assistance with laundry based upon this functional rank and meeting other eligibility requirements of the program not in dispute at this hearing. The worker reduced the assistance from the maximum of 5 hours per month to 30 minutes per month but based the reduction solely on the fact of having another adult reside in the home. This is not supported by policy. Policy supports reducing the payment by ½ in this circumstance.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly sought to pro-rate the Appellant's HHS payment for IADL's.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED** in part and **REVERSED** in part. The Department is ordered to correct the payment authorization for laundry assistance to 2.5 hours per month in accordance with Policy.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 5/9/2011

Docket No. 2011-17181 HHS
Decision and Order

***** 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.