

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-22267 HHS

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge 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 ██████████. ██████████, Guardian, appeared on behalf of the Appellant. ██████████, represented the Department. Also in attendance were ██████████ and ██████████, stand-by Guardian.

ISSUE

Did the Department properly reduce home help services (HHS) owing to a shared household?

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 ██████-year-old, disabled, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with MR and developmental delay. (Appellant's Exhibit #1)
3. On ██████████, the ASW ██████████ sent the Appellant an advance negative action notice advising her that HHS would be reduced owing to the Department's proration policy regarding the number of adults living in the shared household. (Department's Exhibit A, p. 2)
4. The previous HHS benefit was ██████████ a month, while the revised HHS benefits now stands at ██████████ a month. (Department's Exhibit A, pp. 2, 11, 12)
5. The Department representative acknowledged that the reduction was the result of a State of Michigan audit. (See Testimony and Department's Exhibit A, p. 8)

6. The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED]. (Appellant's Exhibit #1).

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 the Appellant lives in a shared household with ██████████, but has her own bedroom. She said she reduced the IADLs by half according to policy. She explained further that the HHS program does not pay for transportation or time spent waiting. She further acknowledged that the Appellant had no other in-home assistance. She said she had been in the Appellants' home twice over that last two years.

The Appellant's representative said that the Appellant had a tragic upbringing until she was placed with she and her spouse in 1991 by the ██████████ County Probate Court. She described a lengthy list of services which they provide on a daily basis for the Appellant's necessity and enjoyment. She testified that over the last 20-years the HHS hours received by the Appellant had been deemed appropriate and were not disturbed.

On review, the Appellant's representative paints a touching portrayal of life with the Appellant. There was no dispute in the record about the quality of care received by the Appellant, nor did her representatives seek any increase in HHS compensation as chore providers.

However, it was also stated that the number of adults living in the house was 3 – thus triggering application of the Department's proration policy irrespective of its erroneous past practice. The Appellant's representative seeks an equitable result which, although eloquently argued, is beyond my jurisdiction. Having found no error in the application of the proposed reduction of HHS for shared household, the Department's position must prevail.

It is noted for the record that that the Appellant receives no other services from CMH, CLS or EHHS. The Appellant had not preponderated her burden of proof that the Department erred in the proration of her HHS benefit.

The following indicates the application of proration to the Appellant's IADLs and the ALJ's agreement:

- Housework was prorated by half.
- Laundry was prorated by half
- Shopping was prorated by half.
- Meal preparation was prorated by half.

The application of proration policy is the responsibility of the ASW. Based on the information presented at hearing I found the proration policy to be correctly applied.

DECISION AND ORDER

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

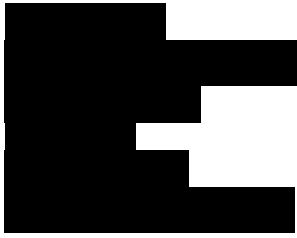
IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

Docket No. 2011-22267 HHS
Decision and Order

CC:



Date Mailed: 5/27/2011

***** 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.