

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-27489 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 ██████████. Appellant appeared on his own behalf. ██████████, Appellant's chore provider, also testified on his behalf. ██████████, represented the Department of Community Health. ██████████, Appellant's Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ DHS Office 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 upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████ year-old Medicaid beneficiary.
2. Appellant has been diagnosed by a physician with both cervical spondylosis and c4-c7 discectomy and fusion. (Exhibit 1, page 9).
3. Appellant had been receiving 50 hours and 9 minutes of HHS per month, with a care cost of ██████ per month. (Exhibit 1, page 13).
4. On ██████████, ASW ██████████ conducted a home visit with Appellant as part of an annual review. (Exhibit 1, page 11).
5. Based on her observations and information provided by Appellant, ASW ██████████ terminated HHS for dressing, toileting, and taking medication. ASW ██████████ also made reductions to the HHS time authorized for bathing and meal preparation/cleanup. The HHS hours for housework, laundry

and shopping remained the same. (Exhibit 1, pages 11-13; Testimony of ASW ██████████).

6. The eliminations and reductions resulted in a total of 25 hours and 30 minutes of HHS per month, with a monthly care cost of ██████████. (Exhibit 1, page 12).
7. On ██████████, ASW ██████████ issued an Advance Negative Action Notice to Appellant indicating that his HHS payments would be reduced effective ██████████. (Exhibit 1, pages 5-8).
8. On ██████████, the Department received a Request for Hearing on Appellant's behalf, but only signed by his provider. On ██████████, the Department received the same Request for Hearing along with Appellant's signature. (Exhibit 1, page 4).

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.

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.

On ██████████, ASW ██████████ completed a home visit as part of an annual review of Appellant's case and an HHS comprehensive assessment in accordance with Department policy. Following the assessment, ASW ██████████ terminated HHS for dressing, toileting and taking medication. ASW ██████████ also made reductions to the HHS hours authorized for bathing and meal preparation/cleanup. The HHS hours for housework, laundry and shopping remained the same. Appellant disagrees with the eliminations and reductions. Each of the specific disputed activities will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the Department properly reduced the Appellant's HHS payments based on the available information.

However, for the reasons discussed below, this Administrative Law Judge also finds that the Department failed to provide Appellant with proper notice and made the reduction effective prematurely. Accordingly, the Department must re-determine Appellant's eligibility for HHS during the period of ██████████ to ██████████, and reimburse for benefits Appellant is otherwise entitled to.

Reduction in HHS

Adult Services Manuals 361 (6-1-07) (hereinafter “ASM 361”) and Adult Services Manual 363 (9-1-08) (hereinafter “ASM 363”) address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

Home help services (HHS, or personal care services) are non-specialized personal care service activities provided under ILS to persons who meet eligibility requirements.

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

(ASM 361, page 2 of 5)

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 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:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven 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.

(ASM 363, pages 2-4 of 24)

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- Verification of the client's medical need by a Medicaid enrolled medical professional. The client 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.

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.

(ASM 363, pages 14-15 of 24)

Taking Medications

According to ASW ██████████, she based all of the reductions and terminations in HHS on what Appellant expressly told her. Specifically, with respect to taking medications, ASW ██████████ reported, in both her notes and her testimony, Appellant as stating that he can take his medications himself. (Exhibit 1, pages 10-11; Testimony of ASW ██████████). Appellant testified that, while he does not remember what he told ASW ██████████ regarding his medications, he can physically take them if he is reminded to. According to Appellant, his mother-in-law/chore provider does bring them to him as she “won’t let [him] do anything”. (Testimony of Appellant). As discussed above, however, HHS

payments cannot be authorized for assistance such as supervising, monitoring, reminding, guiding or encouraging. ASM 363, page 14 of 24. As stated in his own testimony, Appellant requires no physical assistance with taking his medications and the Department' decision to terminate was therefore be sustained.

Toileting

ASW ██████████ also testified and wrote in her notes that she terminated HHS for the task of toileting because Appellant told her he can go to the bathroom by himself. (Exhibit 1, pages 10-11; Testimony of ASW ██████████). In response, Appellant testified that, while he may have told the ASW that he can go to the bathroom himself, she took it the wrong way. (Testimony of Appellant). It is unclear what other way Appellant's statements could be understood. He can use a toilet himself and requires no physical assistance with the task of toileting. Accordingly, the Department's decision to terminate HHS with respect to that task must be affirmed.

Dressing

ASW ██████████ further testified and wrote in her notes that she terminated HHS for the task of dressing because Appellant told her he can dress himself. (Exhibit 1, pages 10-11; Testimony of ASW ██████████). Appellant testified that he cannot fully dress himself or put a shirt on. (Testimony of Appellant). However, Appellant also concedes in his testimony that he does not remember exactly what he told ASW ██████████ and he once again claims that she took things the wrong way. (Testimony of Appellant). Given Appellant's lack of memory and the consistency between much of his testimony and ASW ██████████ notes and testimony, this Administrative Law Judge finds ASW ██████████ to be credible on the issue of dressing and what Appellant told her. Accordingly, based on the information available at the time of the decision, the Department's decision to terminate HHS for dressing is sustained.

Bathing

Likewise, the Department's decision to reduce HHS for bathing must also be affirmed. ASW ██████████ states, in both her notes and her testimony, that Appellant expressly told her he takes three baths a week and that he only needs help getting in-and-out of the bathtub and washing his back. (Exhibit 1, pages 10-11; Testimony of ASW ██████████). Accordingly, she reduced his HHS for bathing to 3 days a week, while keeping the minutes per day the same. Regarding bathing, Appellant testified that he does only take baths 3 days a week and that his mother-in-law/chore provider assists him. (Testimony of Appellant). Given the agreement as to the number of days Appellant needs assistance with bathing, the Department's decision to reduce HHS for bathing to 3 days a week, while keeping the minutes per day of assistance the same, is reflective of Appellant's need for assistance and is affirmed.

Meal Preparation and Cleanup

With respect to meal preparation and cleanup, Appellant's HHS was reduced from 25 minutes per day, 7 days a week, which was the maximum amount allowed under policy, to 19 minutes per day, 7 days a week. (Exhibit 1, pages 12-13).

ASW ██████████ testified and wrote in her notes that Appellant told her he can make most of his own meals, but that his mother-in-law makes meals for her grandkids and he just eats with them. (Exhibit 1, pages 10-11; Testimony of ASW ██████████). Accordingly, she reduced HHS for meal preparation/cleanup by three hours a month from the maximum allowable amount for a person in a shared living arrangement. Appellant testified that his chore provider/mother-in-law prepares his meals. (Testimony of Appellant). Similarly, Appellant's chore provider testified that she prepares meals for Appellant. (Testimony of ██████████).

As described above, the maximum allowable hours for meal preparation is 25 hours per month. ASM 363, pages 3-4 of 24. Moreover, that maximum should be prorated by at least one-half when the client is on shared living arrangements as HHS payments should only be authorized for the benefit of the client. ASM 363, pages 3-5 of 24. It is undisputed in this case that Appellant is living with others and that the meals his chore provider prepares are for multiple people. (Testimony of Appellant; Testimony of ██████████). Accordingly, ASW ██████████ properly noted that, after the proration of hours, the maximum HHS time Appellant could receive for meal preparation was 12 and a half hours.

Moreover, the reduction from that maximum amount by three hours per month should also be sustained. Appellant's chore provider may prepare all his meals, but that does not mean he needs her to prepare all his meals. ASW ██████████ testimony that Appellant told her that he can make most of his own meals but does not because his mother-in-law is already making a meal is credible and Appellant never contradicted that testimony. Accordingly, the reduction of HHS time allocated for meal preparation and cleanup is sustained as it is reflective of Appellant's need for assistance with that activity.

Notice

The ██████████ Advance Negative Action Notice in this case indicates that the Department intends to make the reductions to the Appellant's case effective ██████████ (Exhibit 1, pages 5-8). 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.

None of the exceptions to the advance notice requirement were present in this case and, given the clear regulations regarding notice, the Department cannot make the reductions to the Appellant's HHS case effective any earlier than 10 days after the ██████████ Advance Negative Action Notice. However, the ██████████ Advance Negative Action Notice issued by the Department clearly failed to provide Appellant with the required advance notice of at least 10 days that her HHS payments would be reduced as the effective date of the reduction was ██████████. Accordingly, the Department must re-determine Appellant's eligibility for HHS during the period of ██████████ to ██████████, and reimburse for benefits Appellant is otherwise entitled to.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced Appellant's HHS payments based on the available information. However, as the Department failed to provide the proper advance notice of the reduction and prematurely reduced payments, the Department must re-determine Appellant's eligibility for HHS during the period of ██████████ to ██████████ and reimburse for benefits Appellant is otherwise entitled to.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED IN PART and REVERSED IN PART.

Steven Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: ██████████

Date Mailed: 7/1/2011

Docket No. 2011-27489 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.