

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-37115 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's father and legal guardian, appeared and testified on Appellant's behalf. ██████████ Appellant's mother and chore provider, also testified on his behalf. ██████████ Appeals Review Officer (ARO), represented the Department of Community Health. ██████████ Appellant's Adult Services Worker (ASW) at the ██████████ DHS-HHS Office, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce Home Help Services (HHS) payments to 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. Appellant is a ██████ year-old Medicaid beneficiary who has been diagnosed with cerebral palsy, mental retardation, and quadriplegia. (Exhibit 1, page 14).
2. ██████████ is Appellant's plenary guardian. (Testimony of ██████████).
3. Appellant has been receiving HHS for assistance with bathing, grooming,

¹ Appellant's HHS case was held in conjunction with ██████████. The appellants in those three cases are Appellant's brothers and the appeals all involved the same actors and types of reduction.

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██████████ dressing, toileting, transferring, mobility, taking medication, housework, laundry, shopping and errands, meal preparation and cleanup, eating or feeding, and range of motion. In total, Appellant receives 120 hours and 11 minutes of HHS, with a total monthly care cost of ██████████ (Testimony of ASW ██████████).

4. On ██████████, ASW ██████████ conducted a home visit as part of the annual review of Appellant's case. (Exhibit 1, page 18; Testimony of ASW ██████████).
5. In his home, Appellant lives with his father/guardian, mother/provider, and brothers. (Exhibit 1, page 13; Testimony of ██████████; Testimony of ASW ██████████).
6. Based on that living arrangement, the Department decided to prorate and reduce the HHS hours authorized for laundry, housework, meal preparation/cleanup, and shopping. After the reduction, Appellant would receive one-half of the monthly maximum hour limits for those tasks. All other HHS authorizations would remain the same. (Exhibit 1, page 17; Testimony of ASW ██████████).
7. The reduction would result in a total of 111 hours and 5 minutes of HHS per month, with a monthly care cost of ██████████. (Exhibit 1, page 17; Testimony of ASW ██████████).
8. On ██████████, the Department sent Appellant two Advance Negative Action Notices notifying Appellant that his HHS would be reduced due to its proration policy. (Exhibit 1, pages 5-12).
9. The effective date of the reduction was to be ██████████, but the reduction was never implemented because Appellant filed a timely request for hearing. (Exhibit 1, page 5; Testimony of ASW ██████████).
10. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 1, page 4). In that request, Appellant challenges the reduction and seeks to have his benefits reestablished. (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.

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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 agencies.

Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") addresses both the maximum hours allowed for assistance with Instrumental Activities of Daily Living (IADLs) and the proration of IADL services:

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 customer needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements.

(ASM 363, pages 3-4 of 24 (underline added by ALJ))

Service Plan Development

Address the following factors in the development of the service plan:

- 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.

(ASM 363, pages 4-5 of 24)

The undisputed evidence in this case establishes that the Appellant was living with his parents, who are able and available to provide the needed services, and his brothers, who require assistance themselves, in a shared living arrangement. Given that others are living in the home, the Department was bound to follow the mandated policy and

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prorate the HHS time and payment for all IADLs, except taking medication, by at least one-half.

The Department did prorate HHS for housework, laundry, shopping, and meal preparation/cleanup by one-half and Appellant is now receiving half of the monthly maximum hour limits for those IADLs. That decision must be sustained as ASM 363 does not provide for any exceptions. To the extent the Department failed to follow the proration policy by not prorating IADLS previously, it was generous in favor of the Appellant. Appellant can point to no error that harmed him and the Department's decision to prorate is sustained.

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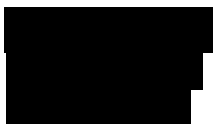
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced Appellant's Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:



Date Mailed: 8/17/2011

***** 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.