

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-39037 HHS
Case No. 72231370

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on her own behalf. ██████████, Appeals Review Officer (ARO), represented the Department of Community Health. ██████████, Adult Services Worker (ASW) at the ██████████ County DHS-HHS Office, appeared as a witness for the Department. ASW ██████████ was also present during the hearing as an observer.

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. (Exhibit 1, page 13).
2. Appellant has been diagnosed by a physician with schizophrenia, arthritis, asthma, fibromyalgia, predialicche, and allergic rhinite. (Exhibit 1, page 11).
3. Appellant had been receiving HHS for assistance with housework, laundry, shopping, and meal preparation/cleanup. In total, Appellant received 39 hours and 25 minutes of HHS per month, with a total monthly care cost of \$██████████. (Exhibit 1, page 14).
4. On ██████████, ASW ██████████ conducted a home visit as part of the annual review of Appellant's case. (Exhibit 1, page 19; Testimony of ASW

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- ██████████).
5. In her home, Appellant lives with her son ██████████, a special needs child under 18 years of age. (Exhibit 1, page 12; Testimony of Appellant; Testimony of ASW ██████████).
 6. Based on her observations and information relayed from Appellant during the home visit, ASW ██████████ decided to reduce the HHS hours authorized for assistance with laundry, housework, shopping, and meal preparation/cleanup. After the reduction, Appellant would receive 7 hours and 57 minutes of HHS per month, with a total monthly care cost of \$ ██████████. (Exhibit 1, page 15; Testimony of ASW ██████████).
 7. On ██████████, the Department sent Appellant an Advance Negative Action Notice notifying Appellant that her HHS payments would be reduced. The effective date of the reduction was ██████████. (Exhibit 1, pages 5-8).
 8. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant stated that she has many health issues, is always in pain, and needs more HHS. (Exhibit 1, page 4).
 9. ASW ██████████ subsequently decided to adjust Appellant's HHS by authorizing assistance with bathing and changing the times for assistance with laundry, housework, shopping, and meal preparation/cleanup. (Testimony of ASW ██████████). After the changes, Appellant would receive 27 hours and 6 minutes of HHS per month, with a total monthly care cost of \$ ██████████. (Exhibit 1, page 15).
 10. With respect to laundry, housework, shopping, and meal preparation/cleanup, Appellant will still receive less HHS than she was originally. (Exhibit 1, page 16). According to ASW ██████████, the reduction for those four tasks was due to the Department's proration policy. (Testimony of ASW ██████████).
 11. On ██████████, the Department sent Appellant a Services Approval Notice notifying Appellant that her HHS payments would be increased. The effective date of the increase was ██████████. (Exhibit 1, page 17).

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.

In this case, while appellant was notified of both a reduction and an increase, the ultimate effect was a reduction, effective ██████████, in HHS for the tasks of housework, laundry, shopping, and meal preparation/cleanup. Moreover, while Appellant's Request for Hearing was filed after the initial reduction and before the subsequent adjustments, Appellant still disputes the eventual reduction that took place on ██████████.

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 and applicable proration policy. However, this Administrative Law Judge also finds that the Department failed to provide Appellant with proper notice of the reduction. 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.

Housework, Laundry, and Shopping

With respect to the tasks of housework, laundry and shopping, ASW ██████████ stated that she ultimately reduced the HHS authorized for assistance with those tasks after prorating the maximum amount of time that could be authorized by half. 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 Appellant lives with her son, a special needs child under 18 years of age, in a shared living arrangement. (Exhibit 1, page 12; Testimony of Appellant; Testimony of ASW ██████████). Given that another person was living in the home, the Department was bound to follow the mandated policy and prorate the HHS time and payment for all IADLs, except taking medication, by at least one-half.

Here, Appellant's HHS for assistance with housework, laundry and shopping were reduced, but the times were not cut in half (Exhibit 1, pages 14-16) and it does not appear at first that the reductions were based on proration. However, the second Services Approval Notice expressly states that the payment reflects shared living (Exhibit 1, page 17) and ASW ██████████ testified that she first increased the assistance with those three tasks to the maximum allowed by policy and then prorated from that maximum (Testimony of ASW ██████████).

Therefore, the Department did prorate HHS for housework, laundry and shopping 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 her and the Department's decision to prorate is sustained.

Meal Preparation/Cleanup

As with the other IADLs, the HHS for assistance with meal preparation/cleanup reflects the shared living arrangement and the amount of services approved was prorated by one-half. (Exhibit 1, page 17; Testimony of ASW ██████████). Therefore, ASW ██████████ essentially allocated 40 minutes a day, 7 days a week pre-proration, which was less than the 50 minutes per day she was previously receiving, and prorated that reduced amount. Both the initial reduction in minutes per day of assistance with meal

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preparation/cleanup and the subsequent proration of that reduced amount are sustained.

The proration portion of the reduction is affirmed because, as discussed above, it is undisputed that Appellant was living in a shared living arrangement and ASM clearly dictates that, in such circumstances, the Department must prorate the HHS time and payment for all IADLs, except taking medication, by at least one-half.

The portion of the reduction based on a lessened need for services is also affirmed. ASW ██████████ noted that, while the medical needs form dated ██████████ does not certify time for assistance with meal preparation/cleanup, some assistance was authorized for that task based on Appellant's inability to stand up, focus, and balance. (Exhibit 1, page 9). However, ASW ██████████ also reduced that time due to her belief, based on the fact that Appellant was taking care of a special needs child, that Appellant could do more and required less assistance than she had been given. (Testimony of ASW ██████████). ASW ██████████ also testified that Appellant prepares some meals for herself and her son. (Testimony of ASW ██████████)

Appellant testified in turn that she does not cook over the stove because she gets nervous and the heat makes her drowsy or fatigued. (Testimony of Appellant). Appellant also testified that she takes care of her son, who has special needs, as best as she can and that the chore provider helps with meal preparation/cleanup by cooking meals for her and her son. (Testimony of Appellant). Appellant further testified that, when the provider prepares meals, the provider prepares enough so that Appellant can reheat leftovers for 2-3 days. (Testimony of Appellant).

As described above, while Appellant and ASW ██████████ identified different reasons for why Appellant requires assistance, there is no dispute over whether she requires some assistance with meal preparation/cleanup. Similarly, there is no dispute that Appellant takes care of her son and is able to prepare some meals, whether on her own or reheating leftovers. Likewise, Appellant's testimony also confirmed that, when the provider does prepare meals, she prepares enough for 2 to 3 days at a time. Given that evidence, that decision to reduced assistance with meal preparation/cleanup because of a lessened need for services is affirmed as it is reflective of Appellant's actual need for physical assistance.

Notice

While this case has a confusing payment authorization history, the end result was that a reduction took effect on ██████████ and Appellant had no advance notice of that reduction. 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;

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(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 initial ██████████ Advance Negative Action Notice. However, 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.


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DECISION AND ORDER

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. However, as the Department failed to provide the proper advance notice of the reduction and retroactively 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: 9/9/2011

***** 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.