

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2011-3924 HHS
Case No. 40779934

██████████
Appellant
_____ /

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 ██████████. ██████████, appeared on the Appellant's behalf. ██████████, represented the Department. ██████████, and ██████████, 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. The Appellant is ██████████ Medicaid beneficiary.
2. The Appellant has been diagnosed with Downs Syndrome. (Exhibit 1, page 13, Exhibit 2 pages 1-2)
3. The Appellant was receiving Home Help Services (HHS) for assistance with bathing, grooming, eating, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 22)
4. On ██████████, the Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, pages 9-10)
5. As a result of the information gathered from the assessment, the worker determined that the Appellant's HHS hours for eating should be eliminated, the HHS hours for bathing should be increased, and the HHS hours for laundry and shopping should be reduced. (ASW Testimony and

Exhibit 1, pages 12 and 22)

6. On [REDACTED], the Department sent an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments would be reduced to \$ [REDACTED] effective [REDACTED]. (Exhibit 1, pages 5-7)
7. On [REDACTED], the State Office of Administrative Hearings and Rules received the Request for Hearing filed on the Appellant's behalf. (Exhibit 1, pages 3-4)

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 (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.

Adult Services Manual (ASM 363, 9-1-08), pages 2-5 of 24 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 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:

- 5 hours/month for shopping
- 6 hours/month for light housework
- 7 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.

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 client 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 client's maintenance and functioning in the living environment.

- The availability or ability of a responsible relative or legal dependent of the client to perform the tasks the client 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 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).

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.

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- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

*Adult Services Manual (ASM) 363, 9-1-2008,
Pages 2-15 of 24*

The Adult Services Worker (ASW) completed a home visit as part of a comprehensive assessment on ██████████. Based on the information gathered for the reassessment, the ASW increased the Appellant's HHS hours for bathing, eliminated the HHS hours for eating assistance, and reduced the HHS hours for laundry and shopping. The increase in HHS hours for bathing was made to allow for assistance with this activity 7 days per week, instead of 4 days per week. (ASW Testimony and Exhibit 1, pages 12 and 22) The ASW testified that the HHS hours previously authorized for eating assistance were eliminated because the Appellant is able to feed herself with some monitoring, prompting, and direction. The Department also noted that the Appellant's physician did not certify a medical need for assistance with this activity on the Medical Needs forms (DHS 54-A) completed in ██████████ and ██████████. (Exhibit 2, pages 1-2) The ASW also explained that the HHS hours for laundry and shopping were reduced based on the Department's policy requiring the HHS hours for these activities be prorated based on the household composition. She explained that the adjusted hours for laundry and shopping are consistent with the household composition of 3 adults and the Appellant's rankings for these activities.

The Appellant's ██████████ disagrees with the overall reduction to the Appellant's HHS hours and payment. She testified that she may have forgotten some things during the home visit as she did not realize what all is covered. In the hearing request and in her testimony the Appellant's ██████████ provided additional information regarding assistance with feeding, toileting, dressing, laundry, and shopping as well as diabetic concerns. (Sister Testimony and Exhibit 1, pages 3-4)

The ASW can only base her determination on the information provided to her during the assessment. This ALJ does not doubt that the Appellant's ██████████ provides more assistance to the Appellant than what is covered under the time and task authorization of HHS hours, or than was discussed during the home visit. However, the above cited HHS program policy states that HHS payments can not be authorized for verbal assistance such as supervising, monitoring, reminding, guiding or encouraging. Hands on assistance, such as cutting foods, assisting with hooks or buttons, and wiping or clean up for toileting could be included under functional assessment definitions and rankings for activities of daily living. (Adult Services Manual (ASM) 365 10-1-1999, Page 1 of 2, Exhibit 1, page 20) However, the Appellant's doctor has not certified a medical need for assistance with the activities or eating, toileting, and dressing. Further, the Appellant's doctor has not documented the pre-diabetic condition and related additional needs for assistance. (Exhibit 1, pages 1-2) Accordingly, the ASW

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appropriately eliminated the HHS hours for eating and did not authorize HHS hours for dressing or toileting.

The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks based upon the number of persons residing in the home together, as the Appellant's [REDACTED] would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy.

Department policy also imposes a maximum of 6 hours for housework, 7 hours for laundry, 5 hours for shopping, and 25 hours for meal preparation each month. The Appellant is ranked as a level 3 for these activities. (Exhibit 1, page 14) The ASW testified that three adults live in the Appellant's household. The ASW explained that she first determined the appropriate HHS hours for a ranking of 3 for laundry and shopping, then reduced this based on the Appellant's household composition of 3 adults. The resulting authorization of 2 hours per month for laundry and 1 hour and 26 minutes per month for housework is consistent with the Appellant's rankings, household composition, and Department policy.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

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Date Mailed: 1/13/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 State Office of Administrative Hearings and Rules 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 March 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.