

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

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IN THE MATTER OF:

Docket No. 2011-3980 HHS  
Case No. [REDACTED]

[REDACTED],

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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. The Appellant, [REDACTED], was present. She was represented by her Attorney, [REDACTED]. Her mother, [REDACTED]; her step-father, [REDACTED]; and her brother, [REDACTED], appeared as witnesses for the Appellant. [REDACTED] represented the Department (DHS). [REDACTED] and [REDACTED] appeared as witnesses for the Department.

**ISSUE**

Did the Department properly reduce Home Help Services (HHS) payments to the Appellant?

**FINDINGS OF FACT**

The Administrative Law Judge, based on the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary.
2. The Appellant is a [REDACTED] year-old woman, who has been diagnosed with cerebral palsy, seizure disorder, and chronic encephalopathy. (Exhibit 1, page 14)
3. The Appellant's mother is her chore provider for the HHS program. (Exhibit 1, pages 10-11)
4. The Appellant also receives Community Living Supports (CLS) Services through Community Mental Health. Her step-father is her CLS provider (Exhibit 1, pages 29-31; Testimony of [REDACTED])

5. The Appellant attends a day program, typically, Monday through Friday from 9:00 a.m. to 3:00 p.m. (Testimony of ██████████)
6. The Appellant's biological father has visitation one weekend of every month and the other Saturdays of the month, but he does not always exercise his visitation time with the Appellant. (Testimony of ██████████)
7. An annual assessment was conducted by the former<sup>1</sup> Adult Services Worker on ██████████. The Appellant, her mother, and her step-father were present for the home visit. (Exhibit 1, page 9)
8. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payment would be reduced to ██████████, effective ██████████. (Exhibit 1, pages 4-6)
9. The HHS hours authorized for transferring were eliminated, and the hours for toileting, eating, mobility, housework, shopping, and meal preparation were reduced. (Exhibit 1, pages 12-13)
10. On ██████████, the Michigan Administrative Hearing System received the Request for Hearing signed by the Appellant's Guardian. (Exhibit 1, page 3)

### **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.

The purpose of HHS is 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.

The Adult Services Manual addresses the issue of assessment as follows:

#### **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

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<sup>1</sup> The Adult Services Supervisor testified that this Adult Services Worker left the Department for another position. She was not present at the hearing. (Testimony of ██████████)

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

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- 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).

*Adult Services Manual (ASM) 9-1-2008, Pages 2-5 of 24  
(Emphasis Added)*

It further addresses the need for supervision, monitoring, or guiding as follows:

### **Services Not Covered By Home Help Services**

Do **not** authorize HHS 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 - Medical transportation policy and procedures are in Services Manual Item 211.
- 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 14-15 of 24  
(Emphasis Added)*

The Appellant was receiving HHS payments in the amount of ██████████. (Exhibit 1, page 13) On ██████████ the former Adult Services Worker completed an annual HHS comprehensive assessment in accordance with Department policy. (Exhibit 1, pages 8-9) Based on the information provided at the assessment and the worker's observations, the task of transferring was eliminated from the Appellant's chore grant. In addition, there was a reduction in the tasks of toileting, eating, mobility, housework, shopping, and meal preparation. (Exhibit 1, pages 12-13) This resulted in a reduced HHS payment of ██████████, as indicated on the ██████████ Advance Negative Action Notice. (Exhibit 1, pages 4-6) The Appellant disputes the reduction in her HHS payment.

### Transferring

The Appellant's hours for transferring were eliminated. She was previously receiving 10 minutes per day or 5 hours and 1 minute per month. (Exhibit 1, page 13) The Appellant is ranked at a level 3 for this task. The Appellant's mother and step-father testified that she needs assistance in and out of the bathtub.

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The Adult Services Supervisor conceded that the elimination of transferring in this case was erroneous because she does need transferring assistance for stability. Instead, the Department intended to eliminate mobility. The Appellant's rank of 3 indicates that she does need some human assistance with the task. Accordingly, the Department's elimination of the task of transferring from the Appellant's chore grant cannot be upheld and a new assessment of this task is needed to determine the Appellant's actual need for transferring assistance.

Eating

The Appellant's hours for eating were reduced from 56 minutes per day or 28 hours and 6 minutes per month to 30 minutes per day or 15 hours and 30 minutes per month. The Adult Services Supervisor explained that this reduction was made because the Appellant is able to eat finger foods on her own. In fact, the former worker observed the Appellant eat independently. She stated that the Appellant needs supervision so that she does not choke or overeat. However, the HHS program does not pay for supervision, monitoring, or guiding.

The Appellant's mother and step-father conceded that the Appellant can feed herself and that she only needs supervision to prevent choking and overeating. In other words, aside from cutting up her food, they provide very little hands-on assistance with eating. Accordingly, the reduction in hours for eating is affirmed.

Toileting

The Appellant's hours for toileting were reduced from 28 minutes per day, 7 days per week or 14 hours and 3 minutes per month to 18 minutes per day, 6 days per week, or 7 hours and 44 minutes per month. The Adult Services Supervisor conceded that toileting should have been provided 7 days per week. However, she stated that the reduction in hours is supported because even though the Appellant is ranked at a level 5, the highest possible level of need, she is at school for a good portion of the day. In addition, she spends every other Saturday and one weekend per month with her biological father. (Testimony of [REDACTED]). In addition, the Appellant's step-father is provided 6.35 hours of Community Living Supports (CLS) per day to assist with the Appellant's care. Given that the Appellant is at school for 6-7 hours per day and her step-father is also being paid to assist her with toileting, the Department's reduction of hours for toileting is affirmed. However, the reduced rate should be paid 7 days per week.

Mobility

The Appellant's hours for mobility were reduced from 18 minutes per day, or 9 hours and 2 minutes per month to 10 minutes per day or 5 hours and 1 minute per month. The Adult Services Supervisor explained that this was an error because mobility should have been eliminated instead of transferring. She stated that the Appellant can walk independently and, therefore, does not need mobility assistance. However, the Appellant is ranked at a level 3 for this task.

The Appellant's mother and step-father testified that the Appellant can walk on her own, but she holds on to them to come down the stairs or move from room to room.

From the testimony provided at the hearing, it appears that the Appellant does need at least some assistance with mobility, which is reflected in her rank of 3 for the task. Accordingly, the Department's assertion that it should have been eliminated from the Appellant's chore grant instead of transferring is without merit. Further, it is unclear if the Appellant's actual mobility assistance needs were considered in this matter, given the mix-up between mobility and transferring. Therefore, the Department's reduction in hours for mobility cannot be affirmed and a new assessment of this task is needed to determine the Appellant's actual need for mobility assistance.

#### Housework, Shopping, and Meal Preparation

The Adult Services Supervisor testified that proration was applied to the HHS hours for housework, shopping, and meal preparation in accordance with Department policy requiring that these IADL's be prorated based on the number of adults living in the home. The former worker concluded that because the addition to the Appellant's home was not complete at the time of the assessment, this was still a shared household.

The Appellant's mother and step-father assert that their home is no longer a shared household. They testified that they built an addition onto their home, in which they live, and the Appellant lives in the original part of the house. The Appellant has a bedroom, half bathroom, living room, and kitchen. However, they conceded that the Appellant cannot be left unattended and that there is a door that is used to access either the old or new portion. In other words, you can enter either side from inside the home; they do not have to go outside to access the Appellant's portion of the house. They further conceded that the door between the two sides is not usually locked and that the home is still considered a single parcel for tax purposes, even though they have separate addresses.

This Administrative Law Judge concludes that there is a shared household in this case. In addition to the physical attributes that indicate a shared household, the Appellant's mother and step-father conceded that the Appellant cannot be left unattended for safety reasons. They cannot have it both ways. They cannot on one hand say that they are with the Appellant at all times and then, on the other hand, state that they do not have a shared household.

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, shopping, and meal preparation. Therefore, it is appropriate to prorate the payment for those tasks by the number of adults residing in the home together, as the other adults in the household 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 allows for a maximum of 6 hours per month for housework, 5 hours per month for shopping, 7 hours per month for laundry, and 25 hours per month for meal preparation. Here, the Department authorized 3 hours and 1 minute per month for housework, 2 hours and 30 minutes per month for shopping, and 12 hours and 32 minutes per month for meal preparation. (Exhibit 1, page 10) The authorized hours are approximately one-half of the maximum allowed for each of these activities and are reflective of the Appellant's household composition and rankings for these activities.

The Appellant's mother and step-father argued that the Appellant's gluten-free diet requires them to spend more time shopping and for meal preparation than has been authorized by the Department. Likewise, they stated that they are constantly cleaning up after the Appellant. However, the former worker determined that at least two-thirds of the items required for the Appellant's special diet could be purchased at a local grocery store. Further, because of the shared household, housework and meal preparation are not just for the benefit of the Appellant. Therefore, the proration of these tasks was proper.

### **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 HHS hours for eating, toileting, housework, shopping, and meal preparation based on the information available at the time of the assessment. However, its elimination of transferring and reduction of the HHS hours for mobility were improper. And toileting should be paid 7 days per week.

### **IT IS THEREFORE ORDERED THAT:**

The Department's decision is partially AFFIRMED and partially REVERSED. The Department's reduction of the tasks of eating, toileting, housework, shopping, and meal preparation is affirmed. However, the Department's elimination of the hours for transferring and its reduction of mobility hours is reversed. The Department is ordered to reinstate the Appellant's transferring and mobility hours, retroactive to [REDACTED], the effective date of its action. In addition, the hours for toileting should be paid 7 days per week.

The Department is further ordered to conduct a new comprehensive assessment to determine the Appellant's actual abilities and assistance needs.

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Kristin M. Heyse  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

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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 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.