

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-46568 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 ██████████. ██████████ son, appeared on the Appellant's behalf. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker, appeared as a witness 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 a ██████ year-old Medicaid beneficiary.
2. The Appellant's medical history includes a cerebrovascular accident (CVA or stroke) with left side weakness. (Exhibit 1, pages 12-13)
3. The Appellant had been receiving 104 hours and 52 minutes of home help services per month with a monthly care cost of ██████████. (Exhibit 1, pages 15-16)
4. On ██████████, an Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 10)
5. DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated in a shared household. (Adult Services Manual (ASM) 363, 9-1-2008, pages 4-5 of 24)

6. The Appellant lives with her son and his family. (Exhibit 1, page 11)
7. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating that her Home Help Services case would be reduced to ██████████ per month effective ██████████, reflecting proration of the HHS hours for meal preparation based on the shared household. (Exhibit 1, pages 7-9)
8. On ██████████, the Appellant's Request for Hearing was received. (Exhibit 1, pages 4-6)
9. On ██████████, the Department retroactively authorized a payment of ██████████ for the month of ██████████ pending the hearing. (Exhibit 1, page 16)

### **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 2-15 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. When hours exceed the RTS rationale must be provided.

### **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.

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### **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.

**Note: Unavailable** means absence from the home, for employment or other legitimate reasons. **Unable** means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54-A.

- 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).

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### **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.

*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 [REDACTED]. The ASW noted that the Appellant lives with her son and his family. She noticed that the HHS hours were already prorated for other IADLs, but not meal preparation. The ASW reduced the HHS hours for meal preparation in accordance with the Department's policy on shared households. (ASW Testimony and Exhibit 1, pages 7-11 and 14-15) The ASW testified that there was no information available indicating a special diet or other justification to exempt meal preparation from the policy requiring proration. Additionally, no request for an increase in the HHS hours for any activities was made. (ASW Testimony)

The Appellant's son disagrees with the reduction and testified that the ASW did not indicate the HHS hours for meal preparation would be reduced during the ██████████, home visit. He stated that extra time is needed to prepare the Appellant's meals, and had been authorized by a prior ASW, because the Appellant changes her mind frequently after food is made, has issues with temperatures of foods, eats middle eastern foods rather than the meals the rest of the family will eat, and requests tea many times per day. The Appellant's son further testified that the Appellant has some special dietary needs, specifically low sodium and cholesterol. The Request for Hearing and attached letter from the Appellant's doctor indicate the Appellant needs total or near total assistance with eating and meal preparation, and is particular about her meals. It was also asserted that the HHS hours for other activities are insufficient. (Exhibit 1, pages 5-6)

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 in a shared household, as the Appellant's family members 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.

Exceptions can be made when there is justification for performing an activity separately, such as incontinence or documented medical reasons for a special diet. In this case, the Department did not have any information showing a medical need for a special diet. (ASW Testimony) The Appellant's food preferences alone are insufficient to exempt meal preparation from the proration policy. Department policy allows for a maximum of 25 hours per month for meal preparation. In the present case, the Department ranked the Appellant at level 5 for this activity, indicating she is dependant on others. (Exhibit 1, page 13) After proration for the shared household, the Department authorized 12 hours and 32 minutes per month for meal preparation. (Exhibit 1, page 14) The reduction to the HHS hours for meal preparation is sustained as it is reflective of the Appellant's rankings and household composition.

No evidence was presented indicating a request for an increase in the HHS hours for any activities was made during the ██████████, home visit. The Appellant is already ranked as a 5 for most of the ADL's and all of the IADLs. If the times authorized are not sufficient to meet the Appellant's needs, a request for an increase should be made to the ASW, including specific information explaining why additional time is needed for each activity that additional time is needed to complete. Additionally, the Appellant can provide medical documentation regarding her heart impairments and addressing the need for a special diet. If the Appellant is not satisfied with the Department's determination once the ASW has had the opportunity to consider the request for an increase, the Appellant can request a hearing on that issue.

The ASW further acknowledged that the ██████████, Advance Negative Action Notice did not provide 10 days advance notice of the reduction to the Appellant. The

Department has since adjusted the effective date of the reduction to allow for at least 10 days advance notice. (ASW Testimony and Exhibit 1, page 16) 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.

The ██████████, Advance Negative Action Notice issued by the Department clearly failed to provide the 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 ██████████. (Exhibit 1, pages 7-9) None of the exceptions to the advance notice requirement were present in this case. Therefore, the Department can not make the reduction to the Appellant's Home Help Services case effective any earlier than 10 days after the ██████████, Advance Negative Action Notice. The Department retroactively authorized the prior monthly payment of ██████████ for the month of ██████████ pending this hearing. (Exhibit 1, page 16)

**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 based on the available information, but the reduction can not be made effective any earlier than 10 days from the ██████████, Advance Negative Action Notice date.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is AFFIRMED with the adjusted effective date.

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

cc:

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██████████  
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[REDACTED]  
Docket No. 2011-46568 HHS  
Decision and Order

Date Mailed: 10/17/2011

**\*\*\* 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.