

**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. 2011-49253 REH
Case No. 16878563

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's daughter/chore provider, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW) from the ██████████ County DHS Office, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce 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. Appellant is a ██████ year-old Medicaid beneficiary.
2. Appellant has been diagnosed by a physician with cerebral vascular accident (CVA), osteoarthritis (OA), coronary artery disease (CAD), obesity, a history of knee replacements, back pain, and degenerative disc disease. (Exhibit 1, page 12).
3. Appellant had been receiving 49 hours and 9 minutes of HHS per month, with a care cost of \$ ██████ per month. (Exhibit 1, pages 10-11).
4. On ██████████, ASW ██████████ conducted a home visit with Appellant. Appellant's chore provider was not present during the home visit because she was out running errands. (Exhibit 1, page 8; Testimony of Appellant's Representative).

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5. Based on information provided by Appellant during that home visit, ASW ██████████ decided to reduce the HHS hours authorized for assistance with bathing and dressing. ASW ██████████ also decided to terminate the HHS authorized for assistance with grooming and taking medication. The times for all other tasks would remain the same. (Exhibit 1, pages 9-11; Testimony of ASW ██████████).
6. Following the changes, Appellant would receive 29 hours and 43 minutes of HHS per month, with a care cost of \$ ██████████ per month. (Exhibit 1, page 9).
7. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced. The effective date of the reduction was identified as ██████████. (Exhibit 1, page 5).¹
8. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 2, page 1).
9. On ██████████, the Michigan Administrative Hearing System (MAHS) mailed Appellant a Notice of Hearing that stated that her hearing was scheduled for ██████████. (Exhibit 2, pages 2-4). However, on the next day, MAHS sent a letter stating that it was unable to schedule a hearing for Appellant because Appellant's signature was not on the Request for Hearing. (Exhibit 2, page 5).
10. Appellant and her representative subsequently showed up for a hearing on ██████████, only to find that it has been cancelled. On ██████████, Appellant wrote MAHS regarding the mistake and requested another hearing. (Exhibit 2, page 6).
11. On ██████████, MAHS mailed Appellant a Notice of Hearing that stated that her hearing was scheduled for ██████████. (Exhibit 2, pages 7-9).
12. Appellant failed to appear for the ██████████ hearing and her appeal was dismissed. (Exhibit 2, pages 10-11).
13. On ██████████, Appellant mailed in a letter stating that she missed the hearing because she has not been feeling well and mixed up the dates for the hearing and a doctor's appointment. Appellant also stated that she was admitted to the hospital on ██████████ and kept there for three days, as provided in the discharge instructions she attached to her letter. (Exhibit 2, pages 12-13).

¹ The Advance Negative Action Notice issued by the Department in this case failed to provide Appellant with the notice required by 42 C.F.R. § 431.211, *i.e.* 10 days. However, the actual reduction in this case was not implemented until ██████████, which was after the required notice period had expired. (Exhibit 1, page 11; Testimony of ASW ██████████).

14. On [REDACTED], Appellant was mailed a Notice of Rehearing. The notice provided that a rehearing of Appellant's appeals would be held on [REDACTED]. (Exhibit 2, pages 14-16).
15. On [REDACTED], a hearing was held by telephone.

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 361 (6-1-07) (hereinafter "ASM 361") and Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

Home help services (HHS, or personal care services) are non-specialized personal care service activities provided under ILS to persons who meet eligibility requirements.

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

(ASM 361, page 2 of 5)

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:

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

(ASM 363, pages 2-4 of 24)

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.

(ASM 363, pages 14-15 of 24)

On ██████████, ASW ██████████ completed a home visit and an HHS comprehensive assessment in accordance with Department policy. Following that assessment, the ASW reduced the HHS times authorized for assistance with bathing and grooming, while also terminating HHS for grooming and taking medication. The times for all other tasks remained the same.

According to ASW ██████████'s notes and testimony, all of the changes were based on what Appellant directly told her. Specifically, ASW ██████████ wrote and testified that she terminated grooming and medication assistance because Appellant expressly said that Appellant was independent in taking medication and that the chore provider does not need to assist Appellant with grooming. (Exhibit 1, page 8; Testimony of ASW ██████████). ASW ██████████ also wrote and testified that she reduced assistance for bathing from 18

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minutes a day, 7 days a week, to 10 minutes a day, 3 days a week, because Appellant expressly stated that Appellant only needs assistance getting in-and-out of the bathtub and that Appellant only takes three baths a week. (Exhibit 1, page 8; Testimony of ASW [REDACTED]). ASW [REDACTED] further noted and testified that she reduced assistance for dressing from 14 minutes per day, 7 days a week, to 5 minutes per day, 7 days a week, because Appellant expressly stated that Appellant only needed help fastening a bra. (Exhibit 1, page 8; Testimony of ASW [REDACTED]).

In her Request for Hearing, Appellant disputes the reductions and terminations on the basis that requires more assistance. However, Appellant also testified that ASW [REDACTED]'s notes and testimony accurately reflect what Appellant told ASW [REDACTED] during the home visit. (Testimony of Appellant). According to Appellant, she did not tell ASW [REDACTED] the truth because Appellant was embarrassed. (Testimony of Appellant).

Given Appellant's testimony this Administrative Law Judge finds that the Department's decision must be affirmed. ASW [REDACTED] was justified in relying on Appellant's own statements regarding what Appellant requires assistance with and she authorized exactly what Appellant stated Appellant needed. Given the information available at the time of the decision, the Department's decision is sustained as it is reflective of Appellant's need for assistance.

DECISION AND ORDER

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

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:

[REDACTED]

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Date Mailed: 10/7/2011

***** 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.