

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2011-52670 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 [REDACTED]. The Appellant's son, [REDACTED], represented the Appellant. [REDACTED], Appeals and Review Officer, represented the Department of Community Health (Department). [REDACTED], Independent Living Specialist (worker), testified as a witness for the Department. [REDACTED] Independent Living Supervisor was also present for the hearing.

ISSUE

Did the Department properly determine the Appellant's monthly Home Help Services (HHS) payment?

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 recipient, who was determined eligible for HHS.
2. The Appellant is [REDACTED] years old. She resides with an adult son who is not her services provider.
3. The Appellant has anemia, high blood pressure, CAD, ASHD, osteoporosis, arthritis and heart problems. She has swelling in her legs.
4. The Appellant formerly had a HHS case which closed when her Medicaid eligibility status was changed.
5. The Appellant sought to re-open her HHS case, thus filed another application in [REDACTED].

6. The Department's worker made a home call in ██████████. She completed a comprehensive assessment during this visit.
7. The DHS worker sent an Approval Notice in ██████████. The Notice informed the Appellant she had been approved for services in the amount of ██████████ per month.
8. During the HHS assessment the worker determined that the Appellant needs assistance with housework, laundry, shopping, and meal preparation. (Exhibit A, page 11)
9. The worker ranked the Appellant at a level 3 for each of those 3 tasks.
10. The worker's narrative notes indicate the Appellant "suffers from arthritis, swelling in both legs, high blood pressure, heart problems and other medical problems which is why she need (sic) some assistance with the housework, laundry, shopping and meal preparation."
11. Additional case notes in evidence indicate the Appellant's provider was formerly receiving approximately ██████████ per month due to likely assisting her with bathing, dressing and grooming. The notes also indicate the same worker who closed the previous case performed the assessment at re-opening.
12. On ██████████, the Michigan Administrative Hearing System received a hearing request from the Appellant, protesting the Department's determination of the amount of the Appellant's monthly HHS payment.

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 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 health professional and may be provided by individuals or by private or public agencies.

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.

- A complete comprehensive assessment and determination of the customer's need for personal care services.
- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider.

* * *

Do **not** authorize HHS prior to the date of the medical professional signature on the FIA-54A.

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.

Adult Services Manual (ASM 363 9-1-2008), pages 14-15 of 24

The Adult Services Manual also explains the initial comprehensive assessment process 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 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.

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-54A.

- 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 363 9-1-2008), pages 2-5 of 24

At hearing the Appellant's provider stated he does everything for his mother except feed her. He stated she is a proud woman and tries to do things for herself but he has to do them for her. He stated he has never been a provider before and thought this was all cut and dry. He said he is a retired engineer and has become his mother's caretaker at this point. He said he assists with transferring, grooming, bathing, dressing, housework and meal preparation as well as laundry and shopping.

The Appellant stated her granddaughter helps her bath.

At hearing the worker was asked about how she determined what functional rank to assign the Appellant. The worker referred to her narrative and said she determined she did require some help and that is why she ranked a 3. She also stated the Appellant likes to go to the dollar store and had used her hands to express herself, thus she thought she could use them to perform instrumental activities of daily living for herself. She was asked to specifically describe what aspects of housework and laundry she could do for herself without physical assistance. The worker was unable to describe what parts of laundry she could do without assistance and admitted "it could go either way" at hearing. She stated she saw her use her hands to move things around, thus she determined a rank of 3 was appropriate for housework. She was asked if the Appellant could vacuum, wash the floor, clean a bathroom, change the bed linen, take out the garbage, clean the oven and stove or clean and defrost a fridge. She admitted she could not. She said on a good day the Appellant could wipe a counter top and dust and pick up. She might be able to make her bed on a good day. She was asked by this ALJ if she thought a 3 was still the appropriate function rank given her limitations. She did not agree the rank should be re-assessed.

This ALJ cannot find the assessment completed by the worker to be reliable in this case. There is substantial evidence the Appellant requires more assistance than as determined by the worker. Furthermore, her own conclusions about what the Appellant could and could not do are not supportive of a functional rank of 3 for housework. Based upon the answers provided at hearing, the Appellant should be ranked a 4 for housework. The rank of 3 for laundry was not supported by competent evidence from the department witness. She was unable to articulate what parts of laundry the Appellant could do without physical assistance. Her reliance on using her hands to

express herself is not an adequate basis to find she could carry laundry, access the machines, place it in the machine, add soap, move wet laundry to a drier, remove it and otherwise complete the tasks necessary outside of folding and putting away clean clothes brought to her. This is incompatible with a functional rank of 3, given the functional assessment definitions and ranks supplied in the evidentiary packet. The Department's own definitions indicate a rank of 3 is for those who perform most of the tasks unassisted. Additional evidence supportive of the finding that the worker did not complete a reliable or competent comprehensive assessment is that she had first hand knowledge the Appellant was previously being assisted with bathing, dressing and grooming, yet she failed to indicate why she thought this was no longer necessary. The Appellant refutes the claim from the worker that she told her she did this for herself. This ALJ finds the testimony from the Appellant quite credible at hearing and supportive of a finding that she does receive hands on assistance with bathing. It is not clear from the evidence of record whether grooming and dressing are still provided or needed. The fact the Appellant is reported to have not asked for help with these tasks at the assessment is not a sufficient basis to find she does not need them in this case. This case is unique because the Appellant had previously had this assistance and it had been known to this worker, thus the Appellant may not have thought it necessary to reiterate in a specific manner each and every thing done for her. Additionally at the assessment, the beneficiary is answering questions. There is no evidence she was evasive or failed to answer questions asked of her. There is no reliable evidence of the questions asked of this beneficiary during the assessment. This ALJ cannot find the worker's assessment sufficiently reliable without more specific and credible evidence.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly determined the Appellant's HHS payment amount because the comprehensive assessment is inadequate.

IT IS THEREFORE ORDERED that:

The Department's action is NOT AFFIRMED. The Department is ordered to conduct a new comprehensive assessment and assign the functional ranks in accordance with the published definitions.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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Decision and Order**

cc:



Date Mailed: 12/1/2011

***** 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.