

**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. 2011-8069 HHS
Case No. 16873244

██████████

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. The Appellant was present and represented herself at hearing. Her ██████████ was present, ██████████.

██████████ represented the Department of Community Health. ██████████, appeared as a witness on behalf of the Department. ██████████, was present and testified on behalf of the Department.

ISSUE

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

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 who is a participant in the HHS program.
2. The Appellant's physician has diagnosed her with seizure disorder, congestive heart failure, chronic obstructive pulmonary disease and hypertension. She reports diabetes as well.
3. The Appellant receives payment assistance for some Activities of Daily Living and Instrumental Activities of Daily Living, through the Department's Home Help Services Program.

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4. The Appellant receives payment assistance for the tasks of bathing, grooming, dressing, medication, housework, laundry, shopping and meal preparation. She has a functional rank of 4 for each of these activities except grooming and dressing for which she is ranked 3.
5. The Appellant's Home Help Services case was transferred to a different worker.
6. The Appellant came into the DHS office and met with the newly assigned worker on or about ██████████. She reported that she and her provider were residing in the same household.
7. When in the office for the face to face meeting, the newly assigned worker directly observed the Appellant get out of the lobby chair and walk across the lobby into the interview room. She did not require assistance getting out of the chair nor use an assistive device for ambulation. She did not have an assistive device with her at the appointment. Her provider was with her at the time.
8. The Department of Human Services Adult Services Worker thereafter reduced the payment authorization in the Home Help Services grant by pro-rating the Instrumental Activities of Daily Living by half based upon the shared household. She further removed payment assistance for mobility based upon her direct observation of the Appellant's ability to functionally ambulate.
9. The Department sent the Appellant an Advance Negative Action Notice indicating her payment was reduced and the reasons therefore.
10. The Appellant requested a hearing ██████████.

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.

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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

*Adult Services Manual,
7-1-2009.*

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. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician
 - Nurse Practitioner
 - Occupational Therapist
 - Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

The Adult Services Manual (ASM 363 7-1-09), 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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer'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 agency 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 customer'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 for food and other necessities of daily living
- Laundry
- 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 customer and provider, observation of the customer'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 for food and other necessities of daily living
- 6 hours/month for housework
- 7 hours/month for laundry
- 25 hours/month for meal preparation

These are maximums; as always, if the customer 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 customer 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 customer's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer 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 customer.
- 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 customer 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 customer.
- HHS may be authorized when the customer is receiving other home care services if the services are not duplicative (same service for same time period).

*Adult Services Manual (ASM)
7-1-2009.*

Department policy addresses the need for supervision, monitoring or guiding below:

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)
9-1-2008

In this case the Appellant contested the reductions implemented by the newly assigned worker following their first meeting. At hearing she testified she is about to have surgery on her knee cap and needs help getting out of bed. She further stated she is only residing with her ██████████ temporarily until she can get another place.

The Appellant's ██████████ stated at hearing he does not want to take away all the Appellant's responsibility for herself and he wants her to be able to do as much for herself as long as she can. He stated that is why the worker saw him not assisting her in the office that day. He further stated she does regularly need help and he provides it.

The Department's worker testified she saw the Appellant was able to get out of the chair without assistance, and walk without assistance. Her reduction was based upon policy supporting the elimination of mobility assistance in a circumstance where there is no need for assistance. The worker also testified the second time she saw the Appellant and the ██████████ in the office he helped her get out of the chair and she used an assistive device to ambulate. She said this was after she had sent Notice of the reductions and reasons therefore.

The ██████████ testified she supports the case actions taken by the worker and agreed with her determination.

This ALJ concurs with the determination of the Department's Adult Services Worker regarding the Appellant's need for Home Help Services assistance. The worker testified in a credible manner and provided specific reasons for her actions and determinations that are supported by the policy included above. She specifically addressed the fact that the Appellant is capable of functional ambulation within the home including the ability to get out of a chair without assistance. She did not rescind authorization for payment in other areas, reflecting the belief that the Appellant still required some physical assistance at times. This is an implementation of policy that requires the worker to address the specific needs and circumstances of each client individually. In this case the Department's actions are supported by credible evidence and policy. The Appellant did not meet her burden of proof.

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 payment.


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IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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

cc:



Date Mailed: 2/15/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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 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.