

**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. 2011-8129 HHS
Case No. 92789301

██████████

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

After due notice, a hearing was held on ██████████. The Appellant was represented by his ██████████. ██████████, represented the Department. ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce 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 has been diagnosed with several medical conditions, including diabetes, hypertension, hemiplegia from a stroke, and glaucoma. (Exhibit 1, page 16)
3. On ██████████, after an annual assessment, the Appellant was sent a Negative Action Notice, reducing the Appellant HHS chore grant to \$██████████. The notice indicated that the tasks of grooming, range of motion, mobility and catheterization were eliminated and that the task of bathing was reduced. Further, the Appellant's Instrumental Activities of Daily Living (IADLs) were prorated to reflect the Appellant's household composition of ██████████ adults. (Exhibit 1, pages 5-8).

4. On [REDACTED], the State Office of Administrative Hearings and Rules received a hearing request from the Appellant. (Exhibit 1, pages 3-4).

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 (ASM 363, 9-1-08), pages 2-5 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.

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.

██████████
Docket No. 2011-8129 HHS
Decision and Order

- 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).

After an annual assessment on ██████████, the Appellant's HHS payment was reduced from \$ ██████ to ██████, effective ██████. The following tasks were removed from the Appellant's chore grant: grooming, range of motion, mobility, and catheterization. The task of bathing was reduced, and the Appellant's IADLs were prorated to reflect the Appellant's household composition. The Appellant's ██████ disagrees with the reduction of the Appellant's HHS payment.

Bathing

The task of bathing was reduced from seven days per week to five days per week. The worker testified that the Appellant's ██████ advised her at the assessment that the Appellant was bathed by a nurse two days per week.

The Appellant's ██████ testified that it is true that a nurse comes in two days per week to bathe the Appellant, but she is only there for 30 minutes each day. Further, she testified that the Appellant is normally already clean when the nurse comes. However, the Appellant's ██████ admitted that she did not explain this to the worker at the assessment.

The reduction of HHS hours for bathing is affirmed. While it appears that the Appellant's ██████ is providing more bathing assistance than the 5 days per week that has been authorized, she did not articulate that information to the worker. It appears that a new assessment would be beneficial to determine the Appellant's actual bathing needs.

Grooming

The worker eliminated the task of grooming from the Appellant's chore grant based on the information from the Appellant's ██████ regarding the nurse coming in to assist two days per week. The Appellant is ranked at a level 5 for grooming. He was previously

██████████
Docket No. 2011-8129 HHS
Decision and Order

receiving 12 minutes, 7 days per week for the task of grooming. The Department could not support the elimination and agreed to reinstate grooming retroactively to 12 minutes a day, 5 days per week. However, the Appellant's ██████ testified that she grooms the Appellant 7 days per week.

The elimination of grooming cannot be affirmed. It was based on the worker's incorrect assumption that because a nurse helps out two days per week, the Appellant needs no other grooming assistance. The Appellant's ██████ testified credibly to the contrary. Therefore, the elimination of grooming is reversed.

Range of Motion

The worker testified that range of motion was eliminated because, at the assessment, the Appellant's ██████ stated that range of motion exercises were not being performed on the Appellant. The Appellant's ██████ did not dispute this fact. Instead, she explained that range of motion exercises cannot be performed on the Appellant. Rather, she turns him and applies lotions to prevent pressure sores.¹ Because the elimination of range of motion was based on the information provided by the Appellant's ██████, and that information is not disputed, it is affirmed.

Mobility

The worker testified that the task of mobility was eliminated because the Appellant is completely bedridden. The Appellant's ██████ did not dispute this fact. Accordingly, the elimination of mobility was proper and must be affirmed.

Catheterization

The Appellant was previously receiving 30 minutes per day, 7 days per week for the task of catheterization. The worker testified that catheterization was eliminated because the Appellant's ██████ advised her at the assessment that the nurse takes care of changing the Appellant's catheter. She stated that the Appellant's ██████ only empties the catheter bag, and she is provided time under the task of toileting to do so. The Appellant ██████ confirmed that she does only empty the catheter bag. However, she states that she does so approximately 5 times per day.

The tasks of catheterization was properly eliminated because, as the worker explained, time is provided under the task of toileting for emptying the catheter.

IADLs

Finally, the worker reduced the Appellant's IADLs—housework, laundry, shopping, and meal preparation—based on the household composition of ██████ adults. She explained that during the assessment, the Appellant's ██████ informed the worker that an ██████ was living in the home with the Appellant and the Appellant's ██████. Therefore, the IADLs were prorated by ██████, instead of ██████.

¹ The Appellant is being provided 10 minutes per day for specialized skin care, which encompasses turning and applying lotions to the Appellant. (Exhibit 1, page 14)

██████████
Docket No. 2011-8129 HHS
Decision and Order

The Appellant's ██████████ testified that she did not advise the worker that her ██████████ lived with her. Rather, she stated that she explained to the worker that her ██████████ was just visiting.

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. 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.

Here, the authorized hours are approximately one-third of the maximum allowed for each of these activities and are reflective of what the worker believed the Appellant's household composition to be and the rankings for these activities. Therefore, they must be affirmed. However, the worker also conceded at the hearing that she does not dispute that the ██████████ may no longer be living in the home. She further acknowledged that she did not inquire as to whether the Appellant had any special needs that would warrant a grant of time over and above the prorated amount. Accordingly, a new assessment would be beneficial to determine the Appellant's actual IADL needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's elimination of the tasks of mobility, range of motion, and catheterization was proper. Further, its reduction in hours for bathing, and its proration of the Appellant's IADLs was proper based on the information the worker had at the time of the assessment. However, its elimination of the task of grooming was improper.

Further, given the discrepancies between the Appellant's ██████████ testimony and the information obtained at the assessment, a new comprehensive assessment is needed in this case to determine the Appellant's actual need for services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **PARTIALLY AFFIRMED** and **PARTIALLY REVERSED**. The elimination of the tasks of mobility, range of motion, and catheterization is affirmed. The reduction in hours for grooming and the proration of the IADLs is affirmed. However, the Department is ordered to conduct a new comprehensive assessment to determine the Appellant's actual need for services. Finally, the elimination of hours for grooming is reversed and should be reinstated retroactively.

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

cc:

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Date Mailed: 2/4/2011

***** 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.