

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

Docket No. 2011-8954 HHS
Case No. 68712699

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 ██████████.

██████████ Appellant, appeared on her own behalf. ██████████ Appellant's ██████████ appeared on behalf of the Appellant and provided testimony.

██████████ represented the Department. ██████████ and ██████████ (ASW) appeared as witnesses 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. Appellant is ██████████. (Exhibit 1, page 23).
2. Appellant is a Medicaid beneficiary.
3. Appellant's ██████████ is ██████████. (Exhibit 1, pages 10, 11).
4. Appellant lives with ██████████ and ██████████ for whom she is legal guardian: ██████████. (Exhibit 1, page 9).
5. Including Appellant, there are at least ██████████ individuals residing in the home.

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(Exhibit 1).

6. The Appellant has a history of non-ischemic cardiomyopathy, CTI (a heart rhythm abnormality related to cardiomyopathy), knee pain, and obesity. (Exhibit 1, page 23).
7. Prior to [REDACTED], the Appellant's HHS chore provider payment was [REDACTED] per month. (Exhibit 1, page 11).
8. On [REDACTED], Appellant's [REDACTED] (ASW) made a visit to Appellant's home to conduct a required Home Help Services reassessment for Appellant. During the assessment the ASW asked questions, and received answers from the Appellant and Appellant's [REDACTED]. (Exhibit 1, pages 7, 9, 10).
9. During the reassessment the ASW observed the Appellant. The ASW noted that based on observations and Appellant's answers, Appellant had a need for assistance with bathing, dressing, housework, laundry, shopping, and meal preparation. (Exhibit 1, pages 9, 10).
10. The ASW also noted that the Appellant's housework, laundry, shopping, and meal preparation had not been prorated by the number of individuals living in the home. (Exhibit 1, page 10).
11. During the reassessment, the ASW was told by the Appellant that with regard to medications, she needs her [REDACTED] to prompt and remind her to take the medication.
12. The HHS program does not include payment for prompting or supervising.
13. On [REDACTED], the Department sent a Negative Action Notice notifying Appellant that her Home Help Services payments would be reduced to an amount of [REDACTED], effective [REDACTED]. (Exhibit 1, pages 4-6).
14. On [REDACTED], the Appellant met for a case conference with the ASW's supervisor, [REDACTED]. As a result of the case conference, the Appellant's HHS payment for meal preparation was increased by [REDACTED] to the amount of [REDACTED].
15. On [REDACTED], the Department received Appellant's Request for Hearing, and on [REDACTED], this State Office of Administrative Hearings and Rules received Appellant's request for hearing. (Exhibit 1, page 3).

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 agencies.

The ASW testified that a comprehensive assessment was completed on [REDACTED], at which the Appellant was asked questions and provided answers.

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-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 her/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:

- Five (5) hours/month for shopping.
- Six (6) hours/month for light housework.
- Seven (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. (Underline added by ALJ).

Adult Services Manual (ASM 363 9-1-08), page 5 of 24 requires a DHS worker to address:

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. (Underline added by ALJ).

Reduction of authorization for assistance with medication–

The ASW testified that during the reassessment the Appellant informed her that she needed prompting and reminding to take her medications. The ASW further testified that when she received an updated medical needs form the doctor's writing was not legible and therefore, she made a follow-up call to ██████████ for clarification on diagnoses. The ASW explained that the doctor's office never returned her call for clarification on what were Appellant's diagnoses. The Department's representative and the ASW clarified that prompting and reminding is not a HHS covered service, and therefore, the Appellant's payment authorization for medication was removed.

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The Appellant's [REDACTED] testified that she had significant carpal tunnel syndrome in her hands and received injections from the doctor near her hands. The Appellant testified that the carpal tunnel syndrome made it impossible for her to open the caps on the medication bottles and that is why her [REDACTED] was needed to help her with her medications. The Appellant testified that she has never tried the medication weekly set up trays that would null the need to have assistance opening medication bottle caps on a daily basis.

According to Department policy, the DHS cannot authorize payment for a HHS personal care task unless there is medical professional certification of medical need. The medical needs form makes no mention of carpal tunnel syndrome or an inability for Appellant to use her hands.

Adult Services Manual (ASM 363, 9-1-08), page 9 of 24 outlines the Department's policy regarding date of HHS authorization:

Necessity for Service

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

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- Verification of the client's medical need by a Medicaid enrolled medical professional. The client 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.

Applying the medical documentation evidence to the Department's policy demonstrates the Department properly removed the Appellant's authorization for medication administration.

IADL of Housework, Laundry, Shopping and Meal Preparation prorated -

As stated above in Department policy, the DHS **must** divide the number of authorized hours for IADLs by the number of people in the household. The DHS worker testified that prior to her [REDACTED] assessment the Appellant's Home Help Services payment amount had not been divided by the number of persons living in the household. At the [REDACTED] assessment the ASW learned that the Appellant's IADL time authorization for housework,

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laundry, shopping, and meal preparation had not been prorated for the █████ individuals living in the home. The DHS worker testified that according to policy she was required to prorate the IADL time authorization to reflect █████ individuals lived in the home and therefore, asked the Appellant what household tasks the █████ performed.

The DHS worker explained that the Appellant stated that "everyone is responsible for their own mess... cleaning up." (Exhibit 1, page 9).

The Appellant testified that she had legal guardianship of her █████. The ASW stated that she explicitly clarified with the Appellant at the time of the assessment that the HHS meal preparation services were for the purpose of the Appellant only and not for the benefit of the █████ other people living in her home. The Appellant admitted that her provider prepared a meal and whether it was intended for them or not the teenagers ate from what the chore provider prepared.

At the █████ care conference, DHS supervisor █████ increased the meal preparation amount by approximately █████. The DHS supervisor █████ explained that the DHS staff has discretion based on the age of the other residents in the home and their ability to perform the functions, as to whether to include that individual in the number of people by which to divide the Instrumental Activities of Daily Living payment.

It was established that there are █████ persons living in Appellant's home. It was further established that in the authorization and pro-ration of all Instrumental Activities of Daily Living, the DHS was generous in favor of the Appellant.

The evidence in this case establishes that the Appellant, and at least █████ were living in the home at the time the DHS worker performed the █████ assessment. The DHS is bound to follow the federal regulations, state policy and law, and was mandated to prorate the Home Help Services time and payment by the number of persons in the household. The evidence demonstrates that the Department's reduction was based on proration policy and therefore the reduction in authorization of housework, laundry, shopping, and meal preparation was proper.

Summary

The Appellant bears the burden of proving by a preponderance of evidence that the Department's reduction was not proper. The Appellant did not provide a preponderance of evidence that the Department's reduction was not proper. The Department must implement the Home Help Services program in accordance with Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced her Home Help Services.


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IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Lisa K. Gigliotti
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

CC:



Date Mailed: 2/9/2011

***** 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.