

**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:

Docket No. 2012-17551 HHS

██████████,

██████████

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

After due notice, a hearing was held ██████████. ██████████, Guardian, appeared on the Appellant's behalf. ██████████, Appeals and Review Officer, represented the Department. ██████████ Adult Services Worker, appeared as a witness 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. The Appellant is a ██████ year-old Medicaid beneficiary.
2. The Appellant has been diagnosed with mental retardation, morbid obesity and depression.
3. The Appellant has additional medical complications at this time and is currently temporarily residing in a nursing home, following a hospital stay.
4. The Appellant moved from a shared residence with one sister into another sister's home, where at least ██████ adults are living. The sister whose home she moved to is her legal Guardian.
5. The Appellant's Guardian is her HHS chore provider.
6. The Appellant had been receiving ██████████ minutes of Home Help Services (HHS) with a care cost of ██████████ per month. (Exhibit A, page 8)

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7. On ██████████, the ASW sent an Advance Negative Action Notice to the Appellant informing her that payment for HHS services would be reduced. The new amount authorized was ██████████ for a care cost of ██████████ per month.
8. The reductions were determined appropriate following an assessment performed in the new residence on ██████████.
9. At assessment, the ASW determined it was appropriate to prorate the Instrumental Activities of Daily Living due to the shared household. He further determined it was appropriate to score the Appellant's functional rank for toileting a 4 rather than a 5.
10. The reduction in rank for toileting from 5 to 4 resulted in a reduction in payment authorized for this task from ██████████ per month to ██████████ per month. He determined she was able to participate in her own self care at least to some extent, at the assessment.
11. The Advance Negative Action Notice printed ██████████, contained an effective date of ██████████.
12. On ██████████, the Michigan Administrative Hearing System received the Request for Hearing filed on the Appellant's behalf.

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 (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.
- 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).

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.

*Adult Services Manual (ASM) 363, 9-1-2008,
Pages 2-15 of 24*

The Guardian testified at hearing her concern was for the reduction in laundry time. She asserted the Appellant has “stooling” issues, and skin issues, thus a large volume of laundry is required on her behalf. She further asserted her laundry is done separately from the rest of the household. She also testified the Appellant has dietary needs for meals different than she and her husband eat. She said it is completely separate and she eats at a different time than she and her husband. She testified the bathing reduction is not appropriate because in her old home the Appellant had a walk in shower and was able to participate more in her own care. In her home she has to manage a regular tub, she requires hands on assistance in doing the task appropriately and it is a daily event. She did not dispute the reduction in housekeeping time. She said shopping is a problem because she has to make multiple trips to pick up medications when refills are available and ready. She asserts they are not coordinated between the Appellant and her sister, who she is also provider for and who also lives with her. She asserts it is inappropriate to prorate the shopping when separate trips are required for each of the two sisters. She further stated mobility is becoming an issue for the Appellant. The Appellant was ambulatory with a walker prior to her hospitalization and subsequent move to a nursing home. She agreed this concern is for possible future care needs and not at issue in this hearing.

The Department presented evidence the reductions in housework, shopping, laundry

and meal preparation were based upon policy requiring prorating in shared household situations. The reduction for toileting was based upon the assessment where he determined the Appellant was able to participate to some extent in her self care for that task. He reduced the functional rank from 5 to 4 following the assessment, resulting in █████ hour per month less of authorized time for that task. Bathing was not reduced.

Housework, Shopping, Laundry and Meal Preparation

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. Normally, it is appropriate to prorate the payment for those tasks in a shared household, as the Appellant's family members 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. Exceptions can be made when there is justification for performing an activity separately, such as incontinence. The Appellant's Guardian explained that the Appellant has some incontinence issues, however, there was no evidence this was made clear to the ASW at any time prior to hearing. Nor is this noted in any medical documentation submitted or the case history in evidence. This is appropriate information to share with the worker as it can impact the authorization for laundry. The worker may want to consider this information for future needs; however, the implementation of prorated hours for laundry based upon what he knew at the time was appropriate.

The parties do not dispute the proration for housework.

The parties do not agree about proration for meal preparation. This ALJ heard the testimony from the Appellant's Guardian about eating being totally separate, however, finds the reduction is still supported by policy. There are █████ people living with the Guardian who she provides HHS for. They each do not get a full share of meal preparation when residing together. The uncontested evidence of record establishes the Appellant is authorized for █████ the available maximum time for meal preparation. This is supported by policy and appropriate in this circumstance.

The reduction in shopping is disputed. The evidence presented by the Guardian is that the █████ sisters she cares for have prescriptions ready at different times resulting in multiple trips to the pharmacy. While this is certainly found credible, this problem can be addressed in a number of ways that do not require the worker to increase the authorization. This issue can be addressed at the pharmacy and a request made to coordinate, to the extent possible, the refill times for the medications taken by the Appellant and her sister. This is simple common sense and does not require authorization of additional money to address. The implementation of a reduction in shopping is found appropriate, as required by policy.

A request for increase in bathing was effectively made at hearing. There is no evidence the request was made at the assessment conducted back in █████. The evidence

shows bathing is authorized █ days per week, however, the authorization is for a great deal of time, █ per bath. This ALJ finds the worker did not make an error in not changing the authorization for bathing at the time of assessment as there is no credible evidence it was requested and denied. This information should be addressed by the worker in the future when the Appellant returns to her home. He should explicitly address this at his assessment upon her return.

Advance Notice

The █, Advance Negative Action Notice indicates that the Department intends to make the reductions to the Appellant's case retroactive to █. The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

§ 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

- (a) The agency has factual information confirming the death of a recipient;
- (b) The agency receives a clear written statement signed by a recipient that—

- (1) He no longer wishes services; or
- (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
 - (c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
 - (d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
 - (e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
 - (f) A change in the level of medical care is prescribed by the recipient's physician;

- (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or
- (h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

- (a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
- (b) The facts have been verified, if possible, through secondary sources.

The ██████████ Advance Negative Action Notice issued by the Department clearly failed to provide the Appellant with the required advance notice of at least █ days that her HHS payments would be reduced as the effective date of the reduction was ██████████. The Department has implemented the reductions to the Appellant's HHS payments in error. None of the exceptions to the advance notice requirement were present in this case. Therefore, the Department can not make the reductions to the Appellant's Home Help Services case effective any earlier than █ days after the ██████████, Advance Negative Action Notice.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did properly reduce the Appellant's HHS payments based on the available information. However, the reduction can not be effective any earlier than █ days from the ██████████, Advance Negative action.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The reductions to the Appellant's HHS hours can not be made effective any earlier than █ days from the ██████████, Advance Action Notice.

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

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cc:



Date Mailed: _____3-14-12_____

***** 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 March 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.