

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2014-17580 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant, ██████████ (Provider/Niece) and ██████████ (God-daughter) appeared on the Appellant's behalf. ██████████, Appeals Review Officer (ARO), represented the Department of Community Health. ██████████, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly reduce Appellant's Home Help Services (HHS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. As of ██████████, the Appellant received HHS for bathing (16 minutes a day 7 days a week), grooming (8 minutes a day 7 days a week), dressing (14 minutes a day 7 days a week), eating (22 minutes a day 7 days a week), medication (2 minutes a day 7 days a week), housework (12 minutes a day 7 days a week), laundry (49 minutes a day 2 days a week), shopping (10 minutes a day 7 days a week) and meal preparation (30 minutes a day 7 days a week). (Exhibit A, pp. 5, 16)
2. On ██████████, the ASW conducted an assessment. During the assessment, ██████████ told the ASW that she uses the Appellant's address for mailing purposes and stays with the Appellant ██████████ through ██████████ leaving ██████████ night to stay at her boyfriends and then

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returns on [REDACTED]. (Exhibit A, pp. 12-14; Testimony)

3. On [REDACTED], the ASW received two separate Medical Needs Forms (54A) from two of the Appellant's providers. The 54A's indicated the Appellant only needed assistance with Instrumental Activities of Daily Living. (Exhibit A, pp. 15, 18, 19)
4. On or around [REDACTED], the ASW determined the Appellant lived in a shared living arrangement and did not receive care 2 days of the week when the Provider was staying at her boyfriend's place; and reduced the Appellant's time and tasks accordingly. (Exhibit A, pp. 5, 16, 17; Testimony)
5. On [REDACTED], the ASW sent the Appellant an Advance Negative Action Notice. The notice indicated the Appellant's HHS was being reduced effective [REDACTED]. (Exhibit A, pp. 5-8)
6. On [REDACTED], MAHS received Appellant's Request for Hearing. (Exhibit A, p. 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.

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.

Adult Services Manual 120 (5-1-12) (hereinafter "ASM 120") addresses the maximum number of hours and the proration of Instrumental Activities of Daily Living (IADLs) services:

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all Instrumental Activities of Daily Living except medication. The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.

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- 25 hours/month for meal preparation

Proration of IADLS

If the client does not require the maximum allowable hours for IADLS, authorize only the amount of time needed for each task. Assessed hours for IADLS (except medications) must be prorated by **one half** in shared living arrangements where **other adults reside in the home**, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLS for the eligible client are completed separately from others in the home, hours for IADLS do not need to be prorated. [ASM 120, page 4 of 5, emphasis added].

MCL 28.291a provides in part:

(c) "Residence address" means the place that is the settled home or domicile at which a person legally resides, which meets the definition of residence as defined in section 11 of the Michigan election law, 1954 PA 116, MCL 168.11. [MCL 291a(c)].

MCL 28.292 provides in part:

(1) The official state personal identification card shall contain the following:

(a) An identification number permanently assigned to the person.

(b) The full legal name, date of birth, sex, residence address, height, weight, eye color, digital photographic image, signature of or verification and certification by the applicant, as determined by the secretary of state, and expiration date of the official state personal identification card. [MCL 28.292].

In this case, the ASW eliminated the task of eating and pro-rated and reduced the time and tasks for the IADL's of meal preparation, medication, shopping and laundry. The

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ASW set the time for the IADL's of housework, laundry, shopping and meal preparation based upon a one half allocation due to other family members (children) living in the home. The ASW eliminated the task of eating based upon the Appellant telling the ASW during the assessment that she is able to feed herself. The ASW reduced several of the tasks by two days due to the Provider leaving the Appellant's home on Friday night and not returning until Sunday evening.

The Appellant in this case focused much of her attention and testimony on the living arrangement. The Appellant argued that her Provider does not live with her. That being said, I found the testimony of the Appellant and the Provider to be a bit confusing. Although the Provider testified she lived at her boyfriend's house, it was unclear as to why the Provider used the Appellant's address for mailing purposes. It was also unclear as to why the Provider would pre-make meals for the weekend if she was returning the next day. And even if she was to return the next day, why wouldn't the Provider then be pre-making meals every day of the week? What made the weekends special? Because the testimony was not very clear and because the Provider used the Appellant's address as her mailing address, I find that more likely than not, the Provider lived with the Appellant Monday through Friday and more likely than not lived with her boyfriend on Saturday and Sunday.

Policy requires that assessed hours for IADL's must be prorated by one half in shared living arrangements where other ADULTS reside in the home. In this case, the ASW prorated each of the IADL's in question based upon the Appellant sharing her home with her Provider.

Additionally, policy only requires HHS payments when services are actually provided. Because, I find that more likely than not, the Provider was living at a different residence on the weekends and pre-making food for the weekends, the Provider was consequently not providing services 7 days a week. Therefore, I find the Department's actions to reduce the days assigned to each task appropriate.

The preponderance of the reliable evidence shows the ASW properly assessed the Appellant's needs for HHS. The evidence available to the DHS at the time of the assessment showed the Appellant was in a shared living arrangement. Therefore, the ASW properly calculated the time allocation for the Appellant's IADL and ADL needs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, based on the available information, the Department properly assessed Appellant's HHS needs.

IT IS THEREFORE ORDERED THAT:

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

/s/ _____
Corey A. Arendt
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: March 10, 2014

Date Mailed: March 10, 2014


cc: 

***** 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.