

**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. 2014-35184 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 and ██████████ (Provider) appeared and offered testimony 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)?²

FINDINGS OF FACT

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

1. On ██████████, a Decision and Order was issued ordering the Department to reopen the Appellant's HHS case with an effective date of ██████████ and issue retroactive benefits if otherwise eligible and qualified. (Exhibit A, pp. 25-31; Testimony)

¹ The Appellant objected to the evidence packet being admitted into the record. The objection was overruled as the Appellant failed to overcome the presumption that she received the packet prior to the hearing as it was mailed in the ordinary course of business to the Appellants address on record and was not returned as undeliverable. *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

² The Appellant raised two other issues at the hearing besides the HHS reduction. The other issues occurred after the Appellant had requested this hearing and/or involved other benefit types that are not covered under the HHS program. For this reason, I did not address the additional issues and advised the Appellant to request a hearing for each of those issues.

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2. On ██████████, the ASW conducted an assessment. The Appellant participated in the assessment. At the assessment, the Appellant indicated her Provider had moved in with her and she drinks shakes to get essential nutrients. (Exhibit A, p. 22; Testimony)
3. On ██████████, the ASW sent the Appellant an Advance Negative Action notice. The notice indicated the Appellant's Instrumental Activities of Daily Living were being prorated due to the Appellant's shared living arrangement resulting in a reduction of HHS benefits (\$██████████). (Exhibit A, pp. 8-11; Testimony).
4. On ██████████, the Department sent the Appellant a Services and Payment Approval Notice in accordance with the ██████████ decision. (Exhibit A, pp. 12-13; Testimony)
5. On ██████████, MAHS received Appellant's Request for Hearing. (Exhibit A, pp. 4, 5)

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.
- 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 increased the time and task of medication and reduced by half (pro-rated) the time and tasks of meal preparation, shopping, laundry and housework based upon a one half allocation due to another adult living in the home.

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The Appellant argued nothing changed when the Provider moved in with her and that they had separate bathrooms and bedrooms. The Appellant also argued that she has a special diet that requires her to time her protein intake; eat 6 meals a day; cut her food in small bites; and eat 800 grams (3200 calories) of protein a day. Additionally, the Appellant argued her laundry required separate washing as she would throw up and have accidents requiring bedding changes.

Based on the testimony provided and notes kept by the ASW, I find the ASW's testimony to be slightly more credible as the ASW had a better recollection of the dates, times and events in question.

The testimony and notes from the assessment indicate the Appellant told the ASW about special dietary shakes to get her essential nutrients. The notes however, do not reflect a need for 6 meals a day, cutting of food into small bites, timing of protein intake, or the consumption of 800 grams of protein a day. Furthermore, even had this been discussed at the assessment, I do not find this to be sufficient to show that the IADL of meal preparation is completed separately from the others in the home.

Additionally, the Appellant argues the laundry is completed separately. However, there was little to no testimony to reflect that this was communicated to the ASW at the time of the assessment. Nonetheless, even if it had been, I do not find that this is enough evidence to indicate laundry is completed separately.

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.

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 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**.

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

CAA [REDACTED]

cc: [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

***** 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.