STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Appellant
________________________/

Docket No. 2009-25446 HHS
Case No. [redacted]

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

After due notice, a hearing was held [redacted]. [redacted], the Appellant's chore provider, represented the Appellant at hearing. The Appellant was present and testified on her own behalf.

[redacted], represented the Department of Community Health. [redacted], appeared as a witness on behalf of the Department. [redacted] was present as a witness on behalf of the Department.

ISSUE

Did the Department properly reduce the rate of payment for the Appellant's Home Help Services provider?

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 [redacted] Medicaid beneficiary who participates in the Home Help Services (HHS) program.

2. The Appellant is disabled in that she has cerebral palsy and is wheelchair bound.

3. The Appellant has participated in the Home Help Services program for several years. Her provider is .

4. The Appellant's provider had been receiving a rate of pay of per hour until a recent review conducted by the Department determined the rate was paid to the provider in error.

5. The Department adjusted the rate downward to per hour, over the objection of the Appellant.

6. Following review for complex care, the Department adjusted the provider's rate for the complex care task of catheter assistance. The rate was adjusted up per hour for that task only. The rate for the remaining tasks remained at per hour.

7. The Department's worker made no reductions in any other aspect of the Home Help case. The rank and time allowed remain unchanged following the most recent assessment.

8. The provider rate for non-complex care tasks was set forth in a memorandum dated June 1, 2004, issued by MDCH Medical Services Administration Director Paul Reinhart. It has not changed since the memo was issued, except as affected by state or federal minimum wage laws.

9. It is not known how or why the Appellant's provider was approved for a payment rate of per hour for non-complex care tasks.

10. The Department sent the Appellant notice of the rate adjustment (reduction in payment) .

11. The Appellant requested a formal, administrative hearing .

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 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 10-1-04), pages 2-4 of 26, 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 customer in his/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:

- 5 hours/month for shopping for food and other necessities of daily living
- 6 hours/month for housework
- 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.

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 customer 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 customer's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer 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 customer.
- 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.
- 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 customer.
- HHS may be authorized when the customer is receiving other home care services if the services are not duplicative (same service for same time period).

Adult Services Manual (ASM) 4-1-2004, Pages 6-7 of 27

A MDCH Beneficiary Eligibility Bulletin issued June 1, 2004 reads in pertinent part:

> Effective July 1, 2004, the Michigan Department of Community Health (MDCH) will implement revisions to the Medicaid Home Help Program.
>
> Rate Freeze
>
> Provider rates continue to be frozen at the June 1, 2003 levels for individual and agency providers. The home help provider rate freeze will be in effect until further notice. Local FIA Offices must adhere to their currently established rates.
>
> Any exception to authorize a rate greater than the locally established provider rate must be submitted to Medical Services Administration, Long Term Care Systems Development Section. P.O. Box 30479, Lansing, Michigan 48909-7979. …

The uncontested material facts are that the rate the Appellant's provider is being paid was reduced. It was corrected to reflect a rate freeze implemented years ago, however, for no known reason, not enforced against this particular provider with this Appellant. It is not known how or why the provider was ever paid a higher rate. The approved rate for [redacted] at the time of the adjustment was [redacted] per hour. The reduction was thereafter adjusted for the only complex care need the Appellant has, catheter care. The Department approval of a higher rate for catheter care is not contested by the Appellant, only the reduction imposed for the remaining tasks. The Appellant's functional assessment is not contested. The services authorized were not reduced. The only reduction implemented was a reduction in the rate the provider is being paid. The Department of Human Services (formerly FIA) has no authority to increase the rate. The rate was frozen per the memorandum cited above. The Department implemented a correction to a rate that had been paid to the provider in error. The Appellant had ample opportunity at hearing to establish the provider had been authorized to be paid a higher rate but no evidence to that effect was presented. While this ALJ does not personally believe the current rate is adequate to compensate someone for providing the personal care needed to another human being, that is not material to the disposition of this case. This ALJ does not have any equitable authority to order the rate be restored to the previous level.

The evidence presented by the Appellant that she is in need of a higher payment for the services rendered was heard and considered, however, there was no evidence presented indicating the level of services authorized is inadequate. The payment may well be inadequate, however, that is different from a finding the services authorized are inadequate to meet the Appellant's needs. In this case, the Department's actions were in accordance to the policy and appropriate given the uncontested material facts.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly implemented the correct provider rate in accordance to the [redacted] rate and Department of Community Health policy for provider rates.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

Date Mailed: 9/1/2009

***** 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.