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. 2009-35006 HHS
[redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted], Guardian, appeared on behalf of her son, [redacted] (Appellant). Also appearing as witnesses for the Appellant were his father, [redacted] and his [redacted] and co-guardian, [redacted]

[redacted], Appeals Review Officer, represented the Department of Community Health (Department). Also appearing as a witnesses for the Department were [redacted] and [redacted], Adult Services Worker, Sanilac County Department of Human Services (DHS).

ISSUE

Did the Department properly reduce the Appellant's Enhanced Adult Home Help Services payment?

FINDINGS OF FACT

Based upon the competent, material and substantial evidence presented, I find, as material fact:

1. Appellant is an adult Medicaid beneficiary.

2. On [redacted], the Appellant was struck by lightning. He suffers from quadriplegia secondary to anoxic encephalopathy following a cardiorespiratory arrest which occurred at the time he was struck. The Appellant also experienced Delayed Electrical Myelopathy secondary to the lightning strike. *(Exhibit 1; p. 11)*

3. The Appellant is totally dependent on others for all aspects of daily living. He does not talk or walk. He is also tube fed. *(Exhibit 1; p. 12)*

4. The Appellant has received physical therapy services for the past 15 years. His primary caregiver is his father, [redacted], who is required to move the Appellant numerous times in many different positions to maintain range of motion and intact skin integrity. The Appellant's physical therapy regimen protocol improves range of motion, prevents contractures, improves trunk balance and function. He has demonstrated some progress; however, it has required the expertise of a physical therapist to develop the protocol. Physical therapy includes the following:

    - *Range of motion (ROM) to his extremities 4 times/day by his home care provider; due to spasticity, this protocol may take up to one hour to accomplish each session.*
    - *With physical assistance, the Appellant allows home care staff to position him in a position to promote more range for at least 20 minutes per session, 5 times per day.*
    - *The Appellant allows home care staff to stretch his back; this procedure takes 20-30 minutes.*
    - *The Appellant's spasticity requires a whirlpool-type bath 5 to 7 days per week. This process takes over one hour per session.*
    - *The Appellant needs re-positioning at least once every 2 hours, 24 hours per day. Due to spasticity, this process may take up to 30 minutes per session to accomplish.*

    (Exhibit 1; pp. 10-11)

5. On [redacted], the adult services worker conducted a re-assessment of the Appellant's home help service needs. She proposed reductions in the area of eating and feeding, toileting, bathing, grooming, transferring, mobility, and medication set-up. Several tasks were added to reflect the Appellant's specialized needs.

6. Because the proposed payment exceeded local level payment maximums, the matter was referred by DHS to the Department for further evaluation. On [redacted], a telephone conference occurred between a Department representative, the adult services worker and the Appellant's family. As a result of that conference, the Department upheld the DHS reductions, which are as follows:

Eating and Feeding *– Appellant is entirely tube-fed. Department learned that, once the tube feeding mechanism has been primed, it requires no further hands-on attention. Thus, the Department reduced this task from 40 hours 8 minutes per month, to 3 hours per month.*

Toileting *– The Department subdivided this task into catheter and bowel program components, as the Appellant is fitted with a condom catheter. According to the Appellant's father, the catheter must be service on average of about once every 8 hours, depending on urine output. The Appellant's father further represented that the Appellant does not have bowel movements every day, and on average, that it takes him about 15 minutes to address this task. Based on these representations, the Department representative reduced this task from 50 hours 40 minutes per month to approximately 25 hours per month.*

Grooming – *Based on representations by the Appellant's father that it takes roughly 20 minutes per day to accomplish this task, grooming was reduced from 55 hours 11 minutes per month to 10 hours 2 minutes per month.*

Dressing – *During the telephone conference, the Appellant's father represented the Appellant is almost always dressed in shorts and t-shirts, and that it took 15-30 minutes per day to accomplish this task. The Department averaged this task to 20 minutes, thereby reducing dressing from 55 hours 11 minutes per month to 10 hours 2 minutes per month.*

Transferring – *During the conference, the Appellant's parents represented they have instituted a transfer system that makes transferring a relatively simply task. Based on this representation, the Department allowed approximately 7 minutes per transfer, thereby maintaining 40 hours 8 minutes per month. The hours allotted for this task were not changed.*

Mobility – *The Department reduced this task to reflect an accurate functional assessment definition, clarifying that mobility involves ambulation within the home. This task was reduced from 25 hours 5 minutes per month to 9 hours 2 minutes per month as a result.*

Medication – *The Department reduced this task to reflect an accurate functional assessment definition, clarifying this task involves preparing medications for administration. The Department reviewed the Appellant's list of medications, and reduced this task from 25 hours 5 minutes per month to 5 hours 1 minute per month.*

Specialized Skin Care and Range of Motion Exercises – *these tasks were added to the Appellant's home help services schedule and not contested by the Appellant.*

7. On [redacted], the Appellant filed his request for hearing with the State Office of Administrative Hearings and Rules for the Department of Community Health.

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.

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 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 re-determination.

- 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. When hours exceed the RTS rationale must be provided.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs 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.

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 if there is a need for expanded hours, a request should be submitted to:

MDCH
Attn: Long Term Care, Systems Development Section
Capitol Commons, 6th Floor, Lansing, MI 48909

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.

Exception: DCH will accept a DHS-54A completed by a VA physician or the VA medical form in lieu of the medical needs form.

The medical professional certifies that the client's need for service is related to an existing medical condition. The medical professional does not prescribe or authorize personal care services. If the medical needs form has not been returned, the adult services worker should follow-up with the client and/or medical professional. If the case is closed and reopened within 90 days with no changes in the client's condition, a new DHS-54A is not necessary.

Do **not** authorize HHS prior to the date of the medical professional signature on the DHS-54A.

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9-1-2008

A Medicaid beneficiary bears the burden of proving he or she was denied a medically necessary and appropriate service. See, e.g., *J.K By and Through R.K. v Dillenberg*, 836 F Supp 694, 700 (Ariz, 1993). Whether the Appellant satisfied that burden must be determined in accordance with the preponderance of the evidence standard. See, e.g., *Aquilina v General Motors Corp*, 403 Mich 206, 210; 267 NW2d 923 (1978).

Regarding an appeal filed with the State Office of Administrative Hearing and Rules for the Department of Community Health, the Administrative Law Judge is given ultimate discretion to determine the weight and credibility of the evidence presented. *Wiley v Henry Ford Cottage Hosp*, 257 Mich App 488, 491; 668 NW2d 402 (2003); *Zeeland Farm Services, Inc v JBL Enterprises, Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996) (the fact finder is provided with the unique opportunity to observe or listen to witnesses; and, it is the fact finder's responsibility to determine the credibility and weight of the testimony and other evidence provided).

The Appellant's parents testified they face significant challenges in caring for Appellant. Exhibit 1 contains a detailed log of what services they provide. However, it is important to

note that the adult home help services program does not pay for supervision. Thus, the fact that the Appellant must be supervised while bathing is not a Medicaid-covered service under this program. Also noteworthy is that the adult home help services program does not provide for all of the Appellant's needs, and is not a 24 hour seven days a week entitlement.

The Department presented credible evidence that the reductions were based on representations made by the Appellant's parents during the [redacted], conference call. The Department also presented credible evidence that the reductions are a fair and reasonable estimate of the time necessary to meet the Appellant's needs.

Although it is clear the Appellant's needs are significant, a preponderance of the evidence presented supports a conclusion that the Department's reductions are appropriate and in accord with present policy. I must therefore conclude the Appellant has failed to carry his burden of establishing that the reduction in hours will adversely impact his medical needs, as of [redacted].

DECISION AND ORDER

Based on the above findings of fact and conclusions of law, I decide that the Department properly reduced the Appellant's Home Help Service award based on the [redacted] and [redacted] re-assessments.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Stephen B. Goldstein
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 12/3/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules for the Department of Community Health 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 for the Department of Community Health 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 60 days of the mailing date of the Decision and Order or, if a timely request for rehearing was made, within 60 days of the mailing date of the rehearing decision.