STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2010-15518 HHS
Case No. [redacted]

[redacted]

Appellant
_____/

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]. The Appellant's guardian and niece Ms Anna Petty was present on behalf of the Appellant. [redacted], from [redacted] acted as his hearing representative. [redacted], [redacted] for the Appellant, was present and testified on his behalf.

[redacted], represented the Department of Community Health. [redacted] (ASW), appeared as a witness on behalf of the Department. [redacted] for the Department of Human Services (DHS), was present on behalf of the Department.

ISSUE

Did the Department properly reduce Home Help Services (HHS) payments to the Appellant?

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] year old Medicaid beneficiary who is a participant in the HHS program.

2. The Appellant is developmentally disabled. He resides in the community with assistance of a supports coordinator and chore providers.

3. The Appellant's home help services case was scheduled for review in [redacted].

4. The Department of Human Services Adult Services worker went to the Appellant's home [redacted] for the purpose of completing a comprehensive assessment and case review.

5. At the comprehensive assessment she directly observed the Appellant get up out of his chair, walk into the kitchen carrying dishes, rinse the dishes and place them into the dishwasher. He did not have physical assistance completing these activities.

6. The DHS worker was informed by the Appellant's chore provider that he is independent in toileting transferring and mobility inside of his home. She was further informed he assists with making his bed and putting clothes away.

7. The Appellant requires prompting for toileting according to his supports coordinator's supervisor. He may have occasional urinary accident, approximately two (2) per month.

8. The Appellant does use furniture inside of his home to stabilize himself when he walks. He has stand by assistance at times inside of the home.

9. The Appellant has physical assistance for bathing. The DHS worker inadvertently eliminated payment assistance for bathing and subsequently reinstated it.

10. No reductions for shopping, laundry, meal preparation or housework were made as a result of the comprehensive assessment. The Appellant also receives assistance with grooming and medication.

11. The Department sent a Notice of the reductions [redacted].

12. The Appellant requested a hearing [redacted].

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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

Adult Services Manual,
7-1-2009.

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.

• Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer 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

> The physician is to certify that the customer's need for service is related to an existing medical condition. The physician 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 customer and/or medical professional.

The Adult Services Manual (ASM 363 7-1-09), 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)
7-1-2009.

Department policy addresses the need for supervision, monitoring or guiding below:

Services Not Covered By Home Help Services

Do **not** authorize HHS 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 - Medical transportation policy and procedures are in Services Manual Item 211.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care

Adult Services Manual (ASM)
9-1-2008

In this case it is undisputed the Appellant is developmentally disabled. He resides in the community with the supports of a case manager and chore provider. He requires supervision, reminding, guidance, and some physical assistance. When the DHS worker went to his home to conduct the comprehensive assessment of his needs, she spoke with his current provider and made direct observations that informed her determination. She directly observed the Appellant get out of his chair unassisted. He carried dishes into the kitchen with him as he walked there without physical assistance from another person. He then rinsed his dishes and placed them into the dishwasher, all without physical assistance. From these observations she was able to determine he does not require physical assistance for transferring or mobility inside of his home. Upon speaking with his provider, she was informed he toilets independently. Based upon this information she discontinued payment assistance for mobility, transferring, and toileting. This ALJ concurs with the determinations made at the home call. Payment assistance cannot be authorized for reminding, guidance, or prompting. The assistance required must be hands on and necessary to remain living in the community setting.

The testimony that the Appellant is aided in toileting with prompting does not evidence a need for payment authorization for that task. The fact that the Appellant may have one (1) or two (2) urinary accidents per month does not evidence a need to authorize payment assistance for toileting. He is consistently using the toilet independently according to his own provider, thus it is not appropriate to authorize payment assistance for a task he routinely accomplishes without physical assistance. Stand-by assistance for mobility does not evidence a need to authorize payment assistance for inside the home mobility. Should his physical capability deteriorate in the future and he requires additional assistance, the change in condition should be reported to the DHS for evaluation. This ALJ considered the evidence presented that the Appellant uses the furniture for physical assistance when walking around in his own home. This is exactly the type of accommodation that is expected to be used if feasible in order for a person with disabilities to remain in the community. The fact that he uses furniture for stability does not evidence a need for payment authorization, rather, it evidences he is striving

for as much independence as possible. Again, should the use of furniture lose its feasibility for this Appellant his worker should be notified of a change so that additional evaluation can be scheduled.

This ALJ concurs with the determination of the Department's Adult Services worker regarding the Appellant's need for home help services assistance. The reductions are supported by policy, thus are sustained.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 04/01/2010

***** 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.