

**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. 2010-30684 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 on [REDACTED]. The Appellant, [REDACTED], represented himself. [REDACTED], the Appellant's roommate, appeared as a witness for the Appellant. Diane Hafke, Appeals Review Officer, represented the Department (DHS). Theresa Couture, Adult Services Worker, and Sharon Jasina, Adult Services Supervisor, appeared as witnesses for 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 Medicaid beneficiary.
2. The Appellant is a [REDACTED] year-old paraplegic (Exhibit 1, page 9)
3. The Appellant lives with his child, his roommate, [REDACTED], and her three children. (Testimony of [REDACTED]; Testimony of [REDACTED])
4. On [REDACTED], a DHS Adult Services Worker (worker) made a visit to the Appellant's home to conduct an annual HHS assessment. (Exhibit 1, page 17)
5. As a result of the information gathered from the Appellant at the assessment, the worker reduced the HHS hours authorized for the tasks of grooming, toileting, mobility, catheterization, and bowel program. (Exhibit 1, pages 10, 19)

6. On [REDACTED], the Department sent an Advance Negative Action Notice, notifying the Appellant that his Home Help Services payments would be reduced to \$ [REDACTED] per month, effective [REDACTED]. (Exhibit 1, pages 13-15)
7. On [REDACTED], the Appellant met with the Adult Services Supervisor, and on [REDACTED], the Department sent out a Services and Payment Approval, increasing his payment to \$ [REDACTED] for additional help with housework, shopping, and meal preparation. (Exhibit 1, pages 11-12, 16)
8. On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, page 3)

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.

The purpose of HHS is 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.

The Adult Services Manual 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 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 redetermination.
- 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.

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
- 6 hours/month for light housework
- 7 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.

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

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On ██████████, the worker completed an annual HHS comprehensive assessment in accordance with Department policy. (Exhibit 1, pages 17, 22-23) The worker's notes indicate that there were some changes in the Appellant's HHS needs. (Exhibit 1, pages 22-23) Therefore, there was a reduction in the tasks of grooming, toileting, mobility, catheterization, and bowel program. (Exhibit 1, pages 14-15) This resulted in a reduced HHS payment of \$ ██████████, as indicated on the ██████████ Advance Negative Action Notice. (Exhibit 1, pages 14-15) However, the Appellant met with the Adult Services Supervisor on ██████████ to discuss the reductions, and his payment was increased to ██████████. (Exhibit 1, pages 11-13, 16) The tasks of housework, shopping, and meal preparation were increased. (Exhibit 1, pages 11-13).

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The Appellant disputes the reductions in his HHS payments. He asserts that he needs even more services than were being provided before the reductions. (Testimony of ██████████).

Grooming

The Appellant's hours for grooming were reduced from 8 minutes per day/7 days per week or 4 hours and 1 minute per month to 8 minutes per day/2 days per week or 1 hour and 9 minutes per month. The worker's notes indicated that the reduction was based on information provided at the assessment by the Appellant—that he only needed help with grooming 2 days per week. (Exhibit 1, page 22). The Appellant acknowledged that he provided the worker with this information, and he did not dispute its accuracy. In addition, the Appellant's physician did not certify a need for grooming on the DHS 54-A medical needs form submitted to the Department in ██████████. Accordingly, the reduction in hours for grooming is affirmed.

Toileting

The Appellant's hours for toileting were reduced from 28 minutes per day or 14 hours and 3 minutes per month to 4 minutes per day or 2 hours per month. The hours were reduced because the Appellant only needs assistance on and off the toilet. (Exhibit 1, page 22; Testimony of ██████████). The Appellant confirmed that he only needs assistance on and off the toilet. Given the Appellant's limited need for assistance and the fact that he is provided hours for both catheterization and a bowel program, the reduction in the hours for toileting is affirmed.

Mobility

The Appellant's hours for mobility were reduced from 14 hours per day or 7 hours and 1 minute per month to 10 minutes per day or 5 hours and 1 minute per month. The Adult Services Supervisor explained that this reduction was made because the Appellant has an electric wheelchair, so total assistance with mobility is not needed. She further noted that the Appellant was able to wheel himself in on the day of the hearing. (Testimony of ██████████). The Appellant testified that he is able to get around in his chair some of the time, but that he has nerve damage to his wrists, for which he wears braces, that sometimes prevents him from operating his chair. When asked how often this occurs, he testified that this happens approximately 3 times per day for 2 hours at a time. (Testimony of ██████████). This ALJ does not find the Appellant's testimony credible.¹ There is no medical diagnosis by a physician that would support the Appellant's inability to operate his electric wheelchair so often and for such lengthy periods. (Exhibit 1, page 26) Further, the Appellant's roommate testified that he is able to get around by himself

¹ There were other issues with the Appellant's credibility. For example, when asked about his daily routine, i.e., what his provider does for him daily, he was unable to do so with any specificity. Other than the fact that his provider is there for 4 hours per day, generally from 8:00 a.m. to 12:00 p.m., the Appellant could not articulate any type of daily routine. Further, the Appellant testified that he stays in his bed from noon until his roommate's son is able to assist him to his chair sometime between 3:00 p.m. and 4:00 p.m., because he cannot transfer from his bed to his chair. However, when asked, the Appellant could not explain why he cannot transfer from his bed to his chair, and he acknowledged that he does have use of his arms and hands. (Testimony of ██████████)

in his electric wheelchair. (Testimony of ██████████) Accordingly, the reduction in hours for mobility is affirmed.

Catheter

The Appellant's hours for catheterization were reduced from 30 minutes per day or 15 hours and 3 minutes per month to 6 minutes per day or 3 hours and 1 minute per month because the Appellant is able to self catheterize. (Exhibit 1, page 23; Testimony of ██████████). The Appellant confirmed that he is able to catheterize himself. But he explained that he only does so when he is forced to because his provider is not available; otherwise, his provider does it for him. (Testimony of ██████████). The Appellant's roommate confirmed the Appellant catheterizes himself, but she stated that when he does so, he does it wrong. (Testimony of ██████████) Because the Appellant can catheterize himself, the reduction in hours for catheterization is affirmed.

Bowel Program

The Appellant's hours for his bowel program were reduced from 30 minutes per day or 15 hours and 3 minutes per month to 15 minutes per day or 7 hours and 31 minutes per month. The worker testified that, at the assessment, the Appellant advised that his provider only assisted with clean up after his bowel movements. However, in ██████████ he advised that his provider also provided digital stimulation. (Testimony of ██████████) The Appellant testified at the hearing that his provider assists with both clean up and digital stimulation. (Testimony of ██████████) The hours assessed appear to be reasonable to provide the assistance needed by the Appellant. Therefore, the reduction in hours for the bowel program is affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did properly reduced the HHS hours for grooming, toileting, mobility, catheterization, and bowel program based on the information available at the time of the assessment.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

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cc:



Date Mailed: 7/7/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 March 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.