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. 2010-31841 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 appeared without representation. Her witnesses included [redacted] and [redacted]. [redacted], appeals review officer, represented the Department. Her witnesses included [redacted], Adult Services Worker (ASW) and [redacted], ASW Supervisor. Also in attendance was new supervisor, [redacted].

ISSUE

Did the Department properly reduce Home Help Services (HHS) 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. At the time of hearing the Appellant is a [redacted] year-old, disabled, and Medicaid beneficiary. Appellant's Exhibit 1

2. The Appellant is afflicted with leg-length discrepancy, fracture of C4, C5, C6 and tailbone with cervical radiculopathy, piriformis syndrome, DDD, RA, chronic pain and right MCL ligament sprain. Department Exhibit A, pp. 21, 23, 24, 42, 48.

3. On or about [redacted], a home help assessment was conducted of the Appellant which established HHS. The Appellant's case was then submitted to the MDCH Central Office for complex care assessment and Expanded Home Help Services review. Department's Exhibit A, p. 2

4. On [redacted], complex care review was conducted by registered nurse Darlene Murphy. Recommendations were submitted back to the ASW with instructions to complete a revised time and task schedule. Department's Exhibit A, pp. 2, 26-33.

5. On [redacted], the ASW submitted the requested data to Murphy.

6. On [redacted], a negative action notice was mailed to the Appellant advising of a decrease in HHS, now established at [redacted] [30 hours and 5 minutes per month]. Department's Exhibit A, p. 15

7. The new assessment revealed that the Appellant continued to require home help services, but with fewer hours than anticipated by the Appellant. Department's Exhibit A, p. 2

8. The Appellant brought the instant appeal on [redacted]. Appellant's Exhibit 1.

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 health professional and may be provided by individuals or by private or public agencies.

Furthermore, in cases where Expanded Home Help Services (EHHS) are at issue policy requires expert review when established threshold dollar amounts are exceeded and exception is sought following the comprehensive review.

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 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 re-determination.
- 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
•• 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. (Emphasis supplied)

Adult Service Manual (ASM), §363, pp. 2, 3 of 24, 9-1-2008.

Expanded Home Help Services (EHHS)

EHHS may be authorized if **all** of the following criteria are met:

- The client is eligible for HHS.
- The client has functional limitations so severe that the care cost cannot be met safely within the monthly maximum payment.
- The local office director/supervisory designee has approved the payment (EHHS $[redacted]-$[redacted]) **or** the Department of Community Health (DCH) has approved the payment (EHHS $[redacted] or over).

All EHHS requests for approval must contain:

- Medical documentation of need, e.g., DHS-54A, **and**
- An updated DHS-324 **and** written plan of care, which indicates:
  - How EHHS will meet the client's care needs **and**
  - How the payment amount was determined.

Supra, p. 10

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The Department witness reported that while the Appellant needed HHS her needs were not as complex as initially determined. She said that the bowel program benefit was eliminated because there was no description of a true bowel program. The Appellant did not require digital stimulation, manual removal, suppositories or enemas. Furthermore, it was reported that the Appellant has the use of her arms and hands.

The Department witness also explained that range of motion (ROM) exercises were reduced as being beyond the reasonable time schedule. The issue of the Appellant's state of paralysis was reviewed by the Appellant in her testimony. The Appellant said she needs "hours" of ROM exercises daily – "sometimes it takes an hour to be able to move."

The Appellant's witness testified that she tries to clean the Appellant's home and take her shopping as best she can. She added that if and when they go shopping together – the Appellant is "all done" when they arrive home.

The Appellant testified that she is less concerned about the receipt of HHS for grocery shopping and laundry services than she is concerned about her continued ability to get up everyday. The Appellant suggests that her physical condition has deteriorated since lodging her appeal because her symptoms "fluctuate according to the weather."

The following values represent the Department's assessment and the ALJ's agreement:

- Bathing was established 5 minutes a day. The Appellant said it is accomplished – with some difficulty – in the shower using a hose as an assistive device.

- Transferring was established at 6 minutes a day. The Appellant said she is able to use a "porta-potty" which is kept next to her bed during the evening.

- Mobility was established at 14 minutes a day - in large part owing to a leg break in February of 2010. Accordingly, the Appellant requires some hands on assistance getting around her home – beyond her use of a cane.

- Laundry was established at 10 minutes a day. The Appellant said she was not concerned about the benefit of laundry assistance.

- Shopping was established at 5 minutes a day. The Appellant's witness said that shopping exhausts the Appellant. The Appellant said she might be able to drive to the corner store on her own – but that she seldom drives. She added that she was not concerned about the benefit of shopping.

- Range of motion was established at 10 minutes a day. The Appellant said she needs "hours" of ROM exercises daily. However, the information provided by the Appellant's physican did not justify the extraordinary time for ROM exercises. However, at hearing the Appellant alleged she is now closer to a paralyzed condition.

On review, the main theme of the Appellant's argument was the adverse sequela of her recent leg fracture[1] and the issue of "fighting paralysis." While there was some documentation in the record concerning the Appellant's limited ability to ambulate[2] – the evidence established that she can walk, has mobility and is largely independent.

The Appellant requires some hands-on assistance and she is properly receiving services as determined by her ASW. That assistance may or may not change as her broken leg continues to heal. Furthermore, her overall condition might improve or worsen as she testified that it tends to "change with the weather." However, the greater weight of the evidence established that the assessment and review conducted on [redacted] was accurate and that HHS benefits were properly established.

There is no dispute that the Appellant needs HHS – however her argument for EHHS was not supported by the evidence. The Appellant has failed to preponderate her burden of proof.

The Department's decision to establish the HHS at [redacted] was correct when made.

[1] Referenced by the Department as having occurred in [redacted]. *See* Department's Exhibit A at page 11
[2] The Appellant uses a cane to ambulate.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 7/19/2010

***** 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.