

**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. 2010-32854 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]. [REDACTED] appeared on the Appellant's behalf. [REDACTED] appeared and testified. [REDACTED] appeared as a witness for the Appellant. [REDACTED] represented the Department. [REDACTED] and [REDACTED] appeared as a witness for the Department.

ISSUE

Did the Department properly determine the Appellant's Home Help Services (HHS) payments should remain the same?

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.
2. The Appellant has been diagnosed with anxiety, depression, progressive dementia, irritable bowel disease, degenerative joint disease, hyperthyroid, carpal tunnel syndrome, arteriosclerotic heart disease, pituitary adenoma, hypothyroid and nerve compression. (Exhibit 1, page 9, Exhibit 2)
3. On [REDACTED], a DHS Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 5)

4. The ASW determined that the Appellant's HHS payments would continue with no changes. (ASW Testimony)
5. The Department did not issue a notice to the Appellant of the determination that her HHS payments would remain the same.
6. On ██████████, the Department received a Request for Hearing filed on the Appellant's behalf. The hearing request was resubmitted on ██████████ with the Appellant's signature. (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.

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.

Program requirements are set forth in Adult Services Manual item 362, below:

COMPREHENSIVE ASSESSMENT

If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the personal care needs. Complete the comprehensive assessment (DHS- 324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

CONTACTS

The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and redetermination.

Adult Services Manual (ASM 362) 12-1-2007, Page 3 of 5

Adult Services Manual item 363 addresses program procedures:

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.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. **Unable** means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- 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).

REVIEWS

ILS cases must be reviewed every six months. A face-to-face contact is required with the client, in the home. If applicable, the interview must also include the caregiver.

Six Month Review

Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.
- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- Follow-up collateral contacts with significant others to assess their role in the case plan.
- Review of client satisfaction with the delivery of planned services.

Annual Redetermination

Procedures and case documentation for the annual review are the same as the six month review, with the following additions:

Requirements

- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- A new medical needs (DHS-54A) certification, if home help services are being paid.

Note: The medical needs form for SSI recipients will **only** be required at the initial opening and is no longer required in the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and then annually thereafter.

- A face-to-face meeting with the care provider, if applicable. This meeting may take place in the office, if appropriate.

Adult Services Manual (ASM 363) 9-1-2008, Pages 2-7 of 24

On ██████████, the Adult Services Worker (worker) completed a home visit for the HHS comprehensive assessment. The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessments, no changes to the Appellant's rankings and HHS hours were justified. (ASW Testimony) This resulted in the Appellant's HHS payment continuing at the same rate. The Department did not issue any notice of this determination to the Appellant.

The Appellant's sons argued that the home visit and comprehensive assessment were inadequate. This is supported by the worker's testimony, which indicated that not all tasks in the function assessment, such as toileting, were specifically discussed at the ██████████ home visit. The evidence also indicates poor communication from the Appellant and her sons to the worker regarding deterioration with the Appellant's condition and her increased needs. At assessments, the worker should discuss the Appellant's functional ability and need for assistance with all of the ADL's and IADL's listed in the above cited policy. However, the Appellant and her sons should also make sure they tell the worker about any changes in the Appellant's condition and her needs.

The Appellant's sons also argued that the Appellant's rankings and HHS hours should have been increased. They explained that the Appellant's condition has deteriorated and therefore she needs more assistance than the current service plan authorizes. The Appellant's oldest son testified he believes all rankings should be at level 5. Under the above cited Department policy, a ranking of 5 indicates that a person is totally dependant and does not perform the activity even with human assistance and/or assistive technology. However, the evidence, including testimony from the Appellant's sons, does not support a ranking of 5 for all activities in the Appellant's case. The Appellant's representative, her son and chore provider, argued that ranking and HHS hour increases should be made for the activities of bathing, dressing, toileting, eating, and mobility.

Bathing

The Department ranked the Appellant as a level 3 for bathing and authorized 16 minutes, 5 days per week for assistance with this activity based upon the Appellant needing help in/out for safety and reach. (Exhibit 1, pages 7 and 10) The Appellant's son/chore provider agreed that he provides this type of assistance with bathing 5 days per week, but stated it takes longer than 16 minutes for the Appellant to get undressed, bathe and get out of the tub. While it may take the Appellant longer than 16 minutes to take a bath from start to finish, the HHS program only compensates her chore provider for the portion of the activity the Appellant needs hands on assistance with. The authorized 16 minutes per day is sufficient to provide the limited assistance, getting in and out of the tub for safety and reach.

Dressing

The Department ranked the Appellant as a level 3 for dressing and authorized 14 minutes, 5 days per week for assistance with this activity based upon the Appellant needing help with many aspects due to depression. (Exhibit 1, pages 7 and 10) The Appellant's son/chore provider agreed that he provides assistance as described in the functional assessment definitions and ranks of activities of daily living for a ranking of 3 for dressing "does not dress self completely, without the help of another person; e.g. tying shoes, buttoning, zipping, putting on hose or brace, etc." (Exhibit 1, page 17) The authorized 14 minutes per day is sufficient to provide this level of assistance with dressing.

Toileting

The Department ranked the Appellant as a level 1 for toileting and did not authorize any HHS hours for this activity. (Exhibit 1, pages 7 and 10) As noted above, this activity was not specifically discussed at the [REDACTED] home visit. (Worker Testimony) The Appellant's son/chore provider gave credible, detailed testimony of the assistance he provides with this activity. He stated that while the Appellant can sometimes perform this activity herself, other times she needs help including helping stabilize her on the toilet and wiping. He indicated she needs this type of assistance about four days per week. At the time of the assessment, the most recent medical needs form indicated a medical need for assistance with toileting. (Exhibit 2) The Appellant should have been ranked as a level 3 for this activity with HHS hours authorized in accordance with the Department's reasonable time schedule.

Eating

The Department ranked the Appellant as a level 3 for eating and authorized 44 minutes, 5 days per week for eating assistance based upon the Appellant sometimes needing help with feeding due to depression, loss of feeling in hand and dropping things. (Exhibit 1, pages 7 and 10) The Appellant's son/chore provider agreed that the Appellant can feed her self at times and on a good day can hold an orange and try to peel it. The ranking at a level 3 and authorization of 44 minutes per day is consistent

with the evidence that the Appellant can perform this activity her self at times but needs some assistance on bad days.

Mobility

The Department ranked the Appellant as a level 1 for mobility and did not authorize any HHS hours for this activity. (Exhibit 1, pages 7 and 10) The Appellant's son/chore provider testified that the Appellant has been deteriorating and her movement has decreased. He explained that the Appellant can move around briefly at times. The Appellant's oldest son testified that the Appellant can get from the bedroom to the couch. The Appellant's sons stated that the Appellant needs a wheelchair for longer distances, such as at the store and getting from the car to the hearing room.

As defined in the Department policy, mobility includes walking or moving around inside the living area, changing locations in a room, and moving from room to room. Adult Service Manual (ASM) 365, Functional Assessment Definitions and Ranks of Activities of Daily Living, October 1, 2999 Page 1 of 2. (Exhibit 1, page 17) The testimony indicates that the Appellant can move the shorter distances within her home without assistance. Accordingly, the ranking at level 1 with no HHS hours authorized was appropriate.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly determine that the Appellant's HHS payment should continue with no changes. HHS hours should have been authorized for the activity of toileting.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The Department shall adjust the Appellant's ranking for toileting to a level 3 and HHS hours for this activity shall be authorized as appropriate for this ranking using the Department's reasonable time schedule.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



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Date Mailed: 9/8/2010

***** 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.