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. 2010-33867 HHS

[redacted]

[redacted]

Appellant
_____/

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]. The Appellant, [redacted], was present for the hearing and represented herself. [redacted], Appeals Review Officer, represented the Department. [redacted], Adult Services Worker, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce the Appellant's monthly Home Help Services (HHS) payment?

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 recipient, who was determined eligible for HHS.

2. The Appellant has been diagnosed with spinal muscular atrophy and diabetes. (Exhibit 1, page 10)

3. On [redacted], after a redetermination, the Appellant was sent a Services and Payment Approval Notice, authorizing [redacted], or 83 hours and 39 minutes per month in HHS. The notice indicated that the task of medication was added and Instrumental Activities of Daily Living (IADLs) were prorated. (Exhibit 1, pages 5-6).

4. On [redacted], the [redacted] office received a hearing request from the Appellant, asserting that the amount of HHS payments authorized was not sufficient to meet her needs. (Exhibit 1, page 2).

5. On [redacted], there was an annual redetermination, and the worker's supervisor recommended a decrease in the Appellant's services, so HHS payments were reduced to [redacted], effective [redacted], without notice from the Department. (Exhibit 1, pages 3-4, 7, 11; Testimony of Pelt)

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.

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.

Adult Services Manual (ASM 363, 9-1-08), pages 2-5 of 24 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).

After an annual assessment on [redacted], the Appellant's HHS payment was reduced from [redacted], effective [redacted]. Reductions were made to the following tasks: bathing, grooming, toileting, range of motion, mobility, and meal preparation. The tasks of housework, dressing, and transferring stayed the same. The tasks of laundry, shopping, and medications were increased. The tasks of specialized skin care and eating were added. The Appellant disagrees with the reductions and asserts that she is need of even more services than had previously been authorized.

At the outset, this ALJ notes that the worker's narrative notes regarding the annual assessment in [redacted] do not provide any information regarding the Appellant's physical condition or capabilities. (Exhibit 1, page 4) In addition, the worker testified that she could not confirm whether the rankings or notes associated with those rankings were in fact made by her or the previous worker. (Exhibit 1, page 8; Testimony o[redacted] Finally, it appeared from her testimony that the worker had little, if any, personal knowledge about the Appellant's capabilities or needs. Instead, it appears that the majority of the reductions made to the Appellant's HHS payment were the based on the worker's supervisor's recommendation, not the worker's assessment.

<u>Bathing</u>
The task of bathing was reduced from 8 hours per month to 2 hours and 20 minutes per month. The worker testified that the Appellant does not need full assistance with bathing because she has a shower chair. The Appellant is ranked at a level 4 for bathing.

The Appellant testified that she has upper-body movement, but she has very little upper-body strength. She cannot reach her hands above her head. Therefore, she cannot

wash her hair or her lower body. While she can wash her chest, neck, and stomach, she rarely does so because her provider just bathes all of her.

The reduction of HHS hours for bathing cannot be affirmed. The fact that the Appellant has a shower chair does not compensate for her lack of upper-body strength to be able to wash her body or her hair. Therefore, the reduction in hours for bathing is reversed.

Grooming

The worker reduced grooming from 5 hours and 1 minute to 2 hours and 30 minutes per month. The Appellant is ranked at a level 4 for grooming. The worker stated that she made this reduction because the Appellant can comb her own hair and clip her own finger nails. The Appellant disputed these assertions and testified that she can only brush the bottom of her hair—she cannot do anything to the top of it—and she has a hard time using a blow dryer. The Appellant further testified that she cannot clip her own nails.

The reduction in grooming cannot be affirmed. The reduction was based on the worker's incorrect assumption that because the Appellant has upper-body movement, she can take care of her own hair and clip her own nails. The Appellant testified credibly to the contrary. Therefore, the reduction in grooming is reversed.

Toileting

The HHS hours authorized for toileting were reduced from 13 hours and 3 minutes per month to 5 hours and 1 minute per month because the Appellant does not need help every time she uses the toilet. The Appellant is ranked at a level 4 for toileting. The worker testified that because she can wipe herself and only needs help getting on and off the toilet, the Appellant's hours were reduced. The Appellant testified that her provider must lift her on and off the toilet, as well as pull her pants on and off. The only part of toileting that the Appellant can assist with is wiping.

The reduction in toileting cannot be affirmed. Ten minutes per day for toileting is not sufficient to provide the assistance the Appellant testified she needs. The reduction in toileting is reversed.

Range of Motion

The worker testified that the task of range of motion exercises was reduced from 12 hours and 54 minutes per month to 10 hours and 2 minutes per month based on the Appellant's statement that her provider exercises her for 20 minutes per day. Because this reduction was based on the information provided by the Appellant, which was not disputed, it is affirmed.

Mobility

The worker testified that mobility hours (8 hours and 2 minutes per month) were eliminated altogether because the Appellant is able to get around fine by herself in her electric wheelchair. The Appellant is ranked at a level 4 for mobility, which suggests that she is need of services. The Appellant testified that she is able to get around on her wheelchair. However, she does need assistance opening doors and moving objects out

of her pathway. Accordingly, the elimination of mobility was improper and must be reversed.

Meal Preparation

The worker reduced meal preparation from 12 hours and 32 minutes per month to 8 hours and 32 minutes per month. Meal preparation was originally prorated by one-half, per policy, for a shared household. The worker explained that the additional reduction was made because the Appellant does not need total assistance for meal preparation. She can prepare some food, and she can microwave meals. The Appellant is ranked at a level 4 for meal preparation. The Appellant did testify that she can microwave meals if they are light. Therefore, the reduction to meal preparation will be affirmed.

In addition, the Department failed to properly notify the Appellant of the reduction in payments. The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

> **§ 431.211 Advance notice.**
> The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.
>
> **§ 431.213 Exceptions from advance notice.**
> The agency may mail a notice not later than the date of action if—
> (a) The agency has factual information confirming the death of a recipient;
> (b) The agency receives a clear written statement signed by a recipient that—
> (1) He no longer wishes services; or
> (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
> (c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
> (d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
> (e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
> (f) A change in the level of medical care is prescribed by the recipient's physician;
> (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or

> (h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)
>
> **§ 431.214 Notice in cases of probable fraud.**
> The agency may shorten the period of advance notice to 5 days before the date of action if—
> (a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
> (b) The facts have been verified, if possible, through secondary sources.

The Advance Negative Action Notice was provided by the Department at the hearing. None of the exceptions to the advance-notice requirement apply to this case. Therefore, the Appellant's HHS payments should be reinstated to the original payment amount retroactively to [redacted].

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's reduction of hours for the tasks of bathing, grooming, toileting, and mobility are not proper.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The HHS hours authorized for bathing, grooming, toileting, and mobility shall be reinstated to the amounts that were authorized before the May 1, 2010 reduction. In addition, the Appellant shall be reimbursed retroactively to May 1, 2010, for those improper reductions.

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

cc: [redacted]

Date Mailed: 7/30/2010

***** 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.