

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-33873 HHS

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge 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 ██████████. ██████████ appeared on the Appellant's behalf. ██████████, brother in law, chore provider, appeared as a witness for the Appellant. ██████████ was present. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker, and ██████████ Registered Nurse DCH Home Help Services Program, appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce Home Help Services 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 who had been receiving HHS payments with a care cost of ██████████. (Exhibit 1, page 14)
2. The Appellant lives with her sister and brother in law. The Appellant's sister is her HHS chore provider. (Exhibit 1, page 23)
3. The Appellant is a ██████████ woman who has been diagnosed with cerebral palsy, seizure disorder, severe mental impairment, spastic quadriplegia, abdominal mass and catatonic disorder due to cerebral palsy. (Exhibit 1, pages 15, 23, 30 and 31, 34 and 38)
4. On ██████████, the Department sent an Advance Negative Action

Notice to the Appellant indicating that her Home Help Services payments would be reduced to ██████████ per month, effective ██████████. (Exhibit 1, pages 4-6)

5. The Department subsequently reassessed the Appellant's case.
6. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments would be reduced to ██████████ per month, effective ██████████. (Exhibit 1, pages 7-10)
7. The Appellant is ranked as a level 5 for all activities of daily living and instrumental activities of daily living except for respiration. (Exhibit 1, pages 16-21)
8. As a result of the information gathered for the assessments, the Department increased the HHS hours authorized for bathing, dressing, toileting, medication, shopping, meal preparation and range of motion exercises. The Department decreased the HHS hours authorized for grooming, transferring, eating, and bowel program. The overall result was a reduction of about 39 hours per month. (Exhibit 1, pages 13-14).
9. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. The hearing request was resubmitted on ██████████ with the Appellant's mark. (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.
- 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).

Adult Services Manual (ASM) 9-1-2008, Pages 2-5 of 24

As a result of the information gathered for the assessments, the Department increased the HHS hours authorized for bathing, dressing, toileting, medication, shopping, meal preparation and range of motion exercises. The Department decreased the HHS hours authorized for grooming, transferring, eating, and bowel program. The overall result was a significant reduction to the Appellant's HHS case. (Exhibit 1, pages 13-14) The Appellant's representative disagrees with the reduction.

Grooming

The HHS hours for grooming were reduced from 18 hours and 4 minutes per month (36 minutes per day) to 15 hours and 32 minutes per month (30 minutes per day). (Exhibit 1, pages 13-14) The RN acknowledged that the Appellant requires total assistance with

grooming, but explained that not all grooming tasks are performed daily, such as nail care. She also explained that not all aspects of grooming were specified in the information provided to her. The RN stated that the reduced HHS hours still exceed the Department's reasonable time schedule allowance of 6 hours per month for this task. (Exhibit 1, pages 25-26)

The Appellant's sister stated that there was no reason to remove six minutes per day for this activity. The Appellant's sister and brother in law explained that assistance is provided with all aspects of grooming, including activities such as brushing and blow drying hair (washed daily), washing her face, cleaning nose and ears, foot soaks, applying lotion, nail care, plucking facial hair, and trimming of other body hair.

It is noted that washing and drying hair daily would fall under the activity of bathing, which received a five minute per day increase in the authorized HHS hours. (Exhibit 1, pages 13-14 and 44) The authorization of 30 minutes per day for grooming is a reasonable time to provide assistance the Appellant requires with this activity. The reduction to the HHS hours for grooming is sustained.

Transferring

The HHS hours for transferring were reduced from 13 hours and 4 minutes per month (26 minutes per day) to 9 hours and 2 minutes per month (18 minutes per day). (Exhibit 1, pages 13-14) The RN explained that there was no evidence a lift is used to transfer the Appellant. The RN testified that the information provided to her indicated that the Appellant is transferred two to three times per day. The RN stated that she allowed for excess and authorized HHS hours to cover up to six transfers per day lasting 3-4 minutes each.

The Appellant's sister testified that no lift is used, and the Appellant is transferred four to five times per day between the bed, wheel chair and couch. This is consistent with the new time authorized for this activity. The reduction to the HHS hours for transferring is sustained.

Eating

The HHS hours for eating were reduced from 78 hours and 16 minutes per month (2 hours and 36 minutes per day) to 37 hours and 37 minutes per month (1 hour and 15 minutes per day). (Exhibit 1, pages 13-14) The RN testified the reduction was based on the Appellant eating the same foods as the rest of the family, just blended and spoon fed. The RN explained that it only takes five minutes to blend food and time was added to the HHS hours for meal preparation. The evidence shows that ten minutes per day was added to the Appellant's HHS hours for meal preparation. (Exhibit 1, pages 13-14) The RN stated that she allowed twenty minutes per meal and five minutes for snacks three times per day for eating assistance.

The Appellant's sister credibly testified that because the of Appellant's impairments, she must hold the Appellant's head, giving any food or liquid slowly because the Appellant

chokes easily. She stated that the average meal takes over an hour, and that drinks are also provided outside of meal times, which takes 25-30 minutes. The Appellant's sister explained that she also has to make some special foods for the Appellant.

The evidence does not support the reduction to the HHS hours for eating. It is uncontested that the Appellant has no teeth, can not hold utensils or self feed. The Appellant's lack of muscle strength in any part of her body, including her neck and the need to hold the Appellant's head for all eating and drinking was repeatedly stated in the documentation available to the RN. (Exhibit 1, pages 16, 19, 28, 29 and 33) There is sufficient justification to allow HHS hours far in excess of the Department's reasonable time schedule due to the Appellant's impairments and needs. The reduction to the Appellant's HHS hours for eating is reversed.

Bowel Program

The HHS hours for bowel program were reduced from 23 hours and 35 minutes per month (47 minutes per day) to 10 hours and 2 minutes per month (20 minutes per day). (Exhibit 1, pages 13-14) The RN testified that she allowed 20 minutes per day for the hands on assistance and clean up. The RN stated 10 minutes per day were added to the toileting HHS hours to cover urine incontinence and 4 minutes per day were added to the HHS hours for medication. (See also Exhibit 1, pages 13-14) The RN explained that she did not know how much liquid the Appellant's powdered medication for the bowel program was mixed with so she was not sure how long it would take to administer. However, the documentation submitted to the RN indicated it takes fifteen minutes to assist the Appellant with drinking the stool stimulator mixture. (Exhibit 1, page 29)

The Appellant's sister testified that the powder drink is mixed in an 8-10 ounce glass and takes 30 minutes for the Appellant to drink, again requiring her head to be held. The Appellant's sister described the bowel program, which includes administering pills then the drinkable medication the night before. A suppository is administered in the morning and then once the Appellant has a bowel movement, washing and cleaning up takes about 10-15 minutes. However, the Appellant may have another two or three bowel movements after she is changed in the morning. (Daughter In Law Testimony)

The evidence does not support the 27 minute per day reduction to the HHS hours for the bowel program. The time added to the HHS hours authorized for medication, four minutes per day, is not sufficient to offset the medication administration portion of the Appellant's bowel program. The additional time authorized for toileting was for urinary incontinence, which is separate from the bowel program, and does not offset any reduction to the HHS hours for bowel program. Further, the evidence indicates that the Appellant has multiple bowel movements per day, therefore she requires hands on care and clean up multiple times per day. (Daughter In Law Testimony and Exhibit 1, page 29) The reduction to the HHS hours for the bowel program is reversed.

DECISION AND ORDER

**Docket No. 2010-33873 HHS
Decision and Order**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced Home Help Services payments to the Appellant in the areas of grooming and transferring, but not in the areas of eating and bowel program.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The authorized HHS hours shall be adjusted to 78 hours and 16 minutes per month for eating, and 23 hours and 35 minutes per month bowel program.

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

cc:



Date Mailed: 8/20/2010

***** 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.