

**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. 2010-35123 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 her own behalf. [REDACTED], appeared as a witness for the Appellant. [REDACTED], represented the Department. [REDACTED], appeared as a witness 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 [REDACTED] Medicaid beneficiary.
2. The Appellant has been diagnosed with nerve laceration, shoulder bursitis, supraspinatus, cervical pain/spasms, cervical fusion, Barrot's esophagus, ulcer of duodenum, depression, and degenerative back disease. (Exhibit 1, page 13)
3. On [REDACTED], a DHS Adult Services Worker (worker) made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 12)

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 ██████████ reflecting reduced hours for dressing, toileting, eating and bathing. (Exhibit 1, pages 6-9)
5. On ██████████, the Department received the Appellant's Request for Hearing. (Exhibit 1, pages 3-5)

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.

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).

Adult Services Manual (ASM) 363, 9-1-2008, Pages 2-5 of 24.
(Exhibit 1, pages 12-15)

On ██████████, the Adult Services Worker (worker) completed an HHS comprehensive assessment in accordance with Department policy. The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, she adjusted the Appellant's rankings and decreased HHS hours for several activities. (Exhibit 1, pages 10-12) This resulted in a reduction to the Appellant's HHS payment.

Bathing

The HHS hours for bathing were reduced from 18 minutes per day to 8 minutes per day. (ASW Testimony) The ASW stated that she decreased the Appellant's ranking from a level 4 to a level 3 for this activity based upon the Appellant's statements that she needs help getting into the tub and washing her hair because she can not reach. The ASW explained that reduced HHS hours were based upon the Department's Reasonable Time Schedule (RTS) for an individual ranked as a level 3 for this activity.

The Appellant did not provide any testimony specific to bathing beyond needing assistance getting in and out of the tub. A functional ranking of 3 for bathing is described as generally does bathe self, but needs assistance with some areas of cleaning the body, e.g. getting in and out of the shower or tub, or can sponge bathe but another person must bring water soap towel, etc. A functional ranking of 4 for bathing is described as requires direct hands on assistance with most aspects of bathing and would be at risk if left alone. (Adult Service Manual (ASM) 365 October 1, 1999 page 1 of 2, Exhibit 1, page 16) The reduced ranking was appropriate considering the Appellant's description of the assistance she needs. The reduction to the Appellant's ranking and HHS hours for bathing is sustained.

Dressing

The HHS hours for dressing were reduced from 16 minutes per day to 9 minutes per day. (ASW Testimony) The ASW stated that she decreased the Appellant's ranking from a level 4 to a level 3 for this activity based upon the Appellant's statements that she needs help pulling her pants up, getting her shirt over her head, and putting her bra on.

The Appellant testified that she also needs assistance with putting her socks and shoes on because she can not bend. The Appellant reported a recent back surgery to the ASW at the time of the assessment. (Exhibit 1, page 12) The Appellant testified that she only has 12% use of her left arm and is finally getting use of her right leg back.

A functional ranking of 3 for dressing is described as does not dress self completely without the help of another person; e.g. tying shoes, buttoning, zipping, putting on hose or brace, etc. A functional ranking of 4 is described as does not put on most clothing items without the help of another person and would be inappropriately inadequately clothed without assistance. (Adult Service Manual (ASM) 365 October 1, 1999 page 1 of 2, Exhibit 1, page 16) The ASW's reduction to the Appellant's ranking for dressing was not appropriate based on the level of assistance the Appellant reported, needing assistance putting on most clothing items. The reduction to the Appellant's ranking and HHS hours for dressing are reversed.

Toileting

The HHS hours for toileting were reduced from 22 minutes per day to 6 minutes per day. (ASW Testimony) The ASW testified that the Appellant's ranking did not change, and remained at level 3. The ASW explained that the reduction was based upon the Appellant's statements that she needs help pulling her pants up after toileting. The Appellant testified that she also needs assistance getting up and setting down to toilet. This is still consistent with a functional ranking of 3 for toileting, which is described as requires minimal assistance with some activities but the constant presence of the provider is not necessary. (Adult Service Manual (ASM) 365 October 1, 1999 page 1 of 2, Exhibit 1, page 16)

The previously authorized 22 minutes per day was excessive for a ranking of 3 for toileting. However, the reduced 6 minutes per day is not sufficient time to provide the functional assistance the Appellant needs with toileting. The reduction to the Appellant's HHS hours for toileting is partially reversed; the Appellant's HHS hours for toileting should be adjusted to 14 minutes per day.

Eating

The HHS hours for eating were reduced from 32 minutes per day to 8 minutes per day. (ASW Testimony) The ASW testified that the Appellant's ranking did not change, and remained at level 3. The ASW explained that the reduction was based upon the Appellant's statements that she needs her meat cut because she does not have use of both hands. This is consistent with a functional ranking of 3 for eating, which is described as assistance needed during the meal; e.g. to apply assistive device, hold beverage, cut up food, or push more food to within reach, etc., but constant presence of another person is not required. (Adult Service Manual (ASM) 365 October 1, 1999 page 1 of 2, Exhibit 1, page 16)

The Appellant testified that she needs her meals completely fixed and brought to her bed. However, this would fall under meal preparation, for which the Appellant also receives HHS hours at 25 minutes per day. (Exhibit 1, page 11) There was no reduction to the Appellant's HHS hours for meal preparation.

The reduced HHS hours for eating was appropriate based on the limited assistance the Appellant needs for this activity, cutting meat. The reduction to the Appellant's HHS hours for eating is sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS payment for the activities of bathing and eating. The reductions for the activities of dressing and toileting were not appropriate based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The reductions for the activities of bathing and eating are sustained. The reduction to the Appellant's ranking and HHS hours for dressing is reversed. The Department shall adjust the Appellant's ranking for dressing back to a level 4 and her HHS hours for this activity shall be returned to 16 minutes per day. The Appellant's HHS hours for toileting shall be adjusted to 14 minutes per day.

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

cc:



Date Mailed: 8/5/2010

***** 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.