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. 2010-37540 HHS
Case No. [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 was represented by his aunt and guardian, [redacted]. His chore provider, [redacted], also appeared as a witness for the Appellant. [redacted], Appeals Review Officer, represented the Department. [redacted], Adult Services Worker, and [redacted], Registered Nurse (R.N.) DCH Home Help Services Program, appeared as witnesses for the Department. [redacted], Adult Services Supervisor, was also present for the hearing.

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 Medicaid beneficiary.

2. The Appellant is a [redacted], who has been diagnosed with Palezeris-merzbacher syndrome (a seizure disorder). (Exhibit 1, pages 11, 14, 18)

3. The Appellant is ranked at a level 5 for all activities of daily living (ADL) and instrumental activities of daily living (IADL). (Exhibit 1, page 12)

4. On [redacted], a DHS Adult Services Worker (worker) made a visit to the Appellant's home to conduct an initial HHS assessment. (Exhibit 1, page 7)

5. On [redacted] the worker requested approval of the Appellant's case from the Department of Community Health (DCH) central office because the recommended payment amount exceeded [redacted]. The worker requested a payment [redacted] per month, effective [redacted] (Exhibit 1, pages 14 and 16)

6. The R.N. spoke with the worker by telephone on [redacted]. (Exhibit 1, page 7)

7. As a result of her review, the R.N. determined that the Appellant should receive 162.02 hours or [redacted] per month in HHS payments. The R.N.'s revisions to the requested time and task hours included the following: reducing HHS hours for the tasks of transferring, mobility, medications, and eating and adding HHS hours for suctioning, specialized skin care, and range of motion exercises. (Exhibit 1, pages 9 and 36)

8. On [redacted], the Department sent the Appellant a Services and Payment Approval Notice, notifying the Appellant that his HHS payments were approved in the amount of [redacted] per month, effective [redacted] (Exhibit 1, page 7)

9. However, during the months of [redacted], the Department issued payments to the Appellant's chore provider based on the recommended HHS payment of [redacted]. (Exhibit 2)

10. On [redacted], the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing, contesting the approval of [redacted] per month in HHS payments. (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.

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).

Further, the Appellant is authorized for Expanded Home Help Services (EHHS). The Adult Services Manual (ASM 363) addresses EHHS as follows:

> **Expanded Home Help Services (EHHS)**
>
> EHHS may be authorized if **all** of the following criteria are met:
>
> - The customer is eligible for HHS.
> - The customer 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 $334-$999) **or** the Department of Community Health (DCH) has approved the payment (EHHS over $1000).
>
> All EHHS requests for approval must contain:
>
> - Medical documentation of need, e.g., FIA-54A, and
> - An updated FIA-324 and written plan of care which indicates:
>   - How EHHS will meet the customer's care needs and
>   - How the payment amount was determined.
>
> **Note:** See Adult Services Home Page for Expanded Home Help Services Procedure Guideline, developed by the Department of Community Health.

The Appellant's case was sent to central office for review on [redacted]. The R.N. who reviewed the Appellant's case made several adjustments to the HHS hours requested in the worker's time and task, resulting in an overall reduction.[1] The Appellant's representative disagrees with the reduction to the Appellant's HHS payments.

Transferring

The worker recommended 1 hour and 10 minutes per day or 35 hours and 7 minutes per month for transferring. The R.N. authorized 30 minutes per day or 15 hours and 3 minutes per month. (Exhibit 1, pages 9 and 36)

[1] This ALJ notes that because payments were originally made to the Appellant's chore provider in the amount of [redacted], the [redacted] authorization in the amount of [redacted] will be treated as a reduction. This ALJ further notes that the R.N. did approve the time recommended by the worker for the following tasks without any change: bathing, grooming, dressing, toileting, housework, laundry, and shopping. In addition, the R.N. added time for the following tasks: suctioning, specialized skin care, and range of motion exercises. Therefore, those times and tasks are not at issue in this appeal.

Transferring is defined as follows:

> Moving from one sitting or lying position to another sitting or lying position; e.g., from bed to or from a wheelchair or sofa, coming to a standing position and/or repositioning to prevent skin breakdown.
>
> Adult Services Manual (ASM) 365, 10-1-1999, ILS Appendix, Page 1.

The R.N. explained that the 30 minutes she provided for transferring only covers moving the Appellant from wheelchair to bed and vice-versa. She stated that repositioning is covered by the 30 minutes she added to the chore grant for specialized skin care. She further explained that because a manual lift takes approximately 2 to 3 minutes each time, she felt that 30 minutes would be sufficient to cover the Appellant's transferring needs. The R.N. further clarified that policy only covers transfers within the home.

The Appellant's representative testified that the Appellant is transferred 4 to 5 times per day—2 times per day manually and 2 to 3 times per day by Hoyer lift. She stated that if the Appellant is lifted manually, it only takes a few minutes, but it takes two people to do it. She further testified that if the Appellant must be lifted with the Hoyer lift, because two people are not available, it takes approximately 10 to 15 minutes. The Appellant's representative also testified that it takes time to transfer the Appellant to the van when they take him out of the house. However, she was advised that the HHS program does not cover transfers outside of the home.

This ALJ concludes that the 30 minutes provided by the R.N. for transferring is sufficient to meet the Appellant's needs. Indeed, on the days when two people are available to transfer the Appellant, the hours provided would actually exceed the Appellant's needs. Therefore, the reduction in the hours for transferring is affirmed.

Mobility

The worker recommended 1 hour and 18 minutes per day or 39 hours and 8 minutes per month for mobility. The R.N. authorized 18 minutes per day or 9 hours and 2 minutes per month.

Mobility is defined as:

> Walking or moving around inside the living area, changing locations in a room, moving from room to room . . . . Does not refer to transfers, or abilities or needs once destination is reached.
>
> Adult Services Manual (ASM) 365, 10-1-1999, ILS Appendix, Page 1.

The R.N. testified that mobility in this case involves the task of moving the Appellant from room to room in his wheelchair only. It does not include range of motion exercises. Rather, the Appellant was granted an additional hour per day for that specific task. The R.N. believes that 18 minutes is a reasonable amount of time to move the Appellant from room to room in the house.

The Appellant's representative testified that it takes approximately 4 to 5 minutes to move the Appellant from his bedroom to the living room because they have a large house. She further testified that this must be done 4 to 5 times per day to change the Appellant. Therefore, the reduction in time for mobility was not warranted.

This ALJ finds that the 18 minutes authorized by the R.N. for mobility is sufficient to cover the Appellant's needs. This ALJ concludes that 4 to 5 minutes to move the Appellant from one room to another, even in a large house, seems a bit excessive. Therefore, the time authorized for mobility is affirmed.

Medications

The worker recommended 3 hours per day or 90 hours and 18 minutes per month for medications based on the information she received from the chore provider—that the Appellant requires respiratory treatments for 30 minutes every 4 hours, in addition to administration of other medications.

The R.N. authorized 25 minutes per day or 12 hours and 32 minutes per month. The R.N. explained this reduction in the recommendation by stating that the HHS program only pays for the preparation of the medications and any hands-on treatment. It does not pay for the wait time during the administration of the respiratory treatments.

However, the Appellant's representative testified that the Appellant cannot be left alone during the respiratory treatments because his mask falls off. She stated that they have tried several different masks, both youth and adult sizes, but none of them fit the Appellant properly. So someone has to be with the Appellant for the entire time in order for him to get the benefit of the treatments.

This ALJ finds the Appellant's representative's testimony credible. In addition, this ALJ finds that, contrary to policy, the R.N. did not take the Appellant's specific needs into consideration when reducing the worker's recommendation. Accordingly, the reduction in the time authorized for medications is reversed.

Eating

The worker recommended 2 hours per day or 60 hours and 12 minutes per month for eating. The RN authorized 52 minutes per day and 26 hours and 5 minutes per month. The R.N. explained that she used the 52 minutes provided in the worker's notes to determine the Appellant's eating needs. It was her understanding that the Appellant was fed 3 times per day, and she gave time based on bolus tube feeding. She further noted that, in her recommendation, the worker had erroneously included suctioning time under the task of eating. The worker confirmed that this was, in fact, the case. The

R.N. explained that in her chore grant, she separated the time allowed for the tasks of eating and suctioning.

The Appellant's representative testified that the Appellant is tube fed. The Appellant does not have a feeding machine, so he is fed manually. She stated that she changes the Appellant's feeding tube one time per month, which takes approximately 10 minutes. She also testified that she feeds the Appellant 4 times per day. She explained that once a day she grinds up regular food for him, which takes approximately 20 to 25 minutes for the preparation and the actual feeding. The other 3 times per day, she feeds the Appellant a liquid dietary supplement, which takes approximately 5 minutes each time.

Based on the Appellant's representative's testimony, this ALJ concludes that it takes approximately 40 minutes per day to feed the Appellant. Therefore, the 52 minutes per day authorized by the R.N. is affirmed because it is sufficient to meet the Appellant's eating needs.

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 task of medications was not proper.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The HHS hours authorized for medications shall be restored to 3 hours per day or 90 hours and 18 minutes per month.

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

cc: [redacted]

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.