STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2010-39412 HHS
Case No. [redacted]

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.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant was present and represented himself. [redacted], Appeals Review Officer, represented the Department of Community Health (Department). [redacted], the Appellant's former Adult Services Worker, testified as a witness for the Department. [redacted], Adult Services Supervisor, was also present for the hearing. However, at that hearing, all of the information needed to resolve this matter was not obtained. Therefore, a continued hearing was held on [redacted]. The Appellant, [redacted] and [redacted] were again in attendance, as well as [redacted], the Appellant's current Adult Services Worker (worker).

ISSUE

Did the Department properly determine 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 receives HHS.

2. The Appellant suffers from back problems, including pinched nerves and muscle spasms. He also underwent bypass surgery in [redacted] (Testimony of Richardson)

3. During an annual assessment on [redacted], the worker determined that the Appellant continues to need assistance with transferring, medications, grooming, housework, laundry, shopping,

and meal preparation. Therefore, his HHS payment remained the same. (Testimony of Ash)

4. On [redacted], the State Office of Administrative Hearings and Rules received a hearing request from the Appellant.

CONCLUSIONS OF LAW

As a preliminary matter, the Department requested a dismissal in this case. The Department asserted that because it had taken no negative action against the Appellant in the last 90 days, that the State Office of Administrative Hearings and Rules (SOAHR) lacks jurisdiction over his appeal. The Department's request was denied. The Social Welfare Act of 1939 states that "if the applicant is dissatisfied with the amount of assistance he is receiving . . . he may demand . . . a hearing of his case . . . ." MCL 400.37. Here, the Appellant expressed dissatisfaction with the amount of his HHS benefits. Therefore, SOAHR has jurisdiction in this case, and the Department's assertion that the Appellant is only entitled to a hearing when the Department takes a negative action against him is erroneous.

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 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 health professional and may be provided by individuals or by private or public agencies.

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.

- A complete comprehensive assessment and determination of the customer's need for personal care services.

- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider.

* * *

Do **not** authorize HHS prior to the date of the medical professional signature on the FIA-54A.

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services.

Adult Services Manual (ASM 363 9-1-2008), pages 14-15 of 24

The Adult Services Manual also explains the initial comprehensive assessment process as follows:

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).

Adult Services Manual (ASM 363 9-1-2008), pages 2-5 of 24

The Appellant is challenging the amount of his monthly HHS payments. More specifically, he asserts that he needs additional time for transferring and that the task of bathing should be added to his chore grant.[1] The Appellant testified that his chore provider helps him get "up and down" at least seven times per day. He further stated that she helps bath him every other day. The Appellant also later testified that he needs assistance with eating. However, he did not explain why he needs this assistance.

The worker, on the other hand, testified that the Appellant never mentioned that he needed help with bathing at the assessment. She further testified that the Appellant advised her that he only needed help with transferring a few times per week, so she ranked him at level three for that task. She also stated that when she contacted the Appellant in [redacted] regarding past-due provider logs, he was able to obtain them from upstairs in a very short period of time. And when she inquired with the Appellant regarding the ten seconds it took him to get up and down the stairs, he replied that it was actually five seconds. In addition, the worker stated that the Appellant has continually asked for an increase in his HHS payment, but he never articulates any additional need for services.

The record evidence establishes that the worker followed policy and used the reasonable time schedule as a guide in determining the time that would be allocated for transferring. Further, this ALJ finds the worker's testimony—that the Appellant did not request assistance with bathing—credible. Finally, the Appellant has failed to articulate a need for eating assistance.

The Appellant bears the burden of proving by a preponderance of evidence that the Department did not properly determine his HHS payment amount. The Appellant failed to meet that burden in this case.[2]

DECISION AND ORDER

The ALJ, based on the above findings of fact and conclusions of law, decides that the Department properly determined the Appellant's HHS payment amount.

---

[1] The Appellant also attempted to challenge a reduction that was made to his chore grant in [redacted]. Apparently, he requested a hearing at that time. But he withdrew his hearing request before the hearing. (Testimony of [redacted]). The Appellant was advised that any matters that occurred a year ago are outside of this ALJ's jurisdiction.

[2] The Appellant testified that his physician recently restricted him from any walking. This ALJ was unable to address the issue because it was not information that was available to the Department at the time of the assessment. However, the Appellant was advised to provide his worker with the restriction and request a new assessment based on his change in medical condition.

IT IS THEREFORE ORDERED that:

The Department's action is AFFIRMED.

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

cc: [redacted]

Date Mailed: 9/10/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules may 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 may 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.