

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

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-39437 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 ██████████, sister and caregiver, appeared on the Appellant's behalf. ██████████, Community Mental Health Case Manager, and ██████████, caregiver, appeared as witnesses 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 25)
2. The Appellant lives in an apartment by herself and ██████████ ██████████ agency is enrolled as her HHS chore provider. (Exhibit 1, page 21)

3. The Appellant is a ██████████ woman who has been diagnosed with spastic cerebral palsy and recent stroke. (Exhibit 1, pages 14, 21, 36 and 39)
4. 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, page 11)
5. On ██████████ the Department of Community Health (DCH) central office received an expanded home help request from the Adult Services Worker (ASW) requesting approval for the Appellant's case due to an increase in the pay rate for HHS providers effective ██████████, which would increase the total cost of care in the Appellant's case. No increase in HHS hours was requested. (Exhibit 1, page 33)
6. The Registered Nurse (RN) who reviewed the Appellant's case requested additional information from the worker, which was received. Additionally, the RN spoke with the Community Mental Health (CMH) Case Manager and the Appellant's sister/caregiver by telephone. (RN Testimony and Exhibit 1, pages 29, and 31-32)
7. As a result of her review, the RN determined: the HHS hours authorized for bathing, eating and specialized skin care should be reduced. The RN also added medication and shopping/errands to the service plan with HHS hours for these activities. (Exhibit 1, pages 25-30)
8. 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, page 5)
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 guardian's signature. (Exhibit 1, page 4)

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 expanded home help request, the Department increased the HHS hours authorized for bathing, dressing, toileting, medication, shopping, meal preparation and range of motion exercises. The Department determined the HHS hours authorized for bathing, eating and specialized

skin care should be reduced, and the tasks of medication and shopping/errands should be added to the service plan with HHS hours for these activities. (Exhibit 1, pages 25-30) The Appellant's representative disagrees with the effective date for the Department's reductions and the HHS hours authorized for the tasks of bathing, transferring, mobility, housework, laundry, eating, and medication. (Exhibit 1, page 4 and Exhibit 2)

Advance Notice

Pursuant to the June 4, 2010, Advance Negative Action Notice, it appears that the Department intends to make the reductions to the Appellant's case retroactive to November 1, 2009. 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 issued by the Department clearly failed to provide the Appellant with the required advance notice of at least 10 days that her HHS payments would be reduced as the effective date of the reduction was ██████████. (Exhibit 1, page 4) The payment authorization history indicates that the reductions were actually implemented effective ██████████ 0. (Exhibit 1, page 17) None of the exceptions to the advance notice requirement were present in this case. Therefore, the Department should not have made the effective date for the reductions to the Appellant's Home Help Services case any earlier than 10 days from the ██████████, date of the Advance Negative Action Notice.

Reductions

Bathing

The HHS hours for bathing were reduced from 30 hours and 6 minutes per month (1 hour per day) to 20 hours and 4 minutes per month (40 minutes per day). (Exhibit 1, pages 25-26) The RN explained that the information she received indicated frequent bathing as well as sponging due to perspiration issues. Therefore, she allowed 20-25 minutes for a bath plus sponge time for a total of 40 minutes per day. (RN Testimony)

The information in the RN's notes shows conflicting information was given about bathing assistance. The notes from the conversation with the CMH Case Manager indicate bathing is done twice daily in a shower chair lasting 20-30 minutes per client's family as well as frequent perspiration. The notes from the conversation with the Appellant's sister indicate a bed bath with an inflatable tub every other day and sponge baths the remaining days. (Exhibit 1, page 29)

At the hearing, the Appellant's sister/caregiver testified that the inflatable tub is used in the bed and water must be bailed in and out. She stated that daily the Appellant receives 2 full baths as well as wiping during the day for a total of 48 minutes per day.

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The requested time of 48 minutes per day is reasonable to complete 2 full bed baths daily as well as sponging time.

There is sufficient justification to exceed the Department's reasonable time schedule allowance of 11 hours per month for this task for an individual with a ranking of 5. (Exhibit 1, page 27) A reduction to the previously authorized 1 hour per day was appropriate as the Appellant's sister/caregiver testified less time was needed for this task. However, the reduction to 40 minutes per day was too great given the sister/caregiver's credible testimony. The HHS hours for bathing shall be adjusted to 48 minutes per day.

Transferring

The HHS hours for transferring remained the same, at 5 hours and 1 minute per month (10 minutes per day). (Exhibit 1, pages 25-26) It is noted that this is less than the Department's reasonable time schedule allowance of 7 hours per month for an individual ranked at level 5 for this activity. (Exhibit 1, page 27) The information submitted to the RN for review did not indicate a Hoyer lift is used. (Exhibit 1, page 36) However, the phone conversation notes indicate the CMH Case Manager indicates a manual Hoyer lift is used, but not how often or how long it takes. (Exhibit 1, page 29)

The Appellant's sister/caregiver testified a Hoyer lift is used to transfer the Appellant taking 10 minutes each time, in part due to difficulty getting the sling around the Appellant. Transfers were described as occurring between the bed and the wheelchair while the Appellant is at home six times per day.

While no reduction was made to the task of transferring, the authorized 10 minutes per day is not sufficient to meet the Appellant's needs with this activity. The use of the Hoyer lift and difficulty with the sling provides justification for exceeding the Department's reasonable time schedule allowance for this activity. However, the requested 10 minutes per transfer, even considering use of the Hoyer lift and sling difficulties, seems excessive. The HHS hours for transferring shall be adjusted to 35 minutes per day, which would allow for 5-6 minutes per transfer, six times daily.

Mobility

The HHS hours for mobility remained the same, at 6 hours and 27 minutes per month (18 minutes per day). (Exhibit 1, pages 25-26) It is noted that this is less than the Department's reasonable time schedule allowance of 9 hours per month for an individual ranked at level 5 for this activity. (Exhibit 1, page 27)

It is also important to note the definition of mobility for the Home Help program:

Walking or moving around inside the living area, changing locations in a room, moving from room to room, does not respond adequately if he/she stumbles or trips. Does not step over or maneuver around pets or obstacles, including uneven floor surfaces. Does not climb or

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descend stairs. Does not refer to transfers, or to abilities or needs once destination is reached.

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(Exhibit 1, page 46)

The Appellant's sister/caregiver provided testimony regarding mobility that included transportation to and from the [REDACTED] center as well as twice weekly community activities. This can not be considered under the Home Help program. The mobility for personal activities at home was estimated at 15 minutes per day. While less than the reasonable time schedule allowance, the Department authorized 18 minutes per day for mobility is reasonable to meet the Appellant's needs. The HHS hours authorized for mobility is sustained.

Housework and Laundry

The HHS hours for housework, 6 hours and 1 minute per month, and laundry, 7 hours and 1 minute per month, remained the same. (Exhibit 1, pages 25-26) The Department's Home Help program policy places a limit upon the HHS hours that can be authorized for these tasks each month. The Appellant is receiving the Department's maximum allowance under Adult Service Manual (ASM) 363 9-1-2008 pages 3-4 of 24. (Exhibit 1, pages 42-43) The HHS hours for housework and laundry are sustained.

Eating

The HHS hours for eating were reduced from 72 hours and 44 minutes per month (2 hours and 25 minutes per day) to 37 hours and 30 minutes and 6 minutes per month (1 hour per day). (Exhibit 1, pages 25-26) The RN explained the Appellant is tube fed 2 cans three times per day. The authorized time allows for up to 10 minutes to set up a new feed bag, prime and connect it, 5 minutes for checking for residual and an additional 5 minutes for flushing with water for feeding. (RN Testimony)

The Appellant's sister/caregiver testified that it takes about 10 minutes for feeding assistance three times per day. It was not clear if this includes time to check for residual and flush with water. The reduction to the HHS hours for eating is sustained, however, at the next assessment, the Adult Services Worker should clarify if the full hour is needed or if 30 minutes per day is sufficient to meet the Appellant's needs.

Medication

No HHS hours for medication assistance were included in the time and task sent to the central office for approval, but the RN authorized 2 hours and 30 minutes per month, or 5 minutes per day for this activity. The RN's notes indicate the 5 minutes per day would include crushing and tube feeding five medications. (Exhibit 1, page 30)

The Appellant's sister/caregiver testified that medication assistance involves crushing pills so they will dissolve in water, which can then be tube fed. This also requires

flushing with water. She explained that the Appellant takes medications three times per day, requiring a total of 15 minutes of assistance per day. This is consistent with the RN's estimation of 5 minutes to administer medications, just allowing for this activity three times per day instead of once per day. The HHS hours for medication assistance shall be adjusted to 15 minutes per day.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly reduce the Appellant's Home Help Services payments. The HHS hours for bathing, transferring and medication were not properly assessed.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The authorized HHS hours shall be adjusted with a retroactive effective date of [REDACTED], as follows:

- Bathing 48 minutes per day
- Transferring 35 minutes per day
- Medication 15 minutes per day

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

cc:

[REDACTED]
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Date Mailed: 9/14/2010

***** 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.