

**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. 2010-47734 HHS
[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, [REDACTED] was present. He was represented by his mother and chore provider, [REDACTED]. [REDACTED], Appeals Review Officer, represented the Department. [REDACTED] Adult Services Worker (worker), appeared as a witness for the Department.

ISSUE

Did the Department properly reduce the Appellant's monthly Home Help Services (HHS) payment?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid recipient, who was determined eligible for HHS.
2. The Appellant suffered a stroke in [REDACTED] resulting in a craniotomy. He has been diagnosed with hemiparesis (Exhibit 1, page 13; Testimony of [REDACTED]).
3. On [REDACTED], the worker conducted an in-home assessment to redetermine the Appellant's HHS needs. (Exhibit 1, page 9)
4. After the redetermination, the Appellant was sent an Advance Negative Action Notice, notifying him that his HHS payment was being reduced to [REDACTED], effective [REDACTED]. The notice indicated that the task of mobility was increased to 7 days per week, but the tasks of toileting and range of motion were reduced. (Exhibit 1, pages 5-8).

5. On ██████████, the State Office of Administrative Hearings and Rules received a hearing request from the Appellant. (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.

The purpose of HHS is 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.

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- 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).

After an annual redetermination on ██████████, the Appellant's HHS payment was reduced from ██████████, effective ██████████. Reductions were made to the tasks of toileting and range of motion. The task of mobility was increased to 7 days per week. The Appellant disagrees with the reductions.

Toileting

The HHS hours authorized for toileting were reduced from 26 to 10 minutes per day, 7 days a week because, at the assessment, the Appellant told the worker that he only needs help getting on and off the toilet. The Appellant's representative testified that she does help the Appellant pull his pants up and down, and she does wipe for the Appellant. She explained that the Appellant was too embarrassed to tell the worker the truth at the time of the assessment. So he told her that he only needs help getting on and off the toilet.

In light of this new information obtained at the hearing, the worker agreed to reinstate the time for toileting to 26 minutes per day. That increase should have been implemented as of the date of the hearing, when the Department was made aware of the Appellant's actual toileting needs.

Range of Motion

The worker testified that the task of range of motion exercises was reduced from 45 to 30 minutes per day, 7 days a week because the Appellant is only being exercised on his left side, i.e., his left arm and leg. She explained that guidelines provide for authorization of 30 to 60 minutes per day for both limbs. Here, because the Appellant is only being exercised on his left side, she authorized 30 minutes.

The Appellant's representative testified that she performs range of motion exercises on the Appellant twice a day for approximately 30 minutes each time on both sides of the Appellant's body. She stated that the Appellant's left side is useless. However, his right side is 80% functional.

The reduction in the time authorized for range of mobility is affirmed. The Appellant is receiving half of the maximum time allowed, and range of motion exercises are only required for the left side. While the Appellant's mother and chore provider testified that she does exercise both sides of the Appellant's body, his right side is functional, so range of motion exercises on his right side are not required.

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 tasks of toileting and range of motion were proper based on the information that was obtained at the assessment. However, in light of the new information obtained at the hearing regarding the Appellant's toileting needs, it is apparent that he is need of additional time, and the Department agreed to reinstate the Appellant's time for toileting. That increase should have be implemented as of the date of the hearing.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**. However, pursuant to the agreement made on record, the HHS hours authorized for toileting shall be reinstated to 26 minutes per day, 7 days a week, effective [REDACTED].

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

cc:

[REDACTED]

Date Mailed: _____

***** 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.