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:

Docket No. 2010-51264 HHS

[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 for the hearing and represented herself. The Appellant's current chore provider, [redacted], and her former chore provider, [redacted], appeared as the Appellant's witnesses. [redacted], Appeals Review Officer, represented the Department. [redacted], Registered Nurse (RN) Department of Community Health (DCH) Home Help Service (HHS) Program, [redacted], Adult Services Worker (worker), and [redacted], General Service Program Manager, appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce the Appellant's monthly 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 expanded HHS. More specifically, she receives assistance with the following tasks: bathing, grooming, dressing, transferring, eating, medication, housework, laundry, shopping, meal preparation, catheters, bowel program, specialized skin care, and range of motion. (Exhibit 1, page 16)

2. The Appellant has been diagnosed with multiple sclerosis, chronic fatigue syndrome, and scoliosis. (Exhibit 1, page 20)

3. In [redacted], the worker requested approval of the Appellant's case from the DCH central office due to an increase in the pay rate for HHS providers effective [redacted]. (Testimony of [redacted]; Exhibit 1, page 18)

4. As a result of her review, the RN determined that the Appellant should receive 153.03 hours per month. The RN's revisions to the requested time resulted in reductions in bathing, catheter, and bowel program. (Testimony of [redacted])

5. On [redacted], the Department sent an Advance Negative Action Notice, notifying the Appellant that her HHS payments would be reduced to [redacted] effective [redacted]. (Exhibit 1, pages 4-6) However, the Appellant never received this notice, and by Department error, the original payment was not implemented at that time. (Testimony of [redacted]; Testimony of [redacted]

6. When it was discovered that the reduction had not been implemented, the Department sent a second Advance Negative Action Notice on [redacted], notifying the Appellant that her HHS payments would be reduced to [redacted] per month, effective [redacted] (Exhibit 1, pages 7-10)

7. On [redacted] the State Office of Administrative Hearings and Rules received the Appellant's Requests for Hearing. (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).

After review by central office, reductions were made to the following tasks: bathing, catheter, and bowel program. All other tasks remained the same. The Appellant disagrees with the reductions in bathing and her bowel program.

Bathing

The task of bathing was reduced from 1 hour per day to 40 minutes per day. The RN testified that this reduction was based on her conversation with the Appellant's daughter, who advised the RN that the Appellant is bathed in her bed and that it takes approximately 40 minutes to complete.

The Appellant testified that she is not bathed in her bed. Rather, she explained that her provider lifts her with a Hoyer lift into the restroom and she bathes her. She further stated that the bathing process takes about an hour to an hour and a half to complete. However, she admitted that when her daughter bathes her, she does it in her bed, because her daughter is very small, and she does not dispute that her daughter may have provided that information to the RN.

The reduction of HHS hours for bathing is affirmed. The RN cannot be faulted for relying on the information provided by the Appellant's daughter. However, in light of this information, the worker agreed to reassess the Appellant with regard to her actual bathing needs.

Bowel Program

The worker testified that the bowel program was reduced from 2 hours 4 days per week to 30 minutes 4 days per week. The RN testified that the Appellant's daughter advised her that the Appellant uses suppositories and either a bed-pan or a bed-side commode. She stated that the amount of time for the bowel program was reduced because the Department only provides time for insertion of the suppository and clean-up after it takes effect. It does not pay for the time it takes for the suppository to actually take effect. She further stated that generally suppositories are given every other day or as needed. Finally, the RN testified that suppositories were not even listed on the Appellant's medication list.

The Appellant testified that her bowel program is as follows: she is lifted to the bathroom, her chore provider inserts the suppository, and they wait until it takes effect. She stated that the process can take up to 30 minutes and that her chore provider sometimes has to give her multiple suppositories in a single day.

The reduction in the bowel program is affirmed. Based on the testimony, the time it takes to insert the suppositories, even more than one, should not exceed the 30 minutes that have been provided to the Appellant 4 days per week. Further, the Appellant was unsure if she even articulated her needs regarding the bowel program to her worker. But, again, the Department has agreed to reassess the Appellant. At that time, it should determine what the Appellant's actual bowel program needs are.

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 bathing, catheter, and bowel program are proper.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 11/24/2010

***** 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.