STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted]

Appellant
_____/

Docket No. 2010-55507 HHS
Case No. 21021817

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 [redacted]. [redacted] appeared on behalf of the Appellant. She had no witnesses. [redacted] represented the Department. Her witnesses were [redacted], and [redacted].

PRELIMINARY MATTER

The Department's motion to dismiss for lack of jurisdiction because the Appellant's appeal was filed in excess of 90 days from negative action was taken under advisement at hearing.

On review, the Department's documentation demonstrates negative action dispatched to the Appellant on [redacted], via DHS 1212. See Department's Exhibit A, pp. 2, 5 and Department's Exhibit B. The Appellant filed her appeal on [redacted], after complying with an administrative request to execute dated [redacted]. See Appellant's Exhibit #1 - throughout. The Department's motion to dismiss is denied.

ISSUE

Did the Department properly reduce the Appellant's HHS?

FINDINGS OF FACT

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

1. At the time of hearing the Appellant is [redacted], and Medicaid beneficiary. Appellant's Exhibit 1.

2. The Appellant is afflicted with acute disseminated Encephalomyelitis with neurogenic bladder, scoliosis and paraplegia. Department Exhibit A, pp. 14, 30, 31.

3. On [redacted], the ASW, in coordination with DCH [redacted], sent the Appellant an advance negative action notice reducing HHS from [redacted] to $[redacted]. Department's Exhibit A, pp. 2, 5.

4. The Appellant's case was reviewed by MDCH Central Office for complex care assessment and Expanded Home Help Services review between [redacted] and [redacted]. Department's Exhibit A, pp. 39-41.

5. Recommendations were submitted back to the ASW with instructions to complete a revised time and task schedule which then generated an advance negative action notice for the Appellant on [redacted], with changes in HHS for ADLs of bathing, dressing, catheters and eating/feeding assistance. Department's Exhibit A, pp. 17, 18, 39-41.

6. The Appellant brought the instant appeal on [redacted]. Appellant's Exhibit #1.

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 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.

Furthermore, in cases where Expanded Home Help Services (EHHS) are at issue policy requires expert review when established threshold dollar amounts are exceeded and exception is sought following the comprehensive review.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer'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 re-determination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the agency 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 customer'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. When hours exceed the RTS rationale must be provided. (Emphasis supplied)

Adult Service Manual (ASM), §363, pp. 2, 3 of 24, 9-1-2008.

Expanded Home Help Services (EHHS)

EHHS may be authorized if **all** of the following criteria are met:

- The client is eligible for HHS.
- The client 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 $550-$1299.99) **or** the Department of Community Health (DCH) has approved the payment (EHHS $1300 or over).

All EHHS requests for approval must contain:

- Medical documentation of need, e.g., DHS-54A, **and**
- An updated DHS-324 **and** written plan of care, which indicates:

  - How EHHS will meet the client's care needs **and**
  - How the payment amount was determined.

Supra, p. 10

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The Department witness testified that she reviewed the Appellant's EHHS for time and task complex care compliance and by interviewing the Appellant's provider who provided answers to her questions regarding time spent administering certain services to the Appellant.

Department witness [redacted] testified that she made four reductions in EHHS. She said she reduced the bathing function from 30 minutes a day to 22 minutes a day. She said she used the RTS as a guide and had asked the provider how long it took to bathe the Appellant – her answer was "15 minutes."

The next item of reduced EHHS was dressing. She reduced the amount of time allocated for dressing from 25 minutes a day to 20 minutes a day based on the provider's statement that this task took "15 to 20 minutes a day" to complete.

Next, the central office reviewer, [redacted], addressed the eating task – making no change in the 10 minute HHS allocation, but reducing the complex care component of eating and feeding assistance from 1:15 minutes to a 50 minute allocation owing to the Appellant's being tube fed between 3 and 4 times per day. The Appellant's provider estimated a 45 minute allocation of time for tube feeding – but Murphy increased that allocation to 50 minutes on the chance of an additional tube feeding – or supplemental eating by mouth.

Toileting was not changed and bowel program was not changed – however on complex care assessment [redacted] reduced the catheter program from 1:15 minutes to 40 minutes owing to the Appellant's status as a "straight cath" individual utilizing a condom catheter bag requiring

emptying up to 4 times a day for an allocation of 40 minutes – using a hospital standard of care at 10 minutes per incident. She testified that in conjunction with the undisturbed toileting allocation and bowel program there was ample time for related clean-up and skin care.

The Department witness testified that there were no other changes in the Appellant's allocation – with the exception of adding an hourly increase in compensation.

The Appellant's [redacted] testified that being interviewed by [redacted] over the telephone resulted in an inadequate representation of task and timing. She said that as the Appellant ages his needs and related tasks require greater effort and accordingly, greater amounts of time. She requested that the reduced services remain at their prior level or be subject to an increased allocation.

The following values represent the Department's assessment and the ALJ's agreement:

- Bathing was established 22 minutes a day. The Appellant's [redacted] told [redacted] that the Appellant is wheeled in to the shower for daily bathing which takes about 15 minutes. [previous allocation 30 minutes]

- Dressing was established at 20 minutes a day. The Appellant's [redacted] told [redacted] that this task took "15 to 20 minutes." He is normally dressed in street clothing. [previous allocation 25 minutes]

- Toileting and bowel program were not changed – but catheter activity was reduced to 40 minutes a day - representing up to four 10-minute segments of bag service for this "straight cath" individual. [previous allocation 1:15 minutes]

- Eating was not changed, but the complex care task of feeding assistance was reduced from 1:15 to 50 minutes as the Appellant is largely tube fed at between 3 and 4 times day at 15 minutes per effort. [redacted] said that the HHS task of eating would allow for occasional feeding by mouth as well. [previous allocation 1:15 minutes]

On review, the main theme voiced by the Appellant was an equitable argument that the allocated times were simply inadequate given his diagnosis and advancing age. While there was some documentation in the record concerning the Appellant's limited abilities such as speech and upper limb mobility[1] – the evidence showed that [redacted] established the tasks at the high end of the provider's time and task explanations.

[redacted] then compared and contrasted some of those tasks with the standard allocation of time one would expect to see in a hospital setting or RTS – or both. Although the ALJ has no equitable jurisdiction he notes that the Department reviewer gave the provider the benefit of the doubt on each reviewed task.

[1] The Appellant uses a wheelchair.

The Appellant requires hands-on assistance and is properly receiving services as determined by his ASW and as reviewed by [redacted] on EHHS. Over time that assistance might or might not change as the Appellant's condition improves or deteriorates. The HHS and EHHS programs recognize the potential for change in condition. When and if that happens the Appellant was advised to contact the ASW and seek a new assessment.

The testimony brought by the Appellant through his representative did not establish any error in assessment. Indeed the greater weight of the evidence established that the assessment and review conducted by [redacted] was accurate and properly reached within policy.

There is no dispute that the Appellant needs [E]HHS – however his argument for additional EHHS was not supported by the evidence. The Appellant has failed to preponderate his burden of proof.

The Department's decision to reduce HHS was correct when made.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law decides that the Department properly reduced the Appellant's EHHS.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 1/19/2011

***** 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.