

**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. 2010-11823 HHS  
Case No. ██████████

**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 ██████████. ██████████ appeared on his own behalf. ██████████ Appeals Review Officer, represented the Department (DHS). Ms. Maureen Burton, Adult Services Worker, ██████████ Adult Services Worker, and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

**ISSUE**

Did the Department properly authorize 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.
2. The Appellant is a ██████████ who has been diagnosed with spinal cord injury quadriplegia. (Exhibit 1, page 18 and Exhibit 2, page 1)
3. The Appellant lives with his wife. (Exhibit 1, page 8)
4. On ██████████, a DHS Adult Services Worker completed a Home Help Services (HHS) assessment based upon a home visit made in ██████████ (Testimony and Exhibit 1, page 8)

5. As a result of the information gathered for the assessment, the worker authorized HHS payments in the Amount of ██████████ per month effective ██████████. Notice of this approval was sent to the Appellant on ██████████ (Exhibit 1, pages 5-6)
6. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing contesting the HHS payment amount. (Exhibit 1, pages 3-4)
7. On ██████████, a Program Specialist reviewed the Appellant's case at the request of the Adult Services Worker and an increase in the authorized HHS hours was recommended. (Exhibit 1, pages 14-15)
8. On ██████████, the Department sent a Services and Payment Approval notice to the Appellant indicating that his HHS payments would be increased to ██████████ per month, effective ██████████ (Exhibit 1, pages 10-12)

### **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.

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.

**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).

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On ██████████ the Adult Services Worker (worker) completed an HHS comprehensive assessment based upon a home visit conducted in ██████████ (Testimony and Exhibit 1 page 8) The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, the HHS hours were initially approved in the amount of ██████████ per month. (Exhibit 1, pages 5-6) The worker explained that the authorized hours do not indicate the total amount of assistance she determined the Appellant needs, but rather the amount of assistance that can be authorized during the hours the Appellant's wife is working. The worker stated this was in accordance with the above cited Department policy that a spouse is responsible for providing care unless they are unable or unavailable.

Subsequent to the Appellant's hearing request, the Department increased the HHS payments authorized for the Appellant. The worker testified that she sent the Appellant's case for review by a Department Specialist to ensure the Appellant case is authorized for all the assistance he is eligible for considering the complexity of the case and Appellant's wife's working part time 5 day per week. The Department Specialist recommended an increase in HHS hours for several tasks and a decrease in HHS hours authorized for the bowel program to allow for assistance with this task 4 days per week instead of 5 days per week. (Exhibit 1, page 14) The worker testified that the recommended changes were implemented resulting in an overall increase in the Appellant's HHS monthly payment to ██████████. (Exhibit 1, page 13)

The Appellant is not satisfied with the increased HHS payment amount, and continues to disagree with the limited hours authorized for HHS by the Department. The Appellant testified that there has been a long history of problems between himself and the Department, particularly since a prior hearing. However, this ALJ does not have any jurisdiction over the professionalism of the Department or any prior hearing decisions.

The Appellant introduced a Letter of Medical Necessity from his physician stating that the Appellant needs 6 hours per day of home health care regardless of his wife's employment status. (Exhibit 2, page 2) However, the Department can not ignore program policy based upon a physician's statement. The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. *Adult Services Glossary (ASG Glossary) 12-1-2007, Page 5 of 6*. The Appellant's wife meets the definition of a responsible relative. Under Department policy, Home Help Services for the Appellant can only be authorized for those services or times which the responsible relative is unavailable or unable to provide. The policy notes that unavailable means absence from the home, for employment or other legitimate reasons. *Adult Services Manual (ASM 363) 9-1-2008, Page 5 of 24*. Department policy in this area is clear, the employment status of the Appellant's wife's is material to the hours the Department can approve HHS for the Appellant. The Department properly considered the availability of the Appellant's wife to provide care for the Appellant and limited the authorization of HHS hours based upon the Appellant's wife's work schedule.

The Appellant also disagreed with the HHS hours authorized for his bowel program. The Department authorized 39 minutes 4 days per week for this task. (Exhibit 1, page 13) The Appellant testified the bowel program is part of his daily routine and that it takes approximately 35-45 minutes in the morning when his wife is at work. The Appellant stated that his wife works 6 hours per day 5 days per week.

The Department did not provide sufficient reason for this task being approved for only 4 days per week when all other authorized tasks were approved for 5 days per week. The Department based the HHS hours that could be approved for this assessment on a five day per week work schedule for the Appellant's wife. (Exhibit 1, page 8) The Department Specialist who made the recommendation to approve this task for only 4 days per week was not present at the hearing to testify and did not provide an explanation for this recommendation in her [REDACTED] email. There is no evidence contradicting the Appellant's testimony that the bowel program is part of his daily routine each morning. The HHS hours for the bowel program should be adjusted to allow for assistance with this task 5 days per week in accordance with his wife's work schedule and the other authorized services.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly considered the work schedule of the Appellant's wife and authorized HHS hours for most tasks for only 5 days per week. However, the authorization of HHS hours for the bowel program for only 4 days per week was not appropriate considering this is a daily activity and the Appellant's wife works 5 days per week.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is **PARTIALLY AFFIRMED** and **PARTIALLY REVERSED**. The payment for the bowel program is to be adjusted to five days per week, to be consistent the Appellant's wife's work schedule and the other authorized services.

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

cc:

[REDACTED]

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Date Mailed: 2/18/2010

**\*\*\* 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.