

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

[REDACTED]

Appellant

_____ /

Docket No. 2010-13798 HHS

[REDACTED]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 [REDACTED]. [REDACTED], mother and legal guardian, appeared on the Appellant's behalf. [REDACTED], Appeals Review Officer, represented the Department of Community Health. [REDACTED] Adult Services Worker, [REDACTED], Adult Services Supervisor, and [REDACTED] with MDCH Home Help 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 [REDACTED] Medicaid beneficiary who participates in the Home Help Services (HHS) program.
2. The Appellant resides with his mother and father in the family home. (Testimony)
3. The Appellant has been diagnosed with severe mental retardation, seizure disorder, asthma, and severe cerebral palsy. He has undergone tracheostomy, and gastrostomy surgeries. (Exhibit 1, page 21)

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4. The Appellant is in need of total assistance for all of his Activities of Daily Living and Instrumental Activities of Daily Living. He also requires complex care services including tube feeding, bowel program, suctioning and range of motion exercises. (Exhibit 1, pages 10-11)
5. On [REDACTED] the Department's Adult Services Worker (ASW) conducted a home call for the purpose of performing a comprehensive assessment. During this visit, the worker learned that the Appellant began receiving additional services through Community Living Supports (CLS) two months earlier and that had been attending a program at the Pinegrove Learning Center since the fall. (Exhibit 1, pages 19-20)
6. On [REDACTED], the ASW requested additional information on the services provided by the CLS aid, which was received on [REDACTED]. (Exhibit 1, pages 16-17 and 19)
7. The Appellant's case was sent for review to a Registered Nurse (RN) at the Department's central office, who determined that the HHS payment must be reduced due to the hours the Appellant receives CLS services in the home and the hours the Appellant is out of the home at the learning center program. (Exhibit 1, pages 18-19)
8. The ASW implemented the RN's recommendations by reducing the HHS hours authorized for the tasks of dressing, toileting, transferring, mobility, and medication; removed the authorization for the activities of bowel program and eating; added the task and recommended hours for eating and feeding; and increased the HHS hours in the areas of suctioning and range of motion. (Exhibit 1, pages 12-13)
9. On [REDACTED] the ASW sent an Advance Negative Action Notice notifying the Appellant that his Home Help Services payments would be reduced to [REDACTED] per month, effective to [REDACTED]. (Exhibit 1, pages 4-6).
10. On [REDACTED] the ASW sent an Advance Negative Action Notice notifying the Appellant that his Home Help Services payments would be reduced to [REDACTED] per month, effective to [REDACTED] Exhibit 1, pages 7-9).
11. On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's Request 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 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.

- 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

In this case the Appellant's functional abilities are not contested. He is fully dependent on the assistance from his providers for all Activities of Daily Living and Instrumental Activities of Daily Living. The RN for the Department testified that the reductions were made to the Appellant's case due to the CLS services he is receiving and the time he spends out of the home at the learning center program.

Medicaid policy clearly states that CLS services can not supplant HHS services:

17.3.B. COMMUNITY LIVING SUPPORTS

Community Living Supports are used to increase or maintain personal self-sufficiency, facilitating an individual's achievement of his goals of community inclusion and participation, independence or productivity. The supports may be provided in the participant's residence or in community settings (including, but not limited to, libraries, city pools, camps, etc.).

Coverage includes:

- Assisting, reminding, observing, guiding and/or training in the following activities:
 - meal preparation
 - laundry
 - routine, seasonal, and heavy household care and maintenance
 - activities of daily living (e.g., bathing, eating, dressing, personal hygiene)
 - shopping for food and other necessities of daily living

CLS services may not supplant state plan services, e.g., Personal Care (assistance with ADLs in a certified specialized residential setting) and Home Help or Expanded Home Help (assistance in the individual's own, unlicensed home with meal preparation, laundry, routine household care and maintenance, activities of daily living and shopping). If such assistance appears to be needed, the beneficiary must request Home Help and, if necessary, Expanded Home Help from the Department of Human Services (DHS). CLS may be used for those activities while the beneficiary awaits determination by DHS of the amount, scope and duration of Home Help or Expanded Home Help. If the beneficiary requests it, the PIHP case manager or supports coordinator must assist him/her in requesting Home Help or in filling out and sending a request for Fair Hearing when the beneficiary believes that the DHS authorization of amount, scope and duration of Home Help does not appear to reflect the beneficiary's needs based on the findings of the DHS assessment.

- Staff assistance, support and/or training with activities such as:
 - money management
 - non-medical care (not requiring nurse or physician intervention)
 - socialization and relationship building
 - transportation from the beneficiary's residence to community activities, among community activities, and from the community activities back to the beneficiary's residence (transportation to and from medical appointments is excluded)
 - participation in regular community activities and recreation opportunities (e.g., attending classes,

- movies, concerts and events in a park;
volunteering; voting)
- attendance at medical appointments
- acquiring or procuring goods, other than those listed under shopping, and non-medical services
- Reminding, observing and/or monitoring of medication administration
- Staff assistance with preserving the health and safety of the individual in order that he/she may reside or be supported in the most integrated, independent community setting.

CLS may be provided in a licensed specialized residential setting as a complement to, and in conjunction with, state plan coverage Personal Care in Specialized Residential Settings. Transportation to medical appointments is covered by Medicaid through DHS or the Medicaid Health Plan. Payment for CLS services may not be made, directly or indirectly, to responsible relatives (i.e., spouses, or parents of minor children), or guardian of the beneficiary receiving community living supports.

CLS **assistance** with meal preparation, laundry, routine household care and maintenance, activities of daily living and/or shopping may be used to complement Home Help or Expanded Home Help services when the individual's needs for this assistance have been officially determined to exceed the DHS's allowable parameters. CLS may also be used for those activities while the beneficiary awaits the decision from a Fair Hearing of the appeal of a DHS decision. Reminding, observing, guiding, and/or training of these activities are CLS coverages that do not supplant Home Help or Expanded Home Help.

*Medicaid Provider Manual,
Mental Health/Substance Abuse section
Pages 100-101 October 1, 2009.*

This ALJ understands that the Department was attempting to prevent payment for a duplication of services, which Department policy does not allow. However, the CLS aid is compensated for providing services that are authorized by the Community Mental Health authority, which are not compensated by the Department's Home Help Services program such as guiding and training. The fact that the CLS aid may perform some hands on care incidental to performing the CLS services is not a basis to reduce the HHS hours. The reductions to the HHS hours based upon the CLS services can not be sustained.

The second reason for the reductions in the Appellant's case was the time he is out of the home for the learning center program. It was proper for the Department to consider the time the Appellant is out of the home and not receiving assistance from his chore provider. However, the chore provider testified that this program is only 100 days a

year and therefore it is not appropriate to base a reduction on the Appellant out of the home 5 days per week, every week. The provider explained that there are holidays, breaks, and teacher in service days when the Appellant stays at home and does not attend the learning center program. If they have not already done so, the Department should take these times into consideration. For example, if the Department was provided with a copy of the learning center program schedule, the Department could average the days per week the Appellant actually spends in the program over the assessment period and/or perform more frequent assessments to re-determine the correct HHS hours authorization if a prolonged breaks from the program occurred, such as a summer break of several months duration.

A new assessment is needed in the Appellant's case as it is not possible to tell what portion of the HHS reduction was due to the CLS services and what portion was due to the time the Appellant spends out of the home at learning center program.

DECISION AND ORDER

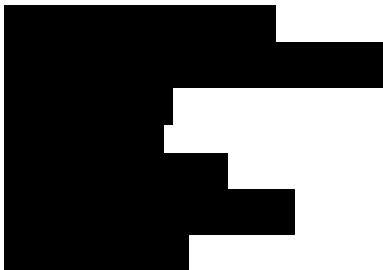
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly reduced the Appellant's HHS payments.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department shall complete a new comprehensive assessment to determine the appropriate ongoing HHS payment.

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

cc:



Date Mailed: 3/10/2010

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***** 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.