

**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. 2010-14387 HHS

██████████

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 ██████████. The Appellant appeared without representation. He had no witnesses. ██████████, appeals review officer, represented the Department. Her witness was ██████████.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services (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 a ██████████, male, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with HIV, wasting syndrome, CTS, back pain, hip pain, HTN, OA, depression, hepatitis C and neuropathy. (Department's Exhibit A, pp. 15, 16 and See Testimony)
3. On ██████████ the ASW conducted a yearly reassessment for the Appellant that led to a reduction in services through the elimination of the tasks of bathing, grooming, dressing, transferring, and mobility. (Department's Exhibit A, pp. 2, 12, 13)
4. The ASW sent the "advance" negative action notice on ██████████ [effective ██████████] with a proposed dollar amount authorized of ██████████. (Department's Exhibit A, p. 4)

5. The instant appeal was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on ██████████
██████████ (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 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.

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.

The Department witness testified that on annual assessment she observed the Appellant move about his residence and determined that he had no issues with regard to mobility. As for the remaining areas of bathing, grooming and dressing she said that the Appellant told her he had no real problems except for what she termed as supervision. The ASW testified that the Department does not provide supervision services "just because of a fall risk."

The Appellant testified that he had taken a "little too much pain medication" in anticipation of the day's events – so aside from some stomach upset he was able to ambulate a little better than usual.

On questioning from the ALJ the Appellant acknowledged that he used the pain medication for some "herniated discs" in his neck and OA in his knees, CTS and an ancient wrist repair. The ASW was unaware of these later afflictions at the time of assessment.

On review, I found the Appellant's testimony credible and controlling on the issues grooming and dressing and the need for assistance. He testified that his hands shake and are severely deformed and painful as a result of his disease process and surgical history. He is a long time manager of his many [18 different medications] pills.

The ASW admitted today that she was unaware of those maladies and I suspect that the Appellant likely failed to differentiate prior hand/wrist pain from other, more recent pain issues, such as revealed on 54A. This is easily corrected with an updated 54A – however the Appellant's present status, I believe, requires reinstatement of the HHS grant for grooming and dressing at its previous level to prevent injury.

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The Appellant admitted at hearing that bathing was not an issue – and owing to the observations of the Appellant (medicated or not) by the ASW on ██████████ – I believe that the remainder of the HHS reductions were well founded, observed and properly issued under the standards of a comprehensive assessment. However, the Appellant’s credible medical history testimony persuades this reviewer that for the items of dressing and grooming - owing to the “fall risk” as observed by the ASW – the Appellant requires hands on services owing to his debilitated state.

The Department did not provide evidence of the prior rankings for the reduced and eliminated ADLS.

The following items summarize the ADL reductions and the ALJ’s disagreement:

- Grooming was improperly eliminated as the clear weight of the evidence showed that the Appellant needs hands on assistance to dress and groom owing to his shaking and malformed hands. Proposed ranking is 3.
- Dressing was improperly eliminated. The Appellant explained, as was the issue with grooming, that the status of his hands and fingers cause this task to require the same level of assistance. Proposed ranking is 3.

The following items summarize the ADL¹ status and the ALJ’s agreement:

- Bathing was removed with the agreement of the Appellant.
- Transferring was removed based on the ASW observation.
- Mobility was removed based on the ASW observation.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was deficient in the deletion of dressing and grooming from HHS coverage. Instead of acquiescence the ASW should have probed further on Functional Assessment to determine her clients’ ability to perform the ADLs of grooming and dressing.

The Appellant is neither totally disabled nor totally dependent. He requires some hands on assistance with the tasks of grooming and dressing.

With regard to the dollar amount authorized there is conflict in the record. The testimony and the Department’s Exhibit [at page 2 and 13] states that the HHS payment was ██████████. The amount referenced in the Department’s Exhibit at page 4 [on advance negative action notice DHS 1212] was shown as ██████████ which represents a calculation not inclusive of a newly established ██████████ hourly rate.

¹ Increased for lack of shared household. Department’s Exhibit A, p. 2

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Based on the record established today the Appellant has preponderated his burden of proof to demonstrate his need for reinstatement of the ADLs of grooming and dressing. The remaining ADLs were properly assessed.

The total care cost calculation is returned to the Department for corrective action.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly reduced the Appellant's HHS payment with regard to the ADLs of grooming and dressing.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**, in part, and **REVERSED**, in part.

IT IS FURTHER ORDERED that:

The Department shall establish the correct total care cost, including the correct hourly rate, upon receipt of this Decision and Order.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 4/1/2010

***** 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.